



Reconstruction of Decency Offenses in the New Indonesian Criminal Code: A Human Rights and Public Morality Perspective

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Abstract

Law Number 1 of 2023 expands Indonesia's decency offenses, especially adultery under Article 411 and cohabitation under Article 412, and thereby intensifies the tension between public morality and individual rights. This article evaluates those provisions from a human rights perspective, identifies their implications for legal certainty, justice, and utility, and develops a model for normative reconstruction. The research is doctrinal and combines statutory, conceptual, philosophical, and comparative approaches. Primary legislation, constitutional and international human rights instruments, judicial decisions, and relevant scholarship are analyzed qualitatively. The analysis finds that the provisions remain strongly oriented toward moral enforcement. Extending criminal liability to consensual adult relationships brings self-regarding conduct into the penal sphere, while the restricted complaint mechanism narrows prosecution without resolving the underlying legitimacy problem. The provisions also create uncertainty in defining a valid marriage, risk disproportionate interference with privacy, and may impose enforcement costs without demonstrable public benefit. The proposed reconstruction uses five parameters: a demonstrable harm threshold, a clear private-public boundary, proportionality and ultima ratio, precise statutory language, and harmonization between Pancasila values and constitutional rights. The model redirects criminal law toward coercion, exploitation, and concrete harm while preserving non-penal avenues for maintaining social morality.

Keywords: legal reconstruction; decency offenses; human rights; public morality; criminalization

INTRODUCTION

The enactment of Law Number 1 of 2023 ended Indonesia's reliance on the colonial *Wetboek van Strafrecht* and introduced a national Criminal Code that took effect on 2 January 2026 (Republik Indonesia, 2023). The codification is presented as a decolonizing project: it recognizes living law, adopts a more rehabilitative penal orientation, and seeks to express Indonesia's legal identity (Faisal et al., 2024). Its reformist character, however, must also be assessed against constitutional limits on state power. Provisions that regulate moral conviction and intimate conduct expose a central tension between national values and protected liberty (Butt, 2023). Decency offenses are therefore an important test of whether the new Code combines legal indigenization with rights-based criminal law.

Articles 411 and 412 substantially widen the reach of decency offenses. Article 411 applies to sexual intercourse outside a valid marriage, rather than only to conduct involving a married person, while Article 412 introduces cohabitation outside marriage as a criminal offense (Republik Indonesia, 2023). Both are complaint offenses that may be initiated only by a spouse, parent, or child. This restriction is intended to prevent reporting by unrelated third parties, yet it does not answer whether consensual adult intimacy should be subject to criminal punishment at all (Bachri et al., 2023; Natalis et al., 2026). The provisions consequently retain an unresolved tension between moral values invoked as national legitimacy and a penal structure capable of intruding into private life (Mubayyinah et al., 2025).

Comparative experience points in another direction. South Korea invalidated its adultery offense in 2015, after which marital conflict was increasingly addressed through non-penal mechanisms (Lee & Choi, 2025). In Botswana, customary adjudication likewise shifted adultery from a criminal wrong

toward civil responsibility (Werbner & Werbner, 2020). These developments do not require Indonesia to copy foreign law, but they show that protecting marriage and social morality does not necessarily depend on criminal punishment.

The legal-philosophical dispute is commonly framed through the Hart-Devlin debate. Devlin defended legal enforcement of a shared morality, whereas Hart argued that private immorality alone cannot justify penal coercion (Devlin, 1965; Hart, 1963). Mill's harm principle supplies the corresponding limit: liberty may be restricted to prevent harm to others, not merely because conduct is disapproved (Mill, 1859). Contemporary concerns about overcriminalization reinforce this restraint, particularly where offenses are difficult to enforce consistently and do not identify a concrete victim (Husak, 2023). For intimate relations, the issue also engages the protection against arbitrary interference with privacy under international human rights law (United Nations, 1966).

Existing Indonesian scholarship has examined adultery policy, the reform of sexual-offense legislation, the criminalization of polyamory, and ambiguity in related decency provisions (Widyawati, 2020; Setiawan et al., 2022; Bachri et al., 2023; Jumain Azizi et al., 2025). These studies clarify particular doctrinal problems, but most treat the provisions separately. Less attention has been given to an integrated test that connects public morality, privacy, criminalization theory, and the three legal values of certainty, justice, and utility. Nor has the literature developed a structured reconstruction model capable of translating that evaluation into legislative criteria.

