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Reconstructing Legal Standing in Adultery Offenses: Expanding Complainant Standing for Affected Third Parties

Rekonstruksi Legal Standing Delik Aduan Perzinahan: Perluasan Subjek Pengadu bagi Pihak Ketiga Terdampak

Muh. Raihan Muflih Anhar[1], Fence M. Wantu[2], Irlan Puluhulawa[3]
[1-3]Faculty of Law, Gorontalo State University, Indonesia

Article Info

Corresponding Author:
Muh. Raihan Muflih Anhar
✉ raihananhar10@gmail.com

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Abstract

Article 411 of the Indonesian National Penal Code expands adultery criminalization but restrictively limits complainant standing strictly to immediate family members, creating a critical regulatory void for materially impacted third parties. This doctrinal research utilized statutory, conceptual, and comparative approaches to deconstruct this procedural anomaly. The analysis reveals that the absolute restriction produces an empirical justice gap, leaving commercial property owners vulnerable to factual damages and triggering communal vigilantism. To resolve this tension, the research formulates the doctrine of limited standing. This conceptual reconstruction grants exceptional complaint rights exclusively to third parties demonstrating direct legal interests and empirical material losses. This limited standing framework establishes a precise equilibrium between legislating public morality, safeguarding family privacy, and protecting commercial rights. Ultimately, it provides a universal prescriptive blueprint for modern criminal justice systems, ensuring that moral policing policies harmoniously coexist with objective civil damage protections, without triggering unintended mass overcriminalization abuses internationally.

Abstrak

Pasal 411 Kitab Undang-Undang Hukum Pidana Nasional memperluas kriminalisasi perzinaan namun secara restriktif membatasi kedudukan pengadu hanya pada anggota keluarga inti, sehingga menciptakan kekosongan regulasi krusial bagi pihak ketiga yang terdampak material. Penelitian doktrinal ini menggunakan pendekatan perundang-undangan, konseptual, dan komparatif untuk mendekonstruksi anomali prosedural tersebut. Analisis menunjukkan bahwa pembatasan absolut tersebut menghasilkan kesenjangan keadilan empiris, yang membiarkan pemilik properti komersial rentan terhadap kerugian faktual dan memicu vigilantisme komunal. Untuk mengurai ketegangan ini, penelitian merumuskan doktrin hak mengadu terbatas. Rekonstruksi konseptual ini memberikan hak pengaduan eksepsional secara eksklusif kepada pihak ketiga yang mampu membuktikan kepentingan hukum langsung dan kerugian material empiris. Kerangka hak mengadu terbatas ini membangun ekuilibrium presisi antara legislasi moralitas publik, perlindungan privasi keluarga, serta pengamanan hak komersial. Akhirnya, formulasi ini menawarkan cetak biru preskriptif universal bagi sistem peradilan pidana modern, guna memastikan kebijakan pengawasan moral berdampingan secara harmonis dengan perlindungan kerugian perdata, tanpa memicu ekses overkriminalisasi internasional.

A. INTRODUCTION

1. Background

The enactment of Law Number 1 of 2023 concerning the National Penal Code has ignited global jurisprudential debate. This discourse primarily centers on a fundamental shift in the regulation of morality offenses, which has precipitated a sharp clash of norms within the architecture of modern criminal law. Specifically, Article 411 of the National Penal Code radically expands the criminalization of adultery. While Article 284 of the former Penal Code strictly limited this offense to married individuals, the new provision absolutely encompasses all forms of extramarital sexual relations.[1] Paradoxically, this massive expansion of the *actus reus* is accompanied by a highly restrictive procedural mechanism, retaining adultery strictly as an absolute complaint-based offense. Under this regime, the legal standing to file a criminal complaint is granted exclusively to the immediate family circle—namely the spouse, parents, or children.[2] Ultimately, this dogmatic construction creates severe friction between the idealized protection of family privacy (*das sollen*) and the empirical reality of the offense's destructive impact expanding into the social and public spheres (*das sein*). This tension fundamentally destabilizes legal certainty and the effective administration of justice within the contemporary criminal justice system.[3]

This normative tension culminates in a critical regulatory void that demands urgent resolution, particularly when such adulterous acts are committed on property or premises legally owned or controlled by third-party entities. Repeated occurrences of adultery in lodging facilities, commercial apartments, hotels, or other public spaces frequently transcend mere moral degradation between the perpetrators and their families. Instead, such conduct inflicts concrete, measurable, and widespread harm upon entities situated entirely outside the family's equilibrium.[4] The empirical impact on private and communal entities manifests as asset depreciation, corporate reputational

