

# Increased Ability of Legal Solution in the Prevention of Promiscuous Sex Outside of Marriage

Deity Yuningsih

Senior Lecturer at Faculty of Law, Halu Oleo University, Kendari, Indonesia, Jalan H.E.A Mokodompit No. 1  
Anduonohu Kota Kendari 93232  
deityhukum@gmail.com

Ruliah

Senior Lecturer at Faculty of Law, Halu Oleo University, Kendari, Indonesia, Jalan H.E.A Mokodompit No. 1  
Anduonohu Kota Kendari 93232  
ruliahlaw@gmail.com

## Abstract

Promiscuous sex behavior in marriage is customary law and religious law is deviant deviant acts. However, the Criminal Code, cannot be held accountable to all perpetrators, except only those who are still bound by marriage. This, both directly and indirectly, leads to the appearance of adolescent or adult-free sex behavior during voluntary. Promiscuous sex behavior negatively affects the fabric of society; and can be the cause of the spread of Sexually Transmitted Diseases, increase unwanted pregnancies, and the birth of children outside of marriage. Therefore, it is very important to conduct research to find legal solutions in an effort to prevent promiscuous sexual behavior. This research is qualitative normative research with a legal approach and a conceptual approach in the related legal field. The results showed that Article 284 of the Criminal Code which regulates ineffective extramarital intercourse (free sex) has been revised with the new Article 411 of the Criminal Code so that it has become a legal solution that contains the principle of legal certainty and legal expediency in preventing free sex behavior. Under the new provisions, all perpetrators of extramarital sex crimes can be criminalized and held legally accountable.

DOI: 10.7176/JLPG/128-03

Publication date: January 31<sup>st</sup> 2023

## Introduction

Some people who do not study law view law as difficult to understand. There are people who commit an offense only to know that there is a law governing it. Some even feel that the legal provisions he encounters are contrary to the values of life attached to him. In fact, the law in principle serves as a guideline for behavior in life in society, it plays a role in determining the acts that are allowed or prohibited in order to create order and peace so that the law is an instrument of social control.

Laws are created, implemented, and devoted to human interests so that humans determine whether or not the law works. But on the other hand, the fact is that even though the law has provided restrictions on behavior, including containing threats to the perpetrator, humans still tend to want the freedom to follow their instincts. The implementation of such freedom depends largely on the character of the individual who lives it, which can be interpreted as freedom is positive according to the norms that live expected or freedom of a negative nature, that is, deviant behavior from the social or legal order. In connection with such deviance, one of its forms is the behavior of promiscuous sex outside of marriage.<sup>12</sup>

Promiscuous sex outside of marriage in fact still occurs in society, whether performed by adolescents or by parties who have been bound in marriage, is a behavior arising from the inner will to have sexual relations with the opposite sex or the same-sex<sup>3</sup>. Even though the Marriage Law in Indonesia only allows such sexual behavior to be carried out only in a valid marriage<sup>4</sup>.

Promiscuous sex offenders outside of marriage can be affected by sexually transmitted diseases. This extramarital sex behavior can play a role in the spread of Sexually Transmitted Diseases (STDs) such as HIV/AIDS, unwanted pregnancies, illegal abortions, and being vulnerable to uterine cancer. Based on WHO data in 2019, there are 78% of new HIV AIDS infections in the Asia Pacific region. Data on HIV AIDS cases in Indonesia also continues to increase from year to year. The number of HIV cases in Indonesia in 2019 was

<sup>1</sup> Satjipto Rahardjo, *Law*, Citra Aditya Bakti, Bandung, 2000.

<sup>2</sup> Venansius Alfridus, et.al., *Factors Influencing Premarital Sex Behavior In Adolescents*, Journal of Telenursing (JOTING) Volume 4, Number 2, December 2022.

<sup>3</sup> Andriani, R., et. Al., *The Relationship of Adolescent Knowledge Levels and Attitudes to Premarital Sexual Behavior*. Journal of Research Innovation, 2(10), 2022.