This article addresses that gap by combining human rights analysis with Radbruch's triad of legal certainty, justice, and utility (Arifin et al., 2023). Its novelty lies in converting those standards into five operational parameters for reviewing decency offenses, while retaining the Pancasila-based orientation of national penal reform (Abdillah et al., 2024). The objective is not to remove morality from law, but to identify when moral concerns become sufficiently public and harmful to justify criminal intervention.

Three questions guide the analysis: how Articles 411 and 412 should be assessed from a human rights perspective; where the provisions create an imbalance between public morality and individual rights, including its consequences for certainty, justice, and utility; and how the norms should be reconstructed within the Indonesian criminal-law system. The study accordingly evaluates the existing provisions and formulates a balance-based model for future legislative review.

LITERATURE REVIEW

The analysis begins with the rule of law, which requires restrictions on liberty to be based on accessible, foreseeable, and non-arbitrary norms. Statutory enactment alone is insufficient; penal provisions must also have substantive quality and be capable of consistent application (Shcherbanyuk et al., 2023). Legal certainty therefore includes clarity of formulation as well as compatibility with justice and constitutional restraint (Sajó, 2024). This framework is especially important for decency offenses because their language often relies on contested moral concepts and their enforcement may enter private settings.

At the middle-theory level, legal moralism and the harm principle offer competing accounts of legitimate criminalization. Devlin considered a shared morality necessary to social cohesion and therefore open to legal protection (Devlin, 1965). Hart rejected the use of criminal law against consensual private conduct merely because a majority regarded it as immoral (Hart, 1963). Their

disagreement concerns not only the existence of moral consensus but also the proper relationship between collective values and individual liberty (Cuypers, 2024). For this study, public morality is a relevant legislative interest, but it is not treated as an unlimited or self-executing basis for punishment.

Mill's harm principle requires a demonstrable connection between the prohibited conduct and harm to others (Mill, 1859). Feinberg later distinguished harm from offense and rejected legal moralism and paternalism as independent grounds for criminal liability (Feinberg, 1984). The principle is not mechanically applied: harm may be direct or sufficiently foreseeable, and the concept must be defined with care (Gibney & Wyatt, 2020). Nevertheless, moral disapproval without a victim, coercion, exploitation, or public disturbance remains an inadequate basis for the most coercive form of state regulation.

Criminalization theory adds the requirements of restraint, proportionality, and institutional justification. Overcriminalization occurs when penal law extends beyond conduct that warrants public condemnation and coercive enforcement (Husak, 2023). Proxy offenses are similarly problematic when one act is punished mainly because it is assumed to signal another, more harmful act (Lee, 2022). Because criminal law is a public regulatory institution, its authority depends on identifying a public wrong rather than simply reproducing social disapproval (Lacey & Pickard, 2021). These considerations support the use of criminal law as *ultima ratio*.

Moral blameworthiness and legal culpability do not always coincide; conduct may be socially condemned without meeting the conditions for criminal punishment (Sarch, 2022). Public assessments of crime seriousness also tend to combine judgments about harm and wrongfulness, which cautions against treating majority sentiment as a complete criminalization test (Adriaenssen et al., 2020). A legitimate norm must therefore translate moral concern into clear evidence of public harm, protected interests, and proportionate legal consequences.

The applied framework is supplied by the right to privacy. Article 17 of the International Covenant on Civil and Political Rights protects individuals against arbitrary or unlawful interference with private life, while Indonesian constitutional and statutory human rights guarantees provide the domestic foundation (United Nations, 1966; Republik Indonesia, 1999). Privacy functions principally as a negative right that limits state entry into intimate relationships (Cinar, 2020; Bakshi, 2025). It does not create immunity for violence, coercion, or exploitation, but it requires a stronger justification when consensual adult conduct is criminalized. Excessive reliance on punishment may also undermine rights protection by equating human rights with penal expansion (Mavronicola, 2024). The analytical framework is summarized in Table 1 and Figure 1.

