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Article Title

## **Complaints by Victims of Adultery Offenses: A Comparative Study of Penal Code and Islamic Law**

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## **ABSTRACT**

*This study aims to comprehensively analyze the differences between the complaint system for victims of adultery in the new Penal Code and Islamic Criminal Jurisprudence. This study uses a normative legal research method. The collected legal material is then qualitatively analyzed to describe the problem and answer the study objectives. The findings reveal fundamental differences between the two legal systems, despite a convergence in the expanded definition of adultery. The new Penal Code retains adultery as a complaint offense, allowing for the withdrawal of complaints before the trial examination begins. Conversely, Islamic Criminal Jurisprudence categorizes adultery as an ordinary offense, with complaints treated as *da'wa* (lawsuits) that, once proven, cannot be withdrawn due to their violation of Allah's law. This distinction reflects a fundamental philosophical divergence between the two legal systems. The new Penal Code prioritizes protecting individual interests and providing room for reconciliation, while Islamic Criminal Jurisprudence emphasizes upholding moral values and divine justice. Therefore, it is recommended that law enforcement officers understand the philosophical differences and practical implications between the new Penal Code and Islamic Criminal Jurisprudence when handling adultery cases. Victims should understand their rights and the consequences of any legal action, including the possibility of reconciliation within the new Penal Code's framework. Furthermore, society should enhance its understanding of both legal systems to actively participate in preventing and addressing adultery cases wisely and based on noble moral values, fostering a social environment conducive to peaceful and dignified conflict resolution.*

*Keywords: Adultery; Complaint Offense; Islamic Criminal Jurisprudence; Ordinary Offense; Penal Code.*

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## **INTRODUCTION**

Adultery, an act violating social and religious norms, has become a latent issue eroding the fabric of Indonesian society (Topan, 2023). Despite Indonesia's status as the country with the world's largest Muslim population, adultery rates across various age groups, from married couples to teenagers, continue to rise (Alfatdi et al., 2022). This phenomenon raises fundamental questions about the effectiveness of legal instruments in deterring and preventing this immoral act.

One contributing factor to the high adultery rate is the weak law enforcement and legal vacuum concerning adultery among teenagers. Teenagers, in their transitional phase from childhood to adulthood, often grapple with surging emotions and strong sexual urges. In this situation, they are susceptible to external stimuli like social media, pornography, and promiscuity, which can lead them to adultery (Rivanie et al., 2021). The absence of clear and firm legal protection to address adultery cases among teenagers creates a void, allowing such behavior to persist without adequate sanctions.

Law Number 1 of 2023 on the New Penal Code brings a breath of fresh air in handling adultery cases. Adultery is now defined as sexual relations outside a legitimate marriage, expanding the scope of this complaint offense compared to the old Penal

Code, which limited it to married couples. Additionally, adultery is established as an absolute complaint offense, meaning prosecution can only occur based on a complaint from the aggrieved party (Sirjon & Sakti, 2023). This change opens a new chapter in addressing adultery cases in Indonesia while raising questions about how the system of complaints by adultery victims is regulated in the new Penal Code and how this aligns with the concept of complaints in Islamic Criminal Jurisprudence derived from the Quran and Hadith.

In the new Penal Code, complaints can only be filed by parties directly related to the victim, such as the husband or wife for those in marriage or parents or children for those not in marriage. Meanwhile, in Islamic Criminal Jurisprudence, complaints can be filed by anyone aware of the adultery, including the general public witnessing the act. This difference reflects the philosophical contrast between the two legal systems in viewing adultery. In the new Penal Code, adultery is seen more as a personal crime, primarily affecting those directly related to the victim (Wahyumah & Saputra, 2024). In contrast, Islamic Criminal Jurisprudence considers adultery a crime that impacts the entire social order (Ardiansyah et al., 2022). Thus, anyone aware of the incident has a moral obligation to report it.

Furthermore, complaints under the new Penal Code must be submitted in writing to the police, accompanied by sufficient evidence, such as witness statements, medical examination results, or video recordings. Meanwhile, in Islamic Criminal Jurisprudence, complaints can be made orally to a judge or ruler and do not always require formal evidence. However, the testimony of four just male witnesses remains a primary requirement in cases of *muhshan* adultery (those already married) (Maswandi et al., 2024). This difference can affect the accessibility of adultery victims to justice, especially for those facing difficulties gathering evidence or obstacles in filing written complaints. For instance, adultery victims from marginalized or vulnerable groups, like poor women or children, might encounter challenges in accessing legal services and collecting the necessary evidence to file a complaint.