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[1] Lidia Tama, *Pengaturan Pasal 411 KUHP (UU No. 1 Tahun 2023) Tentang Perzinaan Dalam Perspektif Hukum Islam* (Jambi: Universitas Jambi, 2026), https://repository.unja.ac.id/97922/.
[2] Siti Khodijah, Deny Guntara, and Muhammad Abas, "Tindak Pidana Perzinahan Dan Kohabitasi Dalam KUHP Baru: Kajian Yuridis Pasal 411 Dan Pasal 412 Undang-Undang Nomor 1 Tahun 2023," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 5, no. 3 (June 14, 2026): 499–506, https://doi.org/10.55681/seikat.v5i3.2347.
[3] Zul Khaidir Kadir, "KUHP Baru Indonesia Dan Prinsip Legalitas: Apakah Kepastian Hukum Masih Menjadi Fondasi?," *Jurnal Ilmu Hukum* 2, no. 2 (January 4, 2026): 100–111, https://doi.org/10.58540/jih.v2i2.1252.
[4] Mizaj Iskandar Usman et al., "Adultery Offenses in Indonesia's New Penal Code: Examining the Influence of Islamic and Customary Law," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (April 13, 2025): 73–84, https://doi.org/10.31958/juris.v24i1.13208.

erosion, and the looming threat of administrative sanctions, such as the revocation of operating licenses by regulatory authorities. On a macro level, this phenomenon degrades grassroots social cohesion, which linearly triggers collective destabilization.[5] This creates a severe legal dilemma: when the family members who possess statutory standing choose to remain silent, act apathetically, or decline to report the offense to conceal the scandal, the third parties bearing the direct factual harm automatically lose procedural access to activate criminal enforcement mechanisms. Such restricted legal standing structurally undermines the essence and function of legal certainty. Procedural loopholes of this nature are frequently identified as critical vulnerabilities within criminal justice frameworks that otherwise mandate comprehensive and equitable protection for all materially harmed victims, free from the arbitrary constraints of mere legal formalities.[6,7]

Over the past three years, both global and domestic academic discourse surrounding the normative architecture of Article 411 has proliferated rapidly, emerging as an epicenter of scholarly debate. Nevertheless, a state-of-the-art literature review reveals that existing studies remain heavily fragmented. They are largely confined to analyses centering on state power relations, offender autonomy, and the purification of religious values, which can be thematically categorized into three primary trajectories. The first trajectory focuses intensely on the philosophical transition and the determinative influence of religious values and customary law in justifying the expansion of adultery criminalization. Studies by Sirajuddin et al., Usman et al., and Hoesein comprehensively confirm that the shift in morality norms within the National Penal Code constitutes an exercise in legal decolonization and purification. This effort seeks to accommodate the aspirations of Islamic criminal law and local customary norms within Indonesia's positive

[5] Taun Taun and Fareed Mohd Hassan, "Criminalization of Adultery under New Criminal Code: Morality and the Protection of Citizens' Private Rights," *Kosmik Hukum* 26, no. 3 (July 23, 2026): 509–19, https://doi.org/10.30595/kosmikhukum.v26i3.27438.
[6] Hermawati Hermawati and Kadi Sukarna, "Protection of Victims' Rights against Undue Delay in Criminal Proceedings through the Victim-Oriented Judicial Time Control Model," *Greenation International Journal of Law and Social Sciences* 4, no. 3 (August 15, 2026): 792–805, https://doi.org/10.38035/gijlss.v4i3.1072.
[7] Resi Bumi, Kuat Puji Prayitno, and Dwi Hapsari Retnaningrum, "Reconstruction of Legal Protection for Victims of Crime from a Victimology Perspective in Indonesia," *International Journal of Social Science and Religion (IJSSR)* 7, no. 1 (April 1, 2026): 83–92, https://doi.org/10.53639/ijssr.v7i1.395.

law hierarchy—a systemic integration common in modern developing jurisdictions.[8,9,10] Reinforcing this postulate, Sukiyawati et al. emphasize that while stringent morality regulations—such as prohibitions on cohabitation and adultery—are designed to preserve communal social harmony, this legal architecture inherently perpetuates dialectical friction with the principles of civil liberties and privacy rights recognized by modern societies on the international stage.[11]

Transitioning to the second literary trajectory, scholars examine the implications of this criminal policy purely through the orthodox lens of human rights protection and the tolerable limits of state intervention. Nirwanawati sharply critiques this transformation of morality offenses, characterizing it as a manifestation of the state's expanding punitive power. She warns that it threatens to breach the demarcation of individual privacy in domestic spaces that should remain insulated from public penal instruments.[12] Echoing this vigilance, Saputra asserts critically that applying a complaint-based framework to adultery, absent rigorous procedural safeguards, could mutate into an instrument of structural persecution. Such an outcome would undermine the universal human rights commitments ratified by the state.[13] Conversely, the third trajectory shifts its focus toward mitigating the social impact and socio-legal dissonance generated by these acts within the community. Sutran and Anggraeny forcefully argue for a paradigm shift, contending that the existence of a complaint-based offense should not be reduced merely to a tool of penal repression. Rather, it must function as a shield protecting the honor and