The framework is cumulative rather than dependent on a single liberal premise. Moral offense may be relevant where conduct is imposed on unwilling observers or seriously disrupts a shared public setting, but offense must be distinguished from private disapproval. The possibility of indirect harm also requires attention, because some conduct may damage dignity or social participation without producing immediate physical injury (Bell, 2020). Even then, the causal connection, seriousness, and affected interest must be demonstrated rather than presumed. Contemporary applications of the harm principle similarly show that criminalization requires evidence that penal coercion is necessary and not merely symbolically attractive (Debbaut, 2022). Privacy has a democratic function in this inquiry: it preserves a domain in which citizens form relationships and convictions without routine state

supervision (Seubert & Becker, 2021). The resulting test asks whether the conduct crosses a public threshold, affects a non-consenting person, and cannot be adequately addressed by less restrictive law.

Table 1. Mapping of the theoretical framework of the study

Theory layer	Theory/concept	Analytical function	Principal references
Grand theory	State based on law (rule of law)	Requires clear, non-arbitrary norms	(Sajó, 2024; Shcherbanyuk et al., 2023)
Middle theory	Legal moralism vs harm principle	Assessing the legitimacy of criminalizing decency	(Devlin, 1965; Hart, 1963)
Middle theory	Criminalization theory and ultima ratio	Restraining the reach of criminal law	(Feinberg, 1984; Husak, 2023)
Applied theory	Human rights and privacy	Protecting the private domain from state interference	(Bakshi, 2025; United Nations, 1966)
Applied theory	Radbruch formula and penal reform	Measuring certainty, justice, and utility	(Arief, 2018; Arifin et al., 2023)

Source: compiled by the authors (2026)

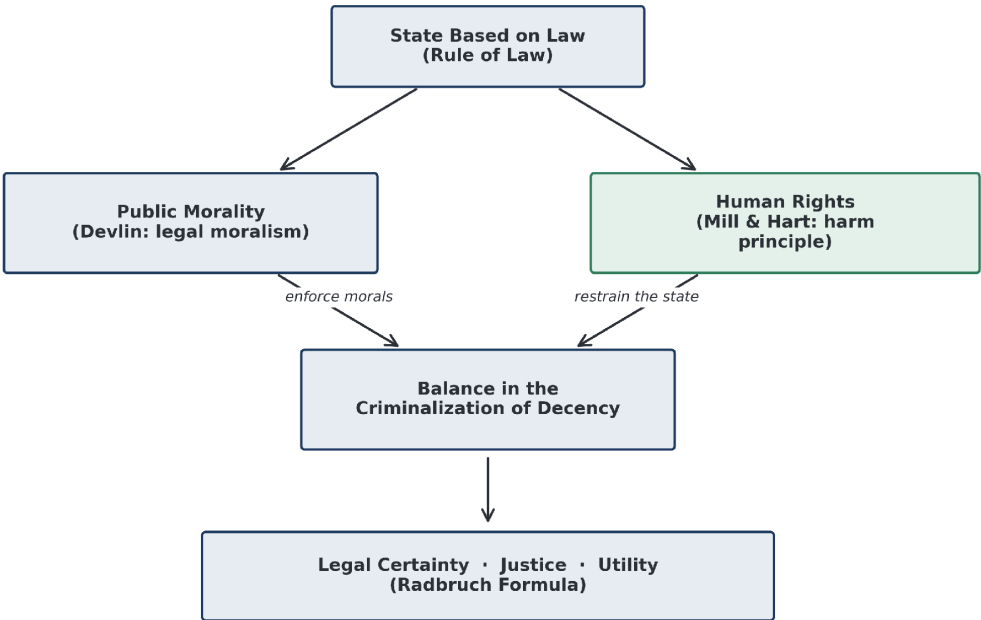


Figure 1. Theoretical framework for balancing public morality and human rights in the criminalization of decency. Source: authors' analysis (2026)

METHOD

This research is normative or doctrinal legal research. It treats legislation, legal principles, judicial decisions, and scholarly doctrine as an integrated normative system. The method is descriptive-analytical: it identifies the structure of Articles 411 and 412, evaluates the values and rights affected by those provisions, and develops a reasoned proposal for normative reconstruction. Philosophical and comparative analysis are used to avoid an exclusively textual reading of the Code (Taekema, 2020).

