

Implementation of Laws on Act No. 3 Year of 2009 Regarding Supreme Courts with Article 244 the Book of the Criminal Procedure Code on the Casatie at the Criminal Adultery

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Abstract

Adultery adheres to one of the moral decisions that are closely related to the moral values of the institution of marriage. In this connection, it is said that Law No.3 of Year 2009 concerning Marriage especially Article 45A Paragraph (2) letters is on or not with the Village 224 The Book Of The Criminal Law. Happen conflict of norm which is vertical with Act No.3 of 2009, if want the importance of the custodian and adultery in the event that it is the best in life in the future, it will be the highest level of income in the high end of the player, which is the best part of the future.

Keywords: Penal Code, Judgment of East Java High Court,

Introduction

Adultery or Mukah, According to the 284 Criminal Code states that adultery is an extramarital sexual relationship conducted by a pair of different human beings, both of whom have grown up and one or both are married to another party. Prohibition of sexual intercourse that can be categorized as Zina crime, in addition to Zina is done by people who are still married, either one of the adulterers or both according to the Criminal Code.

That adultery is a very great crime that gives a very bad impression to the adulterer itself, in particular and to all mankind in general. In contemporary times where many channels and media are trying to drag into this vile act, it is necessary for everyone to know the dangers and the bad consequences arising from adultery.

Man was created by God on earth with pairs between married men and women tied up in a sacred bond called marriage, and this sacred bond is confirmed or registered in a marriage institution to obtain legitimacy and legal force over the marriage. The definition of marriage itself according to Article 1 Law No. 1 of 1974 concerning marriage is the inner bond between a man and a woman as a husband and wife with the aim of forming a family, a happy and eternal household based on the One Godhead. Marriage is not only the union of two different personalities, but more than that related kinship relationship both sides even the surrounding community environment. The bond and destination of the marriage will last and be achieved if both sides are hand in hand to make it happen. In the marriage journey is not always smooth. The sacred bonds and the noble purpose of marriage may fade and are not attained due to a marriage betrayal committed by either party to their partner by committing adultery or adultery with another person or third party.

Adultery is in essence one of the moral decisions closely related to the moral values of the institution of marriage. In an individualistic-liberalistic western view, the rights and freedoms of individuals (including in the field of sexual or moral) are so prominent and highly upheld as long as the sexual or moral rights are individual, free and non-coercive, such matters shall be regarded as natural and without reproach. Therefore it is natural that adultery and marriage institutions are considered private (private). In the social structure of society that is more familial, collectivistic, and monodualistic, the problem of adultery is not merely a matter of private and individual freedom but also related to the values and interests of the wider community, the interests of the family, the people and the environment.

As citizens, both ordinary citizens and legal apparatuses of the police members are required to submit to all provisions both to private law and to public law, particularly in criminal offenses which are also included in the public legal domain. Violations against the provisions of the Criminal Code such as theft, embezzlement of acts of violation of morality such as adultery make a policemember accountable for the criminal act. Members of the POLRI are the actions of police members to comply with the awareness, compliance, and observance of the norms and ethics prevailing in the society as outlined in the legislation.

In accordance with the principle of equality before the law, anyone who violates the provisions of the law and any profession can be held accountable for his actions. In the case of adultery committed by members of police, general criminal provisions are used to make the Criminal Code as the legal basis in settling cases in

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court.

The act of violating morality such as adultery is an absolute complaint offense, where only prosecution can be made if the husband or wife who feels aggrieved complain about the act of adultery to be tried. In the Criminal Code, article 284 paragraph (2) requires a husband / wife complaint that feels harmed on the act of adulthood.

The amendment to the 1945 Constitution brought about changes in the implementation of judicial powers which are further stipulated in Law Number 4 Year 2004 concerning judicial authority affecting the transfer of administrative and financial institutions of the judiciary under the Supreme Court.

A policeman should set an example of a good example. By doing a despicable act that Zina means this cop has violated two rules at once. The first violation of the law of adultery and for that there is its own sanctions, both violations of professional ethics as a member of the police and for that there must be severe sanctions imposed.