<sup>4</sup> Deity Yuningsih et.al., *Same Sex Marriage In Legal And Human Rights Perspectives*, Journal of Legal, Ethical and Regulatory Issues, Volume 21, Issue 3, 2018.

50,282 cases.<sup>123</sup> In addition, it can be the cause of dangerous diseases, such as **chlamydia, syphilis, gonorrhea, fungal infections (candida), genital warts, herpes simplex, and hepatitis B.**<sup>4</sup>

In addition, promiscuous sex behavior outside of marriage will also correlate with the occurrence of unexpected pregnancies, while men who impregnate her often do not marry her, so the woman will be harmed by the shame of giving birth to her child and get a negative stigma by society. In fact, every child must expect to be born from both parents who are bound in a marriage that will position themselves as legal children. A legal child as in the Marriage Law in Indonesia is a child born as long as it is in a valid marriage or as a result of a valid marriage. This has different consequences for a child born outside of a legal marriage that positions himself as an illegitimate child so that his rights will not be fully legitimate. In connection with the phenomenon that occurs in these societies, research is how the law can provide solutions in preventing free sex behavior outside of marriage.<sup>56</sup>

### Method of Research

This research approach is an approach to legislation in force in Indonesia and a conceptual approach in the field of law. The tersenut approaches are used because they fit the type of research that is qualitatively normative and is able to resolve legal issues regarding the prevention of free sex outside of marriage from a legal point of view. Related to this, the laws and regulations governing the act of copulation outside of marriage, legal provisions on the rights of the child, and legal doctrines become sources of legal material that are relevant to the established legal issues. Furthermore, it conducts analysis by interpreting existing legal rules, legal principles that are commonly recognized universally, and aspects of legal expediency with values that live in society objectively.

### Discussion

#### Legal Functions and Purposes

There are many legal objectives that are put forward by legal experts, but in general, it can be drawn, that the purpose of the law is to make people happy, including (1) protecting the interests of society; (2) creating order and peace of society; (3) achieving justice for the community; and (4) provide benefits to the community. This goal can be realized well if it is implemented in synergy between its legal mechanism and the achievement of the meaning of its legal norms so that it not only emphasizes procedural justice, but also the law must be able to detect what its society needs to achieve its substantive justice.<sup>7</sup>

In addition, a rule of law will be internalized in a real and effective way in society if the law meets three elements, namely: (1) Juridically, that is, it is formed according to its legal process and the material norms do not conflict hierarchically with higher law; (2) Sociological applicable, i.e. recognizable and acceptable to society; and (3) Apply philosophically, that is, in accordance with the law of ideals. These three elements must be met in order for the rule of law to function properly. If it is only a juridical element, then it is a rule that is not legitimate (*dode regel*), but if the rule of law is a sociological element due to the coercion of its applicability by the ruler, it will become a coercive rule (*dwaangmatreegel*), while if only the philosophical element is fulfilled, then the rule of law is only an aspired law (*ius constituendum*).

Therefore, in order for a law to be effective in realizing its purpose, Soerjono Soekanto put forward the theory of legal effectiveness which states that there are five factors that determine the effectiveness of the law, namely: (1) Its own legal factors (laws); (2) Law enforcement factors, namely the parties who form and apply the law; (3) Facility factors in law enforcement; (4) The societal factors in which they apply or are applied, and (5) Cultural factors, are as a result of works, creations, and tastes that are based on human work in the social life.<sup>8</sup>

#### Legal Provisions on Promiscuous Sex outside of Marriage

The legal provisions governing free sex outside of marriage in Indonesian law are contained in the Criminal Code, among others, contained in Article 284. Article 284 of the Penal Code states that you are threatened with imprisonment for a maximum of nine months: 1. A married man who commits adultery/copulation/promiscuous sex when it is known that Article 27 BW applies to him; b. A woman who is married does the deed. Article 29

<sup>1</sup> Pebrianti, P., & Maryanti, S., *Factors Influencing Sexual Behavior in Class XII Young Women at SMA Negeri I Unaha, Konawe Regency*. Journal of Vocational Midwifery, 6(1), (2021).