Four approaches are combined. The statutory approach examines Law Number 1 of 2023, the 1945 Constitution, human rights legislation, and related penal statutes (Republik Indonesia, 2023). The

conceptual approach clarifies decency, public morality, privacy, harm, and criminalization. The philosophical approach evaluates the legitimacy of enforcing morality through penal law. The comparative approach uses selected jurisdictions to identify alternative ways of protecting marriage and morality without assuming that foreign models can be transplanted directly into Indonesian law.

Primary legal materials comprise the new Criminal Code, the 1945 Constitution, Law Number 39 of 1999 on Human Rights, Law Number 12 of 2022 on the Crime of Sexual Violence, relevant Constitutional Court decisions, and the International Covenant on Civil and Political Rights (Mahkamah Konstitusi Republik Indonesia, 2017; Republik Indonesia, 1999, 2022; United Nations, 1966). Secondary materials include national and international scholarship on decency offenses, privacy, criminalization theory, and penal reform. Tertiary materials are used only to clarify terminology.

Materials were collected through documentary and literature review. The analysis proceeded in four stages: mapping the elements and complaint mechanisms of Articles 411 and 412; testing the provisions against the harm principle, privacy, proportionality, and ultima ratio; comparing the treatment of adultery and related private conduct in South Korea and Botswana; and evaluating the provisions through legal certainty, justice, and utility. The final stage synthesized the findings into a five-parameter reconstruction model. The comparison is functional rather than transplant-oriented and is used to expose available regulatory alternatives.

RESULTS AND DISCUSSION

The Normative Construction of Decency Offenses in the New Criminal Code

The new Criminal Code places decency offenses in a separate chapter covering public indecency, pornography, sexual conduct, and related behavior. Article 411(1) punishes a person who has sexual intercourse with someone who is not his or her spouse, with a maximum sentence of one year of imprisonment or a category II fine (Republik Indonesia, 2023). The provision therefore expands the former adultery offense, which generally required at least one participant to be married (Widyawati, 2020). Its protected interest is no longer limited to an existing marital relationship; it extends to the broader proposition that sexual intercourse should occur only within a legally valid marriage.

Article 412 criminalizes living together as husband and wife outside marriage. Unlike Article 411, the offense concerns an ongoing domestic arrangement rather than proof of a particular sexual act. Both provisions are complaint offenses: proceedings depend on a complaint by a spouse or, for an unmarried person, a parent or child. This design limits intervention by unrelated third parties and distinguishes the provisions from ordinary public offenses (Bachri et al., 2023). Even so, the restricted group of complainants does not alter the substantive object of regulation, namely consensual adult intimacy and household formation (Natalis et al., 2026).

The provisions reflect the Code's broader claim to incorporate national morality and living law. That orientation may strengthen social legitimacy, but it also creates a paradox when decolonization expands state authority over private sexual life (Butt, 2023). Article 2 on living law adds complexity because moral standards may differ across communities and may not always be formulated with the precision expected of criminal norms (Hardinanto et al., 2024). The legitimacy of Articles 411 and 412 must therefore be assessed not only by their cultural support but also by whether their elements, protected interests, and enforcement consequences satisfy constitutional standards.

The legislative character of this expansion is significant. In Decision Number 46/PUU-XIV/2016, the Constitutional Court declined to enlarge the adultery offense through judicial review and treated the matter as one for the legislature (Mahkamah Konstitusi Republik Indonesia, 2017). Parliament subsequently chose broader criminalization in Law Number 1 of 2023. Because the change is a deliberate penal-policy choice rather than a technical continuation of the former Code, it requires a clear explanation of harm, necessity, and proportionality. Table 2 sets out the principal differences between the old and new provisions.

A further question concerns the protected legal interest. If Article 411 protects an existing marriage, extending liability to two unmarried persons is conceptually overinclusive because no marital bond is breached. If it protects public morality, the legislature must define how private conduct becomes a public wrong and why a complaint by a family member establishes that transformation. Article 412 presents the same difficulty more sharply because cohabitation is a status or living arrangement rather than a discrete harmful act. The recognition of living law cannot remove the need for a national penal boundary. The interaction between Article 2 and regional moral regulation, including the distinct experience of Aceh, illustrates how plural norms may produce different practical burdens (Jamaludin et al., 2025). Modern criminalization theory warns that broad regulatory offenses can normalize coercion without clearly identifying the wrong that justifies it (Venturi, 2025). The protected interest must therefore be stated before the offense elements are drafted.