[8] Sirajuddin Sirajuddin, Risdayani Risdayani, and Dewi Indriani, "Delik Aduan Tindak Pidana Perzinahan Dalam Pandangan Hukum Pidana Dan Hukum Islam," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 5, no. 2 (August 30, 2024): 359–72, https://doi.org/10.36701/bustanul.v5i2.1717.
[9] Usman et al., "Adultery Offenses in Indonesia's New Penal Code: Examining the Influence of Islamic and Customary Law."
[10] Zainal Arifin Hoesein, "Transformation of Islamic Law on the National Legal System in Indonesian Constitutional Perspective," *UUM Journal of Legal Studies* 3 (December 1, 2012): 77–109, https://doi.org/10.32890/uumjls2012.3.4.
[11] Sukiyawati Sukiyawati, Achmad Amin Majid, and Sajida Himaniarah, "The Protection of Social Harmony: A Critical Study on the Prohibition of Cohabitation in Islamic Law and the Criminal Code (KUHP)," *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 2 (January 5, 2026): 129–52, https://doi.org/10.22515/shahih.v10i2.11602.
[12] Mutiara Putri Nirwanawati, "Transformasi Pengaturan Tindak Pidana Perzinaan Dalam Perspektif Pembaruan Hukum Pidana Indonesia," *Jurnal Ilmiah Advokasi* 14, no. 1 (April 1, 2026): 161–77, https://doi.org/10.36987/jiad.v14i1.8187.
[13] Rian Prayudi Saputra, "Implikasi Pengaturan Baru Tindak Pidana Perzinahan Terhadap Perlindungan Hak Asasi Manusia Di Indonesia," *Jurnal Pustaka Cendekia Hukum Dan Ilmu Sosial* 3, no. 3 (January 9, 2026): 377–83, https://doi.org/10.70292/pchukumsosial.v3i3.187.

private sphere of the offender's family.[14] Adding a dimension of preventative management, Azzahra et al. urge the development of non-penal policy frameworks to address morality crimes, thereby preventing the phenomenon of systemic overcrowding across the criminal justice system.[15] Ultimately, however, both these normative and non-penal frameworks demand a degree of law enforcement flexibility. The system must navigate the turbulence of social dynamics adaptively and responsively, avoiding rigidity—an ideal deeply rooted in the philosophical pillars of Progressive Law.[16]

The thematic synthesis of this study identifies a significant research gap within contemporary legal discourse. Prior scholarship has dominantly fixated on the trichotomy of the state's penal authority (*ius puniendi*), religious morality doctrines, and the protection of domestic privacy rights. This discursive dominance has effectively marginalized the legal position of third parties who suffer factual damages. Current normative and prescriptive literature has yet to formulate a legal framework accommodating commercial entities and local communities as indirect victims of adultery. This deficit is particularly acute within the context of a complaint-based offense where the immediate family declines to initiate proceedings. This conceptual void triggers severe practical implications, effectively permitting vigilante justice (*eigenrichting*) due to the complete absence of a judicial conflict resolution mechanism for parties outside the familial nexus.

To address this scholarly gap, this study introduces a legal novelty: a conceptual reconstruction that broadens the scope of eligible complainants by integrating the doctrine of limited legal standing for materially impacted third parties in complaint-based adultery offenses. This research explicitly advises against converting adultery into an ordinary public offense, aiming to eliminate the risks of mass criminalization and excessive state intrusion into the private sphere. The central proposition of this thesis asserts that the state holds an obligation to provide conditional, exceptional procedural access for third parties, including commercial operators. This access must be strictly contingent upon empirical proof of calculable material loss or measurable reputational

[14] Moh. Raihan Rizaldi Sutran and Kurnia Dewi Anggraeny, "Paradigma Unsur Delik Aduan Terhadap Perzinaan Dalam Kajian Pembaruan Hukum Pidana," *Proceedings Series on Social Sciences & Humanities* 23 (June 11, 2025): 149–60, https://doi.org/10.30595/pssh.v23i.1561.
[15] Syafira Azzahra, Abdurrakhman Alhakim, and Rufinus Hotmaulana Hutauruk, "Formulasi Kebijakan Hukum Pidana Terhadap Pelecehan Seksual Anak Di Indonesia," *JURNAL USM LAW REVIEW* 9, no. 3 (June 7, 2026): 1726–47, https://doi.org/10.26623/julr.v9i3.13795.
[16] Mardona Siregar, "Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia," *Muhammadiyah Law Review* 8, no. 2 (August 3, 2024): 1–15, https://doi.org/10.24127/mlr.v8i2.3567.

degradation. Utilizing a doctrinal approach synthesized with the Theory of Pancasila Justice, this analysis evaluates the procedural rigidity of Article 411 of the Penal Code to formulate a proportionate prescriptive solution. This analytical reconstruction is projected not only to resolve the exclusivity of Indonesia's domestic jurisdiction but also to contribute theoretically to the global discourse on criminal law codification—striking a delicate balance between public morality, privacy rights, and the legal protection of third parties.