Numerous studies have examined adultery within the Penal Code and Islamic Criminal Jurisprudence. However, previous studies primarily focused on other aspects of adultery, such as social impacts, comparative punishments, or normative juridical analysis of adultery-related articles in the Penal Code (Widyawati, 2020; Asril, 2023; Putra & Sulaiman, 2023; Lestiawati et al., 2024). Thus, this study aims to fill the gap in the context of complaints by victims and contribute significantly to the development of legal discourse concerning adultery in Indonesia.

By comprehensively analyzing the differences between the complaint system for adultery victims in the new Penal Code and Islamic Criminal Jurisprudence, this study is expected to provide a deeper understanding of the dynamics in handling

adultery cases in Indonesia. The study findings are also expected to offer input for policymakers and legal practitioners in formulating more effective strategies to prevent and address adultery cases and protect the rights of adultery victims. For example, these findings can be used to identify the strengths and weaknesses of each legal system in handling adultery cases, enabling efforts to improve and harmonize the two systems. Additionally, this study can provide recommendations on concrete steps to enhance adultery victims' access to justice, such as providing free legal aid services, training law enforcement officers in handling adultery cases, and conducting public education campaigns on the rights of adultery victims.

## METHOD

This study uses a normative legal research method with statute and comparative approaches (Qamar & Rezah, 2020). The legal materials used in this study include legislation, court decisions, legal books, scholarly articles, and online materials that discuss the complaints of victims of adultery offenses. The collection of these legal materials is done through a literature study technique. The collected legal material is then qualitatively analyzed to describe the problem and answer the study objectives (Sampara & Husen, 2016).

## RESULTS AND DISCUSSION

### A. The Complaint System for Victims of Adultery under the New Criminal Code

Law Number 1 of 2023 on the New Penal Code introduces significant changes to the regulation of adultery in Indonesia. The expanded definition of adultery in Article 411 section (1) of Law Number 1 of 2023 now encompasses sexual relations outside of marriage, regardless of the marital status of the individuals involved. Consequently, adultery is no longer limited to relationships between spouses but also includes sexual relations between unmarried individuals (Fitrah, 2021). This change reflects the evolving social dynamics, where extramarital sexual relationships are becoming more prevalent, particularly among younger generations.

The new Penal Code retains adultery as an absolute complaint offense (Asril, 2023). It means that legal proceedings can only commence upon a complaint from the aggrieved party. Law enforcement cannot conduct investigations or prosecutions without a formal complaint from the victim or authorized party. It reflects the view that adultery, although a violation of norms, remains a private matter whose resolution is left to the directly involved parties. This approach aligns with victimology theory, which emphasizes the active role of victims in the criminal justice process (Yunara & Kemas, 2024). Thus, the state does not take the

initiative in prosecuting but empowers the victim to decide whether the adultery case proceeds to legal proceedings.

Another significant change in the new Penal Code is the expansion of parties entitled to file complaints. Article 411 section (2) of [Law Number 1 of 2023](#) grants this right to the husband or wife in a marriage and to the parents or children of those not in a marriage. This expansion responds to criticisms of the old Penal Code, which was deemed too restrictive of victims' rights in seeking justice. It reflects a paradigm shift in criminal law, from a state-centered approach to a more victim-centered one ([Buitelaar, 2024](#)). This expansion aims to provide adultery victims, whether married or unmarried, with broader access to justice.

Expanding the right to file complaints aligns with the principle of restorative justice, one of the philosophical foundations of the new Penal Code. This principle emphasizes the importance of involving victims in the criminal case resolution process, including deciding whether a case proceeds to prosecution or is resolved through alternative mechanisms ([Faisal et al., 2024](#)). By granting the right to file complaints to those closely related to the victim, the new Penal Code allows them to play an active role in resolving adultery cases, according to their needs and interests. It is expected to provide a sense of justice for the victim and encourage a more comprehensive and dignified resolution of the case.