<sup>2</sup> Sartika, A., et. Al., *Education on the Knowledge of Youth about Youth Care Health Services (PKPR)*. JOSING: Journal of Nursing and Health, 2(1), 2021.

<sup>3</sup> Ministry of Health of the Republic of Indonesia, *Infodatin HIV AIDS*. <https://pusdatin.kemkes.go.id>, 2020

<sup>4</sup> Anjar Saputra, A dangerous disease that arises due to free sex <https://health.grid.id/read/353109164/8>, 2022.

<sup>5</sup> Colleen Murray Gastón, et. Al., *Child marriage among boys: a global overview of available data*, Vulnerable Children And Youth Studies, VOL. 14, NO. 3. 2019.

<sup>6</sup>Deity Yuningsi, *Evasion of Law on Child Legal Status in Close-Shame Marriage's Institution*, Journal of Law, Policy and Globalization, Vol.44, 2015

<sup>7</sup> Dewa Gede Sudika Mangku, *Introduction to Law*, Klaten: Lakeisha, 2020.

<sup>8</sup> Wibowo T. Tunardy, *Legal Functions and Objectives*, <https://jurnalhukum.com/> 2021.

BW states that At the same time, a man may only be married to one woman; and a woman with only one man.

Article 284 of the Criminal Code is often referred to as the law on adultery or copulation outside of marriage which in principle only prohibits the behavior of promiscuous sex outside of marriage which requires that one of the perpetrators or both must have been bound in marriage, as stated by Article 27 BW. This can be interpreted to mean that if the behavior of promiscuous sex outside of marriage (intercourse outside of marriage) whose perpetrator is not bound by marriage, then it cannot be held legally accountable as a category of committing deviant acts. Thus, the scope of Article 284 of the Criminal Code is more about the threat of punishment for criminalizing the reproach of a husband or wife in undermining the sanctity of his marriage. This is historical a result of the secular-hedonistic paradigm of European legal formation in the past.

The paradigm of intercourse outside of marriage that lived in European society at that time was not accommodating to the values that lived in the Indonesian state from the past to the present, but in fact juridically and sociologically forced to remain valid. In fact, the concept of copulation in the sense of free sex in Indonesian society does not limit whether the perpetrator is bound or not in a marriage. The necessity that free sex offenders must be bound by marriage has the effect that the law narrows or restricts who is meant by the perpetrator, thus contradicting the values of living in a society spread in customary, customary, and religious laws of any religion believed by Indonesian society. The legal values in Indonesia, actually underline that whatever the perpetrator is as long as the behavior is carried out not in the marital bond, then it falls into the category of free sex acts.<sup>1</sup>

In Islamic religious law as the majority religion, it is strictly stated to stay away from acts of promiscuous sex or adultery. Q.S Al-Isra: 32 states: "...do not approach adultery. Indeed, adultery is a heinous act and a bad path."

Article 284 of the Criminal Code is not effectively applied as positive law in Indonesia, either directly or indirectly has triggered the emergence of promiscuous sex behavior not only by adolescents but also by adults who are not bound by marriage, as long as the act is carried out voluntarily, then according to Article 284 of the Criminal Code does not fall into the category of deviant acts. 2017 Indonesian Demographic and Health Survey (conducted per 5 years) revealed that around 2% of adolescent girls aged 15-24 years and 8% of adolescent men of the same age admitted to having had sexual intercourse before marriage, and 11% of them experienced an unwanted pregnancy. <sup>2</sup>The most powerful factor in influencing promiscuous sexual behavior is the status of teenagers dating or having dated 362 times at risk of behaving promiscuously outside of marriage.<sup>3</sup>

The status of children born outside of marriage is referred to as out-of-wedlock children who will be partially deprived of their rights as a child, not recognized as having a juridical father who is obliged to provide for him but will instead be the mother's child and part of the mother's family only. The data is iceberg data and still undetected data on promiscuous sex committed by other adult perpetrators who have not been bound in marriage. Thus the real numbers are far from being revealed, as data on promiscuous sex tends to be closed and private.