2. Research Questions

Building upon the previously identified regulatory void and normative tension, this study centers its analytical focus on formulating legal prescriptions to address the procedural exclusion of materially impacted third parties. The analytical framework and critical inquiry of this article are specifically structured to resolve the following central legal questions:

a. How does the dogmatic construction of Article 411 of Law Number 1 of 2023 concerning the National Penal Code dictate the legal standing of third parties who sustain factual damages within the rigid regime of an absolute complaint-based offense?
b. How can the doctrine of limited standing be structurally integrated to reconstruct the eligible complainant framework, thereby providing proportionate legal protection for impacted third parties without undermining the essence of domestic privacy or the foundational character of the complaint-based offense?

3. Research Method

This research was designed and executed as a doctrinal legal research that systematically analyzed legal norms, principles, and jurisprudential doctrines to evaluate the restrictive legal standing of complainants in adultery offenses under the modern Indonesian penal system.[17] Rather than relying on empirical sociological surveys, this study operated exclusively through a normative framework to dissect the procedural tension between the preservation of family privacy and the unaccommodated legal protection for impacted third parties. In executing the research, three specific approaches were simultaneously employed: a statutory approach, a conceptual approach, and a

[17] Irwansyah, *Penelitian Hukum (Pilihan Metode & Praktik Penulisan Artikel)*, Revisi Cet 4 (Mirra Buana Media, 2021), Hal, 93–99.

comparative approach. The statutory approach was operated to critically deconstruct the normative architectures of Article 284 of the former Penal Code and Article 411 of Law Number 1 of 2023 on the National Penal Code, specifically scrutinizing its absolute complaint-based character and rigid complainant limitations. Concurrently, the conceptual approach was utilized to synthesize the doctrines of legal standing, substantive justice, and Progressive Law, whereas the comparative approach was integrated to enrich the analysis by juxtaposing legal constructions regarding moral offenses and third-party protections across relevant global jurisdictions.[18]

The primary legal materials utilized in this investigation explicitly centered on Law Number 1 of 2023 concerning the National Penal Code (specifically Article 411) and the previous penal provisions (Article 284), alongside related statutory instruments governing matrimonial relations, torts, and constitutional rights. To support the primary statutory sources, secondary legal materials were meticulously collected, encompassing global legal treatises, seminal textbooks on criminal law, and peer-reviewed journal articles dissecting legal standing and progressive jurisprudence.[19] The data collection procedure was systematically conducted through an extensive literature review utilizing global academic legal databases, explicitly including Scopus, LexisNexis, Westlaw, and the official repository of the Indonesian National Legal Development Agency (JDIH BPHN). To maintain scientific rigor, transparency, and replicability, strict inclusion and exclusion criteria were established prior to the retrieval process. The collected literature was strictly limited to peer-reviewed publications issued between the years 2020 and 2026, utilizing specific search keywords such as "adultery criminalization," "complaint-based offense," and "third-party legal standing." Furthermore, publications that lacked verifiable academic indexing, non-peer-reviewed commentaries, and articles focusing purely on quantitative field data without doctrinal analysis were deliberately excluded from the analytical corpus to ensure methodological alignment.

Following the comprehensive data collection, the legal materials were structurally analyzed through a qualitative legal content analysis technique.[20] This analytical procedure was executed by discarding purely descriptive summaries in favor of a rigorous application of legal reasoning frameworks. Through this methodology, a

[18] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Kencana, Prenadamedia Group, 2005), Hal, 133–37.
[19] Ibid., 181.
[20] Ibid., 237.

systematic interpretation was operated to position the norms of Article 411 cohesively within the broader philosophical and constitutional architecture of the Indonesian criminal justice system.[21] Concurrently, a teleological interpretation was utilized to ascertain the original legislative intent (*ratio legis*) behind the stringent complaint restriction, subsequently testing its rational equilibrium against the concrete factual damages demonstrably suffered by property owners and external entities. Ultimately, the extracted legal arguments were synthesized through a deductive syllogism to construct a prescriptive conceptual reconstruction. This rigorous logical operation successfully formulated the limited standing doctrine—a targeted legal mechanism designed to accommodate the fundamental rights of impacted third parties while simultaneously safeguarding the foundational privacy constraints inherent to the complaint-based offense.[22]

B. RESULT AND DISCUSSION

1. A Dogmatic Deconstruction of Third-Party Legal Standing Under the Complaint-Based Regime of Article 411 of the National Penal Code

The modernization of the national criminal framework through the enactment of Law Number 1 of 2023 concerning the National Penal Code represents a tectonic shift in Indonesia's criminal policy architecture, particularly regarding state intervention in private morality. Dogmatically, Article 411 of the National Penal Code absolutely expands the *actus reus* of adultery. Whereas Article 284 of the former Penal Code strictly limited adultery to individuals bound by the institution of marriage, Article 411 radically criminalizes all forms of extramarital sexual intercourse regardless of the perpetrators' marital status. Intriguingly, this massive expansion of the penal net is paradoxically accompanied by highly stringent procedural restrictions. The legislature retained adultery as an absolute complaint-based offense, vesting statutory standing to file charges exclusively in the immediate family circle—namely spouses, parents, or children. This statutory construction, which aggressively broadens the punishable conduct while suffocating the class of eligible complainants, demands a rigorous philosophical

[21] Ibnu Sina Chandranegara and Luthfi Marfungah, "Regulatory Capture on Emergency Due Process of Law-Making," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), https://doi.org/10.1080/23311886.2024.2356382.
[22] Stephanie Collins and David Tan, "Legislative Intent and Agency: A Rational Unity Account," *Oxford Journal of Legal Studies* 44, no. 2 (June 7, 2024): 231–56, https://doi.org/10.1093/ojls/gqae001.

dissection to test its validity and proportionality within a democratic state based on the rule of law.