In the decision of Malang District Court No.449 / Pid.B / 2016 / PN.Mlg dated October 13, 2016 defendant Guntur Oktario Purwanto is a member of POLRI who served in Polres Malang City, Malang, proven legally and convincingly guilty of committing a crime "Adultery" by imposing imprisonment of 8 (eight) months. Furthermore, the Decision of the High Court of Surabaya Number: 891 / Pid / 2016 / PT.SBY dated January 19, 2017 has revised the decision of Malang District Court to 6 months imprisonment for the defendant and ordered the crime not to be lived, unless in the future there is a decision of Judge determine otherwise, because the Defendant commits a crime before the expiration of 1 (one) year period.

In both of these decisions there are different results of the case so that the Public Prosecutor filed a cassation appeal but was rejected by the Malang District Court on the grounds that the Supreme Court rejected the appeal of the Public Prosecutor namely based on the provisions of article 45 A paragraph (2) letter b of Law No. 5 Year 2004 juncto Law No.3 Year 2009 on the Supreme Court, a criminal offense punishable by a maximum of 1 (one) year can not be applied for a cassation examination. Moving from the provisions of article 45 A above, the Guntur Oktario Purwanto case which is also threatened with imprisonment of 9 months (under 1 year) should not be applied for a cassation appeal to the Supreme Court.

Chief Justice of the Supreme Court has frankly argued about the problem of the Supreme Court that: "The Supreme Court often gets the negative spotlight from various circles, though not entirely true. The integrity, quality and performance of some judges and supreme judges are questioned. The long-standing proceedings of the Court in the Supreme Court are criticized for bringing justice from justice seekers into disruption. Disturbing other functions, such as supervision and coaching, are not escaped from criticism.

The Supreme Court in performing its functions as the executor of judicial power certainly does not completely disconnect every case until the sense of justice of all parties has been achieved. This is evidenced from the fact that not a few cases that have been tried by the Supreme Court filed a Review as the last Legal Effort. Several decisions of the High Court of Surabaya such as decision No. 891 / Pid / 2016 / PT.SBY is rejected in the cassation appeal, but there are several points in the content of the decision which the author is required to review.

In enforcing the criminal law, the judge in giving the verdict will not be separated from an institution called a court institution which in its implementation is performed by the judge. In performing the duties of the judge shall be free from any influence and interference from any party, so that the judge can be fair in giving the verdict. In relation to the verdict, the judge can not be influenced by any party, here the freedom of the judge is not an unlimited freedom but the freedom that is bound by the responsibility to create the law in accordance with Pancasila and the feeling of community justice.

According to the Public Prosecutor (JPU), the limitation of the cassation is caused by injustice and is discriminatory for the applicant guaranteed by Article 28D Paragraph (1) of the 1945 Constitution. Because, Of the Supreme Court Law, "so that the provision impedes the right of the Public Prosecutor (Appeal) to file an appeal to the Supreme Court.

The point of this discussion is that within the administrative perspective, it must create a synchronization of the law, in the case of those who are more likely to be incompatible with the performances. Act in the Law no. 12 Years 2011 The Formation of Permanent Values The percentage of players that may be made may not be the same with the parent stockholders in their business. In this connection, it is said that Law No.3 of Year 2009 concerning Mightage especially Article 45A Paragraph (2) letters belythen or not with the Regulation 224 Criminal Procedure Code. if want the importance of the custodian and adultery in the event that it is the best in life in the future, it will be the highest level of income in the high end of the player, which is the best part of the future.

Discussion

1. Scope of Law No.3 Year 2009 on Limitation of Appeal Law Effort

Court structures that are generally more than two levels and culminate in a supreme court with different terms

are not accidental. Generally, the highest court function, which in Indonesia is referred to as the Supreme Court other than the Constitutional Court with specific authority, is not entirely the same as the lower court function. The supreme Court's main function as an appeals court is not a repeat court, but rather to maintain the unity of law (to ensure uniformity of interpretation or application of law) to achieve legal certainty (and justice), to encourage legal development (through its interpretations of concrete cases in accordance with the development of society) and supreme control over serious errors of court proceedings first.