### **Renewal of Legal Provisions on Promiscuous Sex Conduct as a Legal Solution**

The long struggle felt by the Indonesian people over the compulsion to enforce Article 284 of the Criminal Code which is incompatible and contrary to the values that live in a society with religious norms and customary norms for many years has not stopped being fought for, both through formal and non-formal discussions, to conducting a judicial review process to the Constitutional Court which resulted in the rejection of the struggle for reducing Article 284 of the Criminal Code to suit the needs and benefits of the community.

The legal rules in Article 284 of the Criminal Code are juridically binding, but sociologically the legal rules are coercive to accept their applicability, so the legal rules become coercive rules (*dwaangmatregel*) which have a consequence that is not useful in creating order and peace of life, so in this case, the legal factor itself (law) is a barrier Its applicability and the factors of the society in which the law is enacted, in this case, contrary to recognized noble values.

At the end of 2022, Article 284 of the Criminal Code is revised with Article 411 paragraph (1) of the Criminal Code. If previously Article 284 of the Criminal Code which regulates copulation or free sex outside of marriage requires one or both of them to be still bound by marriage, then Article 411 paragraph (1) of the Criminal Code does not state it explicitly anymore. Article 411 paragraph (1) confirms that Any person who has intercourse with a person who is not his husband or wife shall be convicted of adultery, with imprisonment for not more than 1 (one) year or a maximum fine of category II. It is in subsection (2) that the Criminal Act referred to in subsection (1) shall not be prosecuted except on the complaint of a. husband or wife for a person who is

<sup>1</sup>Sulis Irianto and A. Cahyadi, *The Bulkhead Collapse of Civil and Criminal: Study Court Case of Violence against Woman*, Center of Study of Woman and Gender & Yayasan Obor Indonesia, Jakarta, 2018.

<sup>2</sup>Kemenkopmk, Free Sex Contrary to Indonesian Culture, <https://www.kemenkopmk.go.id/>, 2020

<sup>3</sup>Rachmadya Wira Shakti, et al., *Relationship Status of Dating, Media Exposure, Peers and The Role of Parents with Premarital Sexual Behavior in Adolescent Men in Indonesia (Advanced Analysis of SDKI Data 2017)*, <https://jurnal.unej.ac.id/index.php/biography/article/view/29460>. Vol 2 No 1, 2022

bound by marriage. b. Parents or their children for persons who are not bound by marriage.

Article 411 paragraph (1) of the Criminal Code will in principle criminalize and provide punishment to anyone who commits intercourse outside of marriage who is not only the perpetrator for his husband or wife with imprisonment or fines.

The legal value contained in the article has appreciated the values that have been fought for so far so that it can be an effective solution in preventing free sex behavior because of the certainty of the norms of actions and perpetrators, as well as the threat of punishment to be imposed. Furthermore, it will also be a solution to minimizing its adverse impact in Indonesia because it provides more certainty and benefits in law enforcement. As a legal system, of course, the consistent and professional performance factor of law enforcement is very influential in implementing it so that legal provisions can be realized in accordance with their objectives. Thus, the provisions of Article 411 paragraph (1) of the Criminal Code can be able to become a legal solution in efforts to prevent free sex behavior outside of marriage, because in addition to being in harmony with the law sociologically, it has also fulfilled juridical and philosophical elements in its applicability.