Philosophically, this standing restriction does not emerge in a vacuum; rather, it manifests the state's identity politics in legal drafting. Engaging with the findings of Sirajuddin et al., Usman et al., and Hoesein, this shift in morality norms can be comprehensively understood as a systematic state effort to decolonize and purify positive law.[23,24,25] The state endeavors to accommodate and assimilate the aspirations of Islamic criminal law and communal customary norms into the positive law hierarchy, effectively replacing the secular legal rationality left by the colonial administration. Nevertheless, this purification thesis must be critically scrutinized against the perspectives of Sukiyawati et al., who sharply emphasize that legislative attempts to preserve communal social harmony inherently generate severe dogmatic friction with civil liberties and individual privacy rights on the international stage.[26] This clash aligns with the global discourse highlighted by Simon Butt in his comparative study of Asian jurisprudence, wherein the trend of "criminalizing morality" in developing nations frequently triggers structural anomalies. These dysfunctions occur when public legal instruments are coerced into policing private intimacy without providing proportionate dispute resolution channels for the broader public.[27]

To precisely deconstruct the anatomy of this procedural asymmetry, a comparative mapping between the colonial-era legal framework and the new national criminal posture is essential. The matrix below visualizes the structural dissonance between the expansion of prohibited conduct and the contraction of the complainant sphere occurring within this statutory transition.

[23] Sirajuddin, Risdayani, and Dewi Indriani, "Delik Aduan Tindak Pidana Perzinahan Dalam Pandangan Hukum Pidana Dan Hukum Islam."
[24] Usman et al., "Adultery Offenses in Indonesia's New Penal Code: Examining the Influence of Islamic and Customary Law."
[25] Hoesein, "Transformation of Islamic Law on the National Legal System in Indonesian Constitutional Perspective."
[26] Sukiyawati, Majid, and Himaniarah, "The Protection of Social Harmony: A Critical Study on the Prohibition of Cohabitation in Islamic Law and the Criminal Code (KUHP)."
[27] Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (April 3, 2023): 190–214, https://doi.org/10.1080/10383441.2023.2243772.

Table 1. Comparison of *Actus Reus* Expansion and Complainant Restriction

Analytical Indicator	Article 284 of the Former Penal Code	Article 411 of the National Penal Code	Dogmatic & Sociological Implications
Scope of *Actus Reus*	**Restrictive:** Applicable only if one or both parties are subject to Article 27 of the Civil Code (bound by marriage).	**Absolute:** Encompasses any person engaging in sexual intercourse with someone other than their spouse (including unmarried couples).	Massive expansion of the state's definition of a "moral victim," transforming a strict marital offense into a general morality offense.
Nature of the Offense	Absolute Complaint-Based Offense.	Absolute Complaint-Based Offense.	The state refuses to act absent the initiative of a private entity restrictively authorized by statute.
Eligible Complainants (*Legal Standing*)	**Restrictive:** Limited solely to the defiled spouse.	**Restrictive:** Spouses (for married individuals), or parents/children (for unmarried individuals).	Creates an absolute kinship monopoly over the activation of criminal law, marginalizing other societal victims.

Based on the anatomical breakdown in Table 1 above, this manuscript exposes a fatal legal blind spot within the architecture of the National Penal Code. The state is palpably trapped in a narrow dichotomy pitting the "perpetrator's privacy interests against state morality," dogmatically neglecting and nullifying the existence of third-party entities outside the family structure who demonstrably incur factual damages. When the crime of adultery is executed on commercial property, hotel operators, apartment owners, and even local community entities frequently suffer material losses. They bear the burden of facility damage, the destruction of commercial reputation, premises sealing by local public order authorities, and the looming threat of social disintegration within their neighborhoods. Yet, when the perpetrator's immediate family chooses silence to conceal a familial disgrace, these third parties are stripped of all procedural legitimacy to activate law enforcement instruments due to a complete lack of legal standing.