Table 2. Comparison of the regulation of decency offenses in the old and new Criminal Codes

Aspect	Old Criminal Code (WvS)	New Criminal Code (Law No. 1/2023)	References
Adultery offense	Article 284: only for parties bound by marriage	Article 411: any intercourse outside a valid marriage	(Republik Indonesia, 2023; Widyawati, 2020)
Cohabitation	Not regulated as an offense	Article 412: living together outside marriage as a new offense	(Bachri et al., 2023)
Nature of the offense	Absolute complaint offense	Limited complaint offense (spouse, parent, or child)	(Natalis et al., 2026)
Scope of subjects	Limited to parties within a marriage	Extended to unmarried adult individuals	(Butt, 2023)
Philosophical orientation	Protection of the marriage institution	Protection of public morality and the living law	(Mubayyinah et al., 2025)

Source: compiled by the authors from Law No. 1 of 2023 and related literature (2026)

The Imbalance Between the Protection of Public Morality and Individual Rights

Articles 411 and 412 place greater weight on public morality than on individual autonomy. For two unmarried adults, consensual intercourse does not by itself identify a person whose rights have been infringed. Criminalizing it therefore moves self-regarding conduct into the public penal domain and is difficult to reconcile with the harm principle (Mill, 1859). The asserted injury to marriage or social morality remains diffuse unless the conduct violates an existing marital commitment, involves coercion or exploitation, or occurs in a manner that causes a concrete public disturbance. In this respect, the provisions are closer to Devlin's legal moralism than to a harm-based account of criminal liability (Devlin, 1965; Natalis et al., 2026).

The central problem is the uncertain boundary between private life and a legitimate public interest. Privacy requires restraint when the state regulates consensual intimate relations, although it does not shield conduct that harms others (Bakshi, 2025). A criminal investigation into adultery or cohabitation may require evidence about residence, communications, family relationships, and sexual

conduct, thereby extending intervention beyond the formal complaint. Indonesia's continuing difficulty in balancing privacy and law enforcement makes this concern practical rather than abstract (Natamiharja et al., 2022). The resulting norm combines local moral claims with intrusive enforcement techniques inherited from penal positivism (Mubayyinah et al., 2025).

The complaint mechanism reduces, but does not eliminate, the risk of misuse. A spouse, parent, or child may invoke the provision during divorce, inheritance, custody, or other family disputes. Where power is unequal, the threat of prosecution can become bargaining pressure rather than a means of protecting a public interest (Bachri et al., 2023). Enforcement may also be selective because private conduct usually becomes visible only through surveillance, disclosure by relatives, or conflict within the household. These features create a risk that similarly situated persons will be treated differently, while stigma and evidentiary intrusion may fall disproportionately on the more vulnerable party. The problem is therefore both substantive and institutional (Butt, 2023).

Comparative experience demonstrates that decriminalization does not necessarily weaken marriage as a social institution. South Korea moved adultery disputes toward family and civil law after the offense was invalidated, while research indicates changes in how spouses evaluate divorce following infidelity (Lee & Choi, 2025). Botswana's customary law similarly shifted the consequences of adultery toward civil responsibility and equitable remedies (Werbner & Werbner, 2020). These examples support a functional distinction: betrayal within marriage may justify legal consequences, but those consequences need not always be penal, and relationships between unmarried adults require an even stronger justification for state coercion.

Ultima ratio requires criminal law to be used only when less restrictive measures cannot protect the relevant interest. Family law, civil remedies, administrative registration, community education, and voluntary religious or social institutions are available for many concerns associated with marriage and cohabitation. Criminal punishment should be reserved for conduct involving a concrete victim, coercion, exploitation, abuse of vulnerability, or a serious public harm (Joyce, 2025). Expanding low-harm offenses also consumes investigative, prosecutorial, judicial, and correctional resources in a system already affected by prison overcrowding (Utami Larasati et al., 2022). The moral objective must therefore be tested against both necessity and institutional cost.

The complaint-offense design should also be evaluated as a procedural safeguard, not as a substitute for substantive legitimacy. Restricting standing may reduce public vigilantism, yet a formally authorized complainant can still use criminal process for strategic purposes. A coherent scheme should specify the time limit and form of the complaint, the effect of withdrawal, the treatment of complaints made under pressure, confidentiality obligations, and evidentiary limits for searches of private communications or dwellings. Legal imperfection does not disappear merely because enforcement is discretionary or infrequent (Edwards, 2023). Predictability requires citizens to understand not only the prohibited conduct but also who may activate state power and how that power will be exercised (Janderová & Hubáľková, 2021). These safeguards would reduce arbitrary enforcement, although they cannot justify an offense that fails the harm and proportionality tests at the outset.