That in this case If the adultery is a free man, muhshan, mukallaf and without coercion from anyone, then the punishment is to be stoned to death.

Adultery is declared as an unlawful act that must be punished accordingly, because recalling the consequences are very bad. Free relations and all forms outside the provisions of religion is a dangerous act and threaten the integrity of society and is a very nista deed

Muhshan is the one who has done jima 'through the marriage ceremony of shahih. While mukallaf is a person who has reached the age of baligh. Therefore, children and madmen should not be punished. Based on the hadith "RUFIAL QALAM 'AN TSALATSATIN (= lifted pen of three classes)".

From Jabir ibn Abdullah al-Ansari that a man from the Aslam area came to the Prophet and told him that he had actually committed adultery, and then he witnessed to himself (by reciting) four oaths. So then the Messenger of Allah ordered (the Companions to prepare him for stoning), then after ready, stoned. And he is a married man. (Saheeh: Sahih Abu Daud no: 3725, Tirmidhi II: 441 no: 1454 and A'unul Ma'bud XII: 112 no: 4407).

From Ibn Abbas that Umar ibn al-Khattab (may Allah be pleased with him) preached before his people, saying: Allah has sent Muhammad Rosulullah (peace be upon him) in a way that is haq and He has sent him the book of the Qur'an. Among the Qur'anic verses that Allah revealed is stoning verse, we have read it, meditated on it and memorized it. The Messenger of God once stoned and we left him stoning (also). I am afraid that when the era passed by people has been running for a long time, there is someone saying, "Wallahi, we do not find stoning verses in the Book of Allah." So they are lost due to abandon the duties that Allah revealed, but stoning verses contained in Kitabullah which must be worn to "If the evidence is clear, or pregnant or there is confession." (Mutafaqun 'alaih: Fathul Bari XII: 144 no: 6830, Muslim III: 1317 no 1691,' Aunul Ma'bud XII: 97 no: 4395, Tirmidhi II: 442 no: 1456).

a. Restrictions through Case, Reasons and Conditions of Cassation and Review

In general, some have laws set out the reasons for allowing decisions or appointment of lower-level courts to be filed by a cassation or the CA. Article 30 of Law no. Law No. 14 of 1985 and amended to No. 3 of 2009 for example, states that in the Supreme Court's appeal may invalidate a decision or lower-level court decision because:

- a) Not authorized or exceeding the limits of authority;
- b) False or unlawful;
- c) fails to comply with the conditions required by legislation that threaten such negligence by the cancellation of the verdict.

In the context of a criminal case, the Criminal Procedure Code states that an appeal may be filed on the grounds that:

- 1) A legal regulation is neither implemented nor implemented properly;
- 2) The means of adjudication is not enforced under the Act;
- 3) The court has exceeded the limits of its authority.

Meanwhile, for reasons for the filing of a petition in a civil case, the state religion and administration in the Supreme Court Law is restricted, ie only:

- a) A judgment is based on a known lie after the case is terminated or based on evidence subsequently by a false judge is declared false;
- b) There is found a decisive evidence which at the time the matter was given was not found;
- c) Granted what is not demanded or more demanded;
- d) There are unanswered demands without consideration;
- e) Conflicting decisions of the same party on the same matter, on the same basis by the same or equal level of the Court;
- f) There is an oversight of the Judge or a clear error in the decision.

Meanwhile, specifically for military criminal and criminal cases, PK can only be submitted in case:

- 1) There are new circumstances which if already known before decisions are different (favorable to convict)
- 2) The terms or circumstances as the basis and reasons for the decisions otherwise proven to be contradictory to each other.
- 3) There is an oversight of the judge or a tangible error.
- 4) In the verdict the alleged act is declared proven but not followed by the crime.

b. The Constitutionality of Case Restrictions According to the 1945 Act

In the constitutional interpretation in Indonesia, the regulation on case restrictions as regulated in Law no. 3 of 2009 on Amendment to Law Number 14 Year 1985 regarding the Supreme Court has been petitioned for constitutional review and rejected by the Constitutional Court. The petition was filed by Hendriansyah who felt aggrieved because with the law he could not appeal the decision of the State Administrative High Court which defeated him in a dispute over the TUN decision made by the East Kutai Regent. As known, Article 45A paragraph (2) sub-paragraph c of Law no. 5 of 2004 states that the TUN case that can not be cassation is "a state administrative case whose object is lawsuit in the form of a decision of a local official whose range of decisions applies in the territory concerned". Which in this case is the decision of TUN Regent of East Kutai. According to the applicant, the article is a form of unequal treatment before the law (discrimination) and limits the right to access to justice (the right to appeal).