This regulatory void essentially demonstrates a phenomenon of regulatory capture from the policymakers' standpoint, wherein the state elitistly drafts laws solely to serve abstract moral interests while failing to mitigate the collateral damage inflicted upon grassroots economic vitality and public order. The state's refusal to expand the statutory interpretation of eligible complainants to include these material victims not only offends the principle of distributive justice but also structurally obstructs formal avenues for legal resolution. On a global scale, when criminal law closes its doors to victims suffering concrete factual harm, the system indirectly justifies the proliferation of vigilantism or mob justice (*eigenrichting*). Consequently, the deconstruction of Article 411 proves that

restricting legal standing purely based on consanguinity or marriage is no longer justifiable in an absolute sense, particularly when an offense inflicts material suffering upon third-party entities in the public sphere.

2. The Factual Gap and the Peril of Vigilantism in the Public Sphere

Shifting the discourse from dogmatic anomalies to empirical realities, the architecture of Article 411 of the National Penal Code has precipitated a highly dangerous factual gap within the public sphere. When adulterous acts occur on commercial properties or within residential zones, third-party entities—such as hotel operators, apartment owners, or local communities—frequently sustain measurable material losses. These damages manifest as the destruction of corporate reputation, the imposition of administrative sanctions such as the revocation of business licenses by regulatory authorities, and the eruption of communal instability.

Responding to this criminalization regime, Nirwanawati sharply critiques that the expansion of the state's punitive power in morality offenses threatens to excessively breach the demarcation lines of individual privacy if not meticulously regulated.[28] Echoing this vigilance, Saputra posits critically that applying morality offenses absent rigorous procedural safeguards can easily mutate into an instrument of structural persecution by the majority against minorities.[29]

This manuscript unequivocally validates the concerns of both scholars; granting "general standing" to the lay public would inversely legitimize moral policing and actualize the threat of authoritarian persecution. Conversely, permitting a regulatory void by completely obstructing access to justice for third parties who suffer genuine economic harm fundamentally undermines legal rationality. The procedural deadlock that arises when the perpetrator's immediate family remains apathetic or chooses silence will inevitably channel conflict escalation toward vigilantism (*eigenrichting*). The procedural impasse culminating in the emergence of street justice is systematically visualized in Table 2 below.

[28] Nirwanawati, "Transformasi Pengaturan Tindak Pidana Perzinaan Dalam Perspektif Pembaruan Hukum Pidana Indonesia."
[29] Saputra, "Implikasi Pengaturan Baru Tindak Pidana Perzinahan Terhadap Perlindungan Hak Asasi Manusia Di Indonesia."

Table 1. Schematic of Procedural Deadlock and the Potential for Vigilantism (*Eigenrichting*)

Phase	Factual Condition / Legal Mechanism	Sociological Implications & Logical Precedents
Phase 1: The Trigger	The commission of adultery on third-party property (hotels/apartments) or within a residential neighborhood.	The emergence of factual damages (business occupancy decline, administrative sanctions, communal unrest).
Phase 2: Procedural Deadlock	The perpetrator's immediate family (spouse/children/parents) chooses silence and refuses to initiate a criminal complaint.	The procedural prerequisite of Article 411 is forfeited. Criminal proceedings are paralyzed, rendering the state unable to intervene.
Phase 3: Legal Void	Third parties suffering material harm lack the legal standing to demand protection.	Factual victims are isolated from formal access to justice; no lawful conflict resolution channels exist.
Phase 4: Escalation (Climax)	The emergence of compensatory justice-seeking outside the framework of positive law.	Vigilantism / *Eigenrichting* (Arbitrary raids, mass persecution, destruction of property assets).

Corroborating the trajectory visualized in Table 2 above, the absence of official legal dispute resolution channels for material victims directly degrades and strips the authority of the criminal justice system. When positive legal instruments fail to provide an adaptive protective mechanism (legal channel) addressing the empirical harm suffered by citizens, criminological theory dictates that society will formulate and execute its own adjudicative mechanisms, which invariably manifest as communal violence or vigilantism.[30]

The practice of *eigenrichting*—ranging from forced raids without warrants and mass persecution that degrades human dignity to the destruction of property by angry mobs—essentially constitutes a logical compensatory eruption caused by the obstruction of justice valves at the formal legal level. Reflecting upon the global landscape of criminal law discourse, the failure of developing nations' legislatures to strike a delicate balance between preserving the absolute right to privacy and protecting the socio-commercial rights of their citizens invariably culminates in the collapse of the rule of law at the grassroots level.[31,32] Bridging the chasm between the terror of state-sponsored moral persecution and the threat of societal vigilante anarchy requires a precise doctrinal

[30] Ofek Edri-Peer and Nissim Cohen, "Citizens' Illegal Behaviour as a Response to Unsatisfactory Street-Level Encounters: The Causal Relationship between Procedural Justice and Vigilantism," *Public Management Review*, September 5, 2024, 1–21, https://doi.org/10.1080/14719037.2024.2399145.
[31] Ngoc Tuan Tran, "Human-Centric Approaches to Digital Privacy: Insights from the Europe with Implications for Vietnam," *Social Sciences & Humanities Open* 13 (June 2026): 102926, https://doi.org/10.1016/j.ssaho.2026.102926.
[32] Bart van der Sloot, "A New Approach to the Right to Privacy, or How the European Court of Human Rights Embraced the Non-Domination Principle," *Computer Law & Security Review* 34, no. 3 (June 2018): 539–49, https://doi.org/10.1016/j.clsr.2017.11.013.

reconstruction. The state is constitutionally bound to design a restricted sphere of intervention, wherein the restoration of justice for genuinely impacted third parties can be accommodated within legal procedures without blindly exposing the perpetrators' privacy to the moral adjudication of the public.