### Conclusion and Recommendation:

The law in a country is not only written law, it is also recognized by unwritten laws that live in a society in the form of customary law and religious law known as living law. In reality, it is still very much recognized and obeyed. Customary law comes from one common ancestor, with the same cultural value system, and the same local wisdom. In addition, there are also religious laws that govern the order of life of its people, both horizontally to fellow mankind and nature, as well as to its creators. The existence of Article 284 of the Criminal Code directly or indirectly has triggered promiscuous sex behavior because parties who are not bound by marriage on the grounds of liking each other do not become a category of deviant acts and do not receive the threat of punishment. However, with the revision of Article 411 paragraph (1) in the new Criminal Code, it becomes the right legal solution to prevent free sex behavior outside of marriage and is also expected to be able to minimize the negative impacts it causes. Also important is the need to increase people's understanding of the manners and morals of male and female associations, reproductive health, and knowledge of relevant laws.

This research is only limited to the study of norms of legal provisions that provide legal solutions to the prevention of promiscuous sex behavior outside of marriage that has been going on for years. Therefore, it is necessary to continue further research to measure the carrying capacity of Article 411 paragraph (1) of the Criminal Code in the form of more concrete law enforcement data in the community after its implementation in a certain year periodization.

### References:

1. Satjipto Rahardjo, *Law*, Citra Aditya Bakti, Bandung, 2000.
2. Venansius Alfridus, et.al., *Factors Influencing Premarital Sex Behavior In Adolescents*, Journal of Telenursing (JOTING) Volume 4, Number 2, December 2022.
3. Andriani, R., et. Al., *The Relationship of Adolescent Knowledge Levels and Attitudes to Premarital Sexual Behavior*. Journal of Research Innovation, 2(10), 2022.
4. Deity Yuningsih et.al., *Same-Sex Marriage In Legal And Human Rights Perspectives*, Journal of Legal, Ethical and Regulatory Issues, Volume 21, Issue 3, 2018.
5. Pebrianti, P., & Maryanti, S., *Factors Influencing Sexual Behavior in Class XII Young Women at SMA Negeri I Unaha, Konawe Regency*. Journal of Vocational Midwifery, 6(1), (2021).
6. Sartika, A., et. Al., *Education on the Knowledge of Youth about Youth Care Health Services (PKPR)*. JOSING: Journal of Nursing and Health, 2(1), 2021.
7. Ministry of Health of the Republic of Indonesia, *Infodatin HIV AIDS*. <https://pusdatin.kemkes.go.id/>, 2020
8. Anjar Saputra, A dangerous disease that arises due to free sex <https://health.grid.id/read/353109164/8>, 2022.
9. Colleen Murray Gastón, et. Al., *Child marriage among boys: a global overview of available data*, Vulnerable Children And Youth Studies, VOL. 14, NO. 3. 2019.
10. Deity Yuningsi, *Evasion of Law on Child Legal Status in Close-Shame Marriage's Institution*, Journal of Law, Policy and Globalization, Vol.44, 2015
11. Dewa Gede Sudika Mangku, *Introduction to Law*, Klaten: Lakeisha, 2020.
12. Wibowo T. Tunardy, Legal Functions and Objectives, <https://jurnalhukum.com/> 2021.
13. Sulis Irianto and A. Cahyadi, *The Bulkhead Collapse of Civil and Criminal: Study Court Case of Violence against Woman*, Center of Study of Woman and Gender & Yayasan Obor Indonesia, Jakarta, 2018.
14. Kemenkopmk, Free Sex Contrary to Indonesian Culture, <https://www.kemenkopmk.go.id/>, 2020
15. Rachmadya Wira Shakti, et al., *Relationship Status of Dating, Media Exposure, Peers and The Role of Parents with Premarital Sexual Behavior in Adolescent Men in Indonesia (Advanced Analysis of SDKI Data 2017)*, <https://jurnal.unej.ac.id/index.php/biograph-i/article/view/29460>. Vol 2 No 1, 2022