In its decision No. 23-PUU-V-2007, the Constitutional Court rejected the request on the grounds, among others:

1. The objective of case restrictions that is to reduce the inclination of each case to the Supreme Court encourages the improvement of the quality of first instance and appellate court judgments in accordance with the legal and justice values in society and is a legitimate objective. In addition, the restrictions on cases that are appropriate for appeals are a common practice in democratic law countries, both common law and civil law traditions.
2. The restrictions on cases set out in Law No.3 of 2009 are different forms of treatment before the law (discrimination) because in essence the provision applies to everyone having the same qualification as the applicant.

The decision of the Constitutional Court reaffirms the constitutionality of the restriction of the case in the context of the Indonesian constitutional law.

Philippus M.Hadjon argues that it divides two forms of legal protection that are preventive and repressive. Preventive means protection provided before a dispute, meaning that the protection of this law aims to prevent the occurrence of a dispute, whereas the opposite of repressive law aims to resolve a dispute arising in the event of a violation of the legal norms in the legislation.

Based on the above explanation, the theory that I use is Legal Protection Theory which in Legislation Ratio in the issuance of Law No.3 Year 2009 the need for a case restriction that can be submitted to the Supreme Court (MA) has been long enough in response to the problem of arrears of the case (case back-log) in the Supreme Court (MA). In addition, there are also ideas to increase the number of judges to compensate for the number of cases. That the main cause of cases arrears in the Supreme Court is due to the large number of articles entering the Supreme Court (and the lack of number of Supreme Court justices). Better regulation of case restrictions that can be submitted to MA is required. However, for different reasons. Arrangements on case restrictions are urgent to be enacted, especially to ensure a fast and cheap judicial process (so that the judiciary can be the community's choice to resolve its dispute) and anticipate an increasing number of future cases that are allegedly going to be bigger and increasingly important to be decided by the MA .

2. Conformity of the Formulation of the Criminal Law Code With a Living View in the Community in Countering the Criminal Acts of Adultery

The crime prevention effort has always been an interesting discussion for many, especially criminal and criminal lawyers. In criminal law there is talk of norms, ie prohibitions, and sanctions for violating those norms in the form of criminal penalties. In criminology the problem of crime prevention is an important part with its penology study which is concerned with criminal control with the criminal sanction system. Crime needs to get a serious review considering the harm it causes. Losses can occur to the state, society and individuals so need to be addressed.

Prevention and prevention of crime must support the goals, social welfare (SW) and "social protection" (SD). Therefore, the state reacts in the form of a ban on the act and sanction those who violate it. In addition, in social reality, the reaction as an attempt to tackle crime is not only given by the state. Communities and individuals who feel disadvantaged for their sense of justice will react as well. Criminal rules that are less feasible often become the object of public discontent that eventually foster a social reaction. It is increasingly clear if the observed results of research conducted by the National Law Development Agency on the Influence of Religion against Criminal Law. Both the people of Bali, Aceh or Manado view that the Criminal Code now can not meet the sense of community justice.

For the people of Aceh the only province that applies Islamic sharia law in Indonesia, implements a special punishment for adulterers, for its proceedings through the courts of the shari'ah court and based on the evidence and witnesses who see, which means it must have authentic proof. And based on a copy of the judge's decision, article 33 paragraph 1 Qanun number 6 of 2014 on jinayah law and Islamic shari'ah arguments for the adulterers in the lash law as much as 100 times in public.