3. Formulating the Reconstruction of Limited Standing Based on Pancasila Justice and Progressive Law

Responding to the procedural deadlock outlined previously, this manuscript formulates a legal prescription introducing the doctrine of limited standing for materially impacted third parties. This dogmatic formulation is deeply rooted in the philosophical foundation of Progressive Law Theory articulated by Siregar, which unequivocally demands that the law must not remain imprisoned within textual rigidity—or normative orthodoxy—when the restoration of substantive justice is at stake.[33] Employing this progressive analytical lens, the text of Article 411 of the National Penal Code must be deconstructed and extended beyond its strict grammatical confines to ensure the legal system is no longer blind to the material damages suffered by third-party entities operating outside the perpetrator’s kinship structure.

Nevertheless, implementing this legal reform requires the establishment of stringent qualifying parameters to eliminate the risk of overcriminalization. This proposition aligns with the empirical findings of Sutran and Anggraeny, who assert that the fundamental function of a complaint-based offense must be unconditionally preserved as a protective instrument for reputational integrity and the domestic family sphere.[34] Consequently, the doctrine of limited standing is not designed to convert adultery into an ordinary public offense, nor does it legitimize general standing for the public. This procedural prerogative is highly exceptional and limitative; it is not surrendered to the lay public armed solely with moral panic, but is specifically calibrated for third parties who possess verifiable material injuries. To guarantee that the perpetrator's privacy shield is not pierced by baseless public accusations, the rigid distinction between public moral injury and tangible factual damages is classified in the matrix below.

[33] Siregar, “Teori Hukum Progresif Dalam Konsep Negara Hukum Indonesia.”
[34] Sutran and Anggraeny, “Paradigma Unsur Delik Aduan Terhadap Perzinaan Dalam Kajian Pembaruan Hukum Pidana.”

Table 3. Matrix of Qualifying Requirements for the Doctrine of Limited Standing for Third Parties

Analytical Indicator	Public Moral Injury	Third-Party Factual Damages (Limited Standing)
Nature of Interest	Abstract, sociological, and untethered to positive law at the *locus delicti* (Communal unrest).	Concrete, material, and legally bound by positive law (Ownership rights over commercial property/business premises).
Burden of Proving Damages	Predicated on assumptions of morality, gossip, or collective discomfort (Moral outrage).	Predicated on empirical data (Documentation of asset depreciation, decline in commercial occupancy, governmental administrative sanctions).
Objective of the Complaint	Primarily intended to humiliate the perpetrator in the public sphere or facilitate mob justice (Vigilantism).	Strictly intended as an instrument to restore economic stability and rehabilitate the corporate entity's legal reputation.
Procedural Rights Status	**Lacks Legal Standing** (Procedurally dismissed).	**Possesses Limited Standing** (Authorized to trigger preliminary investigations).

Referring to the classification matrix above, the operationalization of the limited standing doctrine within the criminal law framework is bound by three highly rigorous cumulative prerequisites to prevent the phenomenon of abuse of process. First, there must be a direct legal interest legitimately tying the third party to the *locus delicti*, evidenced by instruments such as a commercial property deed or the articles of incorporation for a hospitality enterprise. Second, the alleged damages at the time of reporting cannot be presumptive; rather, they must manifest as an actual loss that is empirically and materially demonstrable, whether in the form of facility damage, the sealing of business premises by local authorities, or a numerically quantifiable degradation of commercial credibility. Third, the functional application of this third-party complaint right is strictly reduced to serving as a trigger to activate judicial proceedings—acting solely as a catalyst for preliminary law enforcement inquiry—and absolutely does not serve as an automatic justification for imposing a custodial sentence.

This tripartite formulation represents the true embodiment of Pancasila Justice, which rejects blind egalitarianism in favor of advancing the principle of proportionate legal protection predicated on rational harm. Viewed through the lens of contemporary global jurisprudence, this structural framework aligns with the comprehensive findings of Holder and Englezos, whose research confirms that victim participation in the criminal justice system is no longer absolutely monopolized by primary victims. Instead, it has systematically evolved to accommodate third-party entities proven to have suffered legal

injuries and measurable material damages resulting from a criminal act.[35] By injecting the doctrine of limited standing into the national penal architecture, Indonesia not only successfully safeguards the dignity of family privacy—as mandated by the nature of a complaint-based offense—but also elegantly establishes a judicial system that is accountable, responsive, and equitable in restoring the socio-commercial rights of its citizens in the public sphere.