However, expanding the right to file complaints also presents challenges. The potential misuse of this right for purposes inconsistent with the spirit of justice, such as extortion or revenge, is a serious concern ([Cahyani et al., 2022](#)). Therefore, law enforcement must thoroughly screen every complaint, ensuring they are based on strong facts and sincere motives. Additionally, this expansion can lead to conflicts of interest between parties entitled to file complaints. In adultery cases involving married couples, for example, the husband and wife may have differing views on whether the case should proceed to prosecution or be resolved peacefully. In such situations, law enforcement needs to facilitate effective communication between the entitled parties to reach a fair and satisfactory agreement for all.

The absolute nature of the adultery complaint offense can also pose problems, especially for victims reluctant or afraid to report adultery cases. For example, victims still married to the perpetrator may hesitate to report due to concerns about the impact on their marriage or social stigma ([Astuti & Lestari, 2022](#)). In such situations, it is crucial for law enforcement to provide protection and support to victims, ensuring they feel safe and comfortable reporting their experiences. It aligns with victim protection theory, emphasizing the importance of providing protection and assistance to crime victims, including safeguarding them from intimidation and threats by the perpetrator ([Salsabilla et al., 2023](#)).

Furthermore, efforts are needed to raise public awareness about the importance of reporting adultery cases and eliminate the stigma attached to victims.

In the context of complaint offenses, the new Penal Code introduces the concept of “their children,” referring to biological children who have reached the age of 16. It grants children who have reached this age the right to report adultery cases involving their parents. This provision reflects the recognition of children’s capacity to understand and respond to situations that harm them and allows them to play an active role in protecting their interests. Granting this right aligns with the development of child law, increasingly recognizing children as legal subjects with rights and obligations, including the right to protection from violence and sexual exploitation (Nasrullah, 2023).

However, it is important to remember that the age of 16 is a minimum threshold. It does not mean every child reaches that age automatically possesses the same maturity and capacity to understand and respond to adultery cases. Therefore, law enforcement needs to carefully assess each case, considering factors like the child’s maturity level, psychological condition, and social environment before deciding whether to accept and proceed with a complaint from a child. Additionally, it is crucial to ensure that children reporting adultery cases receive adequate support and guidance from competent parties, such as social workers or psychologists, to help them cope with the trauma and psychological impacts that may arise from adultery.

In the context of reporting adultery crimes, [Law Number 8 of 1981](#) regulates two complaint mechanisms: written and oral complaints. Article 108 section (4) of [Law Number 8 of 1981](#) regulates that complaints can be made in writing. Written complaints must be signed by the complainant and contain a description of the reported crime. Written complaints offer advantages in clarity and accuracy of information and can serve as strong evidence in legal proceedings (Butt, 2023). However, they also require writing skills and access to writing tools, which may not be available to all victims..

Article 108 section (5) of [Law Number 8 of 1981](#) regulates that complaints can be made orally to authorized officials. In this case, the authorized official must create a complaint letter signed by both the complainant and the official. Oral complaints provide convenience for victims who may face difficulties making written complaints, such as due to limited education or writing skills (Rahmawati, 2024). However, oral complaints also have drawbacks, including the potential for inaccuracies in recording information by the authorized official.

Nevertheless, Article 411 section (4) of [Law Number 1 of 2023](#) allows victims to withdraw their adultery complaints before the examination begins in court

proceedings. The new Penal Code reflects a more humanistic and reconciliation-oriented approach (Malau, 2023). This provision provides an opportunity for the involved parties, especially the victim, to reconsider their decision and seek resolution outside the legal system, particularly in adultery cases involving complex family or emotional relationships.

The complaint system for victims of adultery crimes in the new Penal Code is a step forward in protecting victims' rights and providing broader access to justice. The expansion of parties entitled to file complaints, the affirmation of the absolute nature of the adultery complaint offense, and the recognition of children's capacity to report adultery cases are commendable breakthroughs. However, the implementation of these provisions needs close monitoring to ensure that victims' rights are genuinely protected, and justice is effectively upheld.