For people in Bali and manado apply customary law for adultery perpetrators, so that customary law

process can be lived and can be complied with customary sanction, in practice in the middle of customary law, custom sanction in the form of various. If both of them are still "not married" and adultery it will be jatuh traditional fines in the form of goat sekok, rice 20 bushels, selamak semanis and then in nikahkan, but can be more severe when viewed from the position of adulterers, if women are wives of people then his sanctions more heavily in the form of a buffalo, rice 100 bushels, selamak as sweet and divorced by her husband, and who commit adultery at expelled from their place of residence.

The above conditions are very likely to occur because the definition of crime according to criminal law is different from the definition of crime according to the community. In connection with this there is dissatisfaction from some people about deviant behaviors especially in the sphere of decency. This is because the behaviors that deviate from the norms of society have not got their proper place in the criminal law. As in the case of adultery, which according to the understanding of society is different from the definition of adultery in Indonesian criminal law (KUHP).

Article 45 A paragraph (2) Letter b UU No.3 Year 2009 and 244 KUHP has expressly stated that the decision of exemption of nature can not be submitted by appeal and cassation law. In practice, however, this rule is not strictly adhered to by the MA based on the permanent jurisprudence of the Supreme Court. In principle, the Jurisprudence stipulates is "pure free" while for "impurities-free" decisions can still be requested by appeal. The problem in the practice of determining whether an exemption decision is a decision of "pure or impure exemption" can only be known when the decision is filed an appeal to the Supreme Court.

According to Prof Barda Nawawi Arief, the Reformation and Reform of criminal law in the socio-political, socio-philosophical, and socio-cultural values of the Indonesian society which underlies social policy, criminal policy and law enforcement policy in Indonesia. That the renewal of the criminal law must be followed by an approach oriented to the policy and value oriented approach.

Based on the above description, the Implementation of Law No.3 of 2009 on the Supreme Court against the cassation legal action on adultery crime. Consequently the practice limitation of cassation stipulated in Article 45 A paragraph (2) letter b and 244 KUHP has been effective for the perpetrator or defendant in adultery case where the perpetrator or defendant has been executing the punishment for the prosecutor representing the victim (wife / husband) of the perpetrator or the adultery accused there is no sense of justice of the cassation remedy so that Immediately ratified the draft Penal Code which regulates the adultery especially the threat or criminal sanction is higher or above 5 (five) years, given the increasing adultery cases in the community. Therefore, it should be provision in Criminal Procedure Code of Supreme Court, the defendant or the public prosecutor may file a request for a cassation to the Supreme Court except on a free decision.

Conclusion

Legal Ratio in the issuance of Law No.3 of 2009 on the Supreme Court due to the need for case restrictions that can be submitted to the Supreme Court (MA) has been long enough in response to the problem of case back-log (case back-log) in the Supreme Court (MA) . In addition, there are also ideas to increase the number of Supreme Court justices to compensate for the number of cases. That the main cause of arrears in the Supreme Court is due to the large number of cases coming into the Supreme Court (and the lack of number of Supreme Court justices). Better regulation of case restrictions that can be submitted to MA is required. However, for different reasons. Arrangements on case restrictions are urgent to be enacted, especially to ensure a fast and cheap judicial process (so that the judiciary can be the community's choice to resolve its disputes) and anticipate an increasing number of future cases that are allegedly getting bigger and increasingly important to be decided by MA. Implementation of Law No.3 of 2009 on the Supreme Court of Justice for the cassation action on adultery crime. As a result, the practical limitation of cassation stipulated in Article 45 A Paragraph (2) Sub-Paragraph b and 244 KUHP has been effective for the perpetrator or defendant in the case of adultery where the perpetrator or the defendant has served the sentence but the prosecutor representing the victim (wife / husband) of the perpetrator or the accused of adultery is considered to have no sense of justice, due to the limitation of the cassation remedy so that to be ratified the draft Penal Code which regulates adultery especially the threat or more criminal sanction high or above 5 (five) years, considering the increasing cases of adultery in society. Therefore, it should be provision in Criminal Procedure Code stating that against a criminal court decision awarded at the final level by a court other than the Supreme Court, the defendant or the public prosecutor may file a request for a cassation to the Supreme Court except on a free decision.

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