4. Prescriptive Implications: Balancing Penal and Non-Penal Policies

As a prescriptive implication of the preceding dogmatic deconstruction and procedural formulations, this manuscript synthesizes the analytical framework of the limited standing doctrine into an applicable policy solution for the national criminal justice system. This legal construction must be read as more than a mere procedural remedy; it serves as a strategic instrument bridging the dichotomy between penal policy (strict criminal law enforcement) and non-penal approaches (alternatives to prosecution).

The doctrine of limited legal standing functions as a technical mechanism complementing the non-penal policy formulation advanced by Azzahra et al. Integrating non-penal approaches in the adjudication of morality offenses is critical to mitigating the risk of systemic overcrowding within judicial institutions. By formulating conditional procedural standing, this doctrine offers a concrete resolution to the limitations of penal intervention without abandoning victims' restorative rights.[36] Azzahra's concept of rationalizing the judicial caseload finds empirical resonance in global criminological discourse. This aligns with recent findings by Faisal et al., who assert that criminal justice systems in developing nations urgently require rigid gatekeeping mechanisms at the initial reporting stage to stem the tide of overcriminalization and penal populism, which are frequently fueled by mass moral pressure.[37] Absent strict procedural filters, the absolute expansion of adultery offenses will merely transform the judiciary into an instrument of persecution, incarcerating thousands of citizens and ultimately triggering systemic paralysis within correctional facilities.

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[35] Robyn L Holder and Elizabeth Englezos, "Victim Participation in Criminal Justice: A Quantitative Systematic and Critical Literature Review," *International Review of Victimology* 30, no. 1 (January 1, 2024): 25–49, https://doi.org/10.1177/02697580231151207.

[36] Azzahra, Alhakim, and Hotmaulana Hutauruk, "Formulasi Kebijakan Hukum Pidana Terhadap Pelecehan Seksual Anak Di Indonesia."

[37] Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), https://doi.org/10.1080/23311886.2023.2301634.

Within this context, the limited standing doctrine operates with brilliant, synergistic duality. On the one hand, as a precise penal policy, it furnishes a legitimate channel of access to justice for third parties, enabling them to restore civil and socio-commercial rights damaged by criminal conduct. Simultaneously, it functions as a robust non-penal safeguard by strictly filtering out frivolous complaints predicated solely on personal animus, sociological assumptions, or baseless public moral panic. By mandating empirical proof of material loss before penal instruments can be activated, the state effectively bars laypersons from weaponizing law enforcement apparatuses for moral policing. This procedural filter directly diminishes the volume of morality cases flooding the dockets, ensuring that criminal law is strictly reserved as the *ultimum remedium* for instances that inflict demonstrable factual harm in the public sphere.

Ultimately, the construction of limited standing establishes a highly precise and equitable equilibrium. This concept proportionately balances the state's prerogative to legislate public morality, the absolute respect for domestic privacy, and the affirmative obligation to protect third-party commercial rights and social order. This exceptional procedural redesign transcends the domestic jurisdictional deadlock triggered by Article 411 of the National Penal Code, successfully elevating the issue into a global jurisprudential lesson. International jurisdictions can adopt this procedural gatekeeping model as a blueprint for a civilized, modern legal framework—a system capable of criminalizing moral infractions while remaining fully insulated from the snares of majoritarian authoritarianism and mob vigilantism.

C. CONCLUSION

The normative construction of Article 411 of Law Number 1 of 2023—which restricts statutory standing exclusively to the immediate family—has precipitated a critical procedural void. This statutory framework effectively isolates third parties from access to justice, even when they sustain demonstrably material damages resulting from adulterous conduct. Such a dogmatic impasse not only offends the principle of proportionate legal protection but also threatens to incite vigilantism (*eigenrichting*) within the public sphere, a direct consequence of obstructing formal dispute resolution channels. As a legal prescription, this manuscript proposes a procedural reconstruction through the integration of the limited standing doctrine. This approach grants exceptional complaint rights to third parties, strictly contingent upon the cumulative evidentiary

burden of demonstrating a direct legal interest and empirical material loss. This formulation establishes a precise equilibrium, effectively safeguarding the socio-commercial rights of third parties and mitigating the risk of judicial overcrowding, all without sacrificing the core protection of family privacy or the fundamental character of adultery as a complaint-based offense.

REQUIRED STATEMENTS

CRediT authorship contribution statement. M.R.M.A.: Conceptualization, Methodology, Investigation, Formal analysis, Visualization, Writing – original draft. F.M.W.: Conceptualization, Supervision, Validation, Writing – review & editing. I.P.: Methodology, Resources, Validation, Writing – review & editing.

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Data availability. This study analyzed only publicly available legal sources—including statutory instruments accessible via the official repository of the Indonesian National Legal Development Agency (JDIH BPHN) and scholarly literature indexed in Scopus, LexisNexis, and Westlaw—which are cited in full in the footnotes and references. No new datasets were created.

Ethics statement. This study analyzed only publicly available legal sources and involved no human participants. Therefore, ethical approval and informed consent were not required.

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