It's important to note that while the new Penal Code allows victims to play an active role in the criminal justice process, strict supervision and control are still necessary to prevent the abuse of authority and ensure legal proceedings adhere to the principles of justice and truth. Additionally, ongoing socialization and education efforts are needed to inform the public about the changes in the Penal Code, including the complaint system for adultery victims, so people understand their rights and obligations within the context of criminal law.

## **B. The Complaint System for Victims of Adultery under the Islamic Criminal Jurisprudence**

In Islamic Criminal Jurisprudence, reporting or complaining about a criminal act is called *da'wa* (lawsuit) (Wahyuni & Ramadhana, 2021). *Da'wa* has a broad connotation, encompassing claims for existing rights or defense against existing rights. In criminal cases, *da'wa* serves as a means for individuals or the community to report alleged criminal offenses to a judge or competent authority (Rahman, 2023). Unlike the Penal Code, which distinguishes between complaint offenses and ordinary offenses, Islamic Criminal Jurisprudence views *da'wa* as an instrument applicable to all criminal offenses, including adultery. Thus, *da'wa* becomes a key mechanism in enforcing Islamic Criminal Jurisprudence, providing space for active public participation in maintaining order and social justice.

One unique characteristic of *da'wa* in Islamic Criminal Jurisprudence is its open nature. There are no specific restrictions on who has the right to file a *da'wa* in adultery cases. Anyone with knowledge or evidence of adultery can file a *da'wa* with a judge or competent authority. It reflects the view that adultery is not just a private matter between the individuals involved but also a violation of social and religious norms that impact society as a whole. Therefore, every individual

has a moral responsibility to report suspected adultery as a form of participation in upholding justice and maintaining social order. This principle aligns with the concept of hisbah in Islamic Criminal Jurisprudence, which is the obligation of every Muslim to promote good and prevent evil, including reporting acts that violate the law and disrupt the social order (Aksa et al., 2023).

However, the openness of *da'wa* is accompanied by strict requirements. To be accepted and processed by a judge, *da'wa* must meet several conditions, including being filed by a sane person, having a clear and logical basis, and being accompanied by sufficient evidence (Yakar, 2022). In adultery cases, the evidence must meet very high standards through four methods: testimony, confession, *qarinah* (indications), or *li'an* oath (Aslati et al., 2024). This high standard of proof reflects the seriousness of Islamic Criminal Jurisprudence in handling adultery cases and the effort to prevent errors in imposing punishment. It also shows that Islamic Criminal Jurisprudence prioritizes the principles of caution and protection of human rights, particularly the right not to be accused and punished without strong and convincing evidence.

Testimony is the primary evidence in adultery cases. The testimony must meet several conditions, including being provided by four male witnesses who directly witnessed the sexual intercourse, to be admissible (Halim, 2022). This requirement is based on the Q.S. *An-Nisa'* verse 15, which states:

وَالَّتِي يَأْتِيَنَّ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِّنكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّيهِنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا ﴿١٥﴾

*“Those who commit unlawful sexual intercourse of your women - bring against them four (witnesses) from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them (another) way.”*

Furthermore, Ibn Abbas narrated a hadith that Hilal bin Umayyah, in the presence of the Prophet Muhammad, accused his wife of adultery with Sharik bin Sahma'. The Prophet Muhammad said: *“You bring forth evidence (witnesses) or receive the punishment of flogging on your back.”* Hilal said: *“O Messenger of Allah, if one of us sees a man on top of his wife, should we go and look for witnesses?”* The Prophet Muhammad reiterated, *“You bring forth evidence (witnesses) or receive the punishment of flogging on your back.”*

The Quranic verse and the hadith above explicitly regulate the number and quality of witnesses in adultery cases. The strictness of these witness requirements aims to protect individuals from false accusations and prevent unjust punishment.



Additionally, these requirements reflect the importance of preserving the honor and dignity of individuals, especially concerning sensitive issues like adultery.

In addition to testimony, confession can also be a basis for proof in adultery cases. However, the confession must be voluntary and without coercion or pressure. The judge also has the authority to reject a confession if there are doubts about its truthfulness or if the confession is suspected to be motivated by certain reasons, such as avoiding a more severe punishment or protecting another party. This principle aligns with the concept of *iqrar* in Islamic Criminal Jurisprudence, which is a confession made with full awareness and without any element of coercion or pressure (Saifuddin et al., 2024).

*Qarinah* (indications) is another form of evidence that can be used in adultery cases. *Qarinah* refers to circumstances or events that can provide strong indications of adultery, even without eyewitnesses directly observing the sexual intercourse (Bahori et al., 2023). Examples of *qarinah* in adultery cases include the pregnancy of an unmarried woman or the discovery of a non-mahram couple in suspicious circumstances. Using *qarinah* as evidence must be done cautiously because *qarinah* is indirect and can lead to different interpretations. Therefore, the judge must consider *qarinah* comprehensively and wisely and must not impose punishment solely based on *qarinah* without other supporting evidence. This principle reflects the importance of caution in using *qarinah* as evidence and avoiding errors in imposing punishment.

The *li'an* oath is the last resort in adultery cases if no other sufficient evidence exists. The *li'an* oath is taken by a husband who accuses his wife of adultery but does not have four witnesses. In the *li'an* oath, the husband and wife curse each other, stating that they are ready to receive Allah's curse if their testimony is false (Abdulrahman et al., 2024). If the husband maintains his accusation and the wife denies it, the judge can impose the *hadd* punishment (stoning) on the wife. However, if the wife confesses to adultery, the *hadd* punishment is dropped and replaced with a lighter *ta'zir* punishment. The *li'an* oath is a controversial mechanism because it can potentially lead to injustice if one party lies in their oath. Therefore, the use of the *li'an* oath must be a last resort and only in situations where no other evidence is available. This mechanism also reflects the efforts of Islamic Criminal Jurisprudence to seek truth and justice, even in difficult and complex situations.

The system of complaints by victims of adultery crimes in Islamic Criminal Jurisprudence reflects the values of justice, protection of individual rights, and social responsibility. The openness of *da'wa* provides an opportunity for anyone with knowledge or evidence of adultery to play an active role in upholding justice.

However, the strict requirements for evidence also demonstrate the importance of caution and thoroughness in handling adultery cases to avoid errors in imposing punishment.

It is important to note that although Islamic Criminal Jurisprudence provides a clear framework for the system of complaints and evidence in adultery cases, its implementation can vary depending on the local social and cultural context (Juanda et al., 2023). Therefore, a deep understanding of the principles of Islamic law and sensitivity to the values and norms prevailing in society are necessary so that the application of Islamic Criminal Jurisprudence in adultery cases can be carried out fairly and effectively (Rezah & Muzakir, 2021). Additionally, it is also important to consider the developments of the times and the needs of society in interpreting and implementing Islamic Criminal Jurisprudence so that Islamic law remains relevant and can provide solutions to contemporary problems, including adultery.

## **CONCLUSIONS AND SUGGESTIONS**

Based on the results and discussion, it can be concluded that a fundamental difference exists between the complaint system for victims of adultery in the new Penal Code and Islamic Criminal Jurisprudence, despite a convergence in the expanded definition of adultery. The new Penal Code maintains the nature of adultery as a complaint offense, where a complaint from specific parties is an absolute requirement to initiate legal proceedings, and this complaint can be withdrawn before the trial examination begins. In contrast, Islamic Criminal Jurisprudence categorizes adultery as an ordinary offense, allowing anyone to report it, and a complaint as a *da'wa* (lawsuit), once proven through various means, cannot be withdrawn because it is considered a violation of Allah's law. This difference reflects a fundamental philosophical distinction between the two legal systems. The new Penal Code focuses more on protecting individual interests and providing space for reconciliation, while Islamic Criminal Jurisprudence emphasizes upholding moral values and divine justice.

Based on the above conclusions, it is recommended that law enforcement officers deeply understand the philosophical differences and practical implications between the new Penal Code and Islamic Criminal Jurisprudence in handling adultery cases, particularly regarding complaints and their withdrawal. This understanding will enable them to apply the law fairly and wisely, considering the context of each case. Victims are advised to understand their rights under both legal systems, carefully consider the consequences of any legal action taken, including the possibility of reconciliation within the framework of the new Penal Code, and seek adequate legal and psychological support. For society, it is crucial to enhance understanding

of both legal systems to play an active role in preventing and handling adultery cases wisely and based on noble moral values. Furthermore, society should create a social environment that supports peaceful and dignified problem-solving.

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