Implementation of the Norm with Respect to Legal Certainty, Justice, and Utility

Radbruch's triad provides a structured evaluation of these consequences. Legal certainty concerns the clarity and foreseeability of the norm; justice concerns equal liberty and proportionate treatment; and utility concerns whether criminalization produces a defensible social benefit (Arifin et al., 2023). Articles 411 and 412 reveal difficulties in each dimension, even though their moral objective may be understood within Indonesia's value system.

Legal certainty is weakened by terms whose application depends on contested social and legal facts. The phrase 'outside a valid marriage' may be difficult to apply to unregistered marriages, religious marriages not recorded by the state, or relationships whose legal status is disputed. Cohabitation also requires criteria for determining when persons are 'living together as husband and wife,' a phrase that may be inferred from residence, duration, public representation, or economic interdependence. Similar ambiguity has been identified in other decency provisions of the new Code (Jumain Azizi et al., 2025). Penal legality requires objective elements that are accessible and consistently enforceable (Shcherbanyuk et al., 2023). Formal clarity must also remain connected to substantive justice; otherwise, precision may simply stabilize an unjustified restriction (Lifante-Vidal, 2020). The interaction with living law further increases the need for defined statutory limits (Hardinanto et al., 2024).

Justice requires a proportionate relationship between the protected interest and the burden placed on liberty. Equal basic freedom may be restricted only for reasons compatible with the freedom and rights of others (Rawls, 1971). Where consensual conduct between unmarried adults causes no identifiable harm, imprisonment or a criminal record imposes a serious burden without a comparable rights-based justification. The position is different when adultery violates an existing marriage, because a spouse may claim a direct legal and relational injury. Even there, the legislature must explain why criminal punishment is more appropriate than civil, family-law, or restorative remedies. The constitutional protection of personal liberty and private life supplies the limiting framework (Republik Indonesia, 1945).

Utility concerns both effectiveness and collateral cost. Penal prohibitions are unlikely to eliminate intimate relationships; they may instead drive them further from legal and social oversight. Investigation of private conduct can consume resources that would be better directed to sexual violence, exploitation, and abuse, where victims and harms are clear. Human-rights-based protection in sexual-violence cases appropriately emphasizes victim dignity and recovery (Yuliartini et al., 2025). At the same time, morality and religious values remain legitimate components of Indonesian law (Widyawati, 2020). Their accommodation need not take the form of punishment: the development of sexual-violence regulation shows that religious values, local wisdom, and rights protection can be combined through victim-centered norms (Danial et al., 2023). Islamic criminal-law values may likewise inform responsibility and social protection without mechanically reproducing particular sanctions (Abdillah et al., 2024). Articles 411 and 412 do not yet achieve that balance because their penal reach is broader than their demonstrated utility.

A Balance-Based Reconstruction Model of Decency Offenses

The appropriate response is reconstruction rather than a simple choice between moral enforcement and unrestricted privacy. Reconstruction means redefining the protected interest, offense

elements, complaint mechanism, and available sanctions so that public morality is pursued within constitutional limits. Penal reform should connect every offense to a clear purpose of punishment and to the interests that criminal law is uniquely capable of protecting (Arief, 2018). The model proposed here therefore treats morality as a relevant value while requiring additional conditions before moral disapproval becomes a criminal prohibition.

The first parameter is a demonstrable harm threshold. Criminal liability should require harm or a sufficiently concrete risk to another person or to an identifiable public interest (Feinberg, 1984; Mill, 1859). Sexual violence, coercion, exploitation, abuse of dependency, and public indecency satisfy this threshold because they involve victims or public exposure. Consensual conduct between adults does not satisfy it solely because it occurs outside marriage. The second parameter is a clear private-public boundary. Intimate conduct remains presumptively private unless it infringes another person's rights or produces a defined public harm (Bakshi, 2025; Cinar, 2020). This presumption gives practical effect to constitutional privacy and liberty (Republik Indonesia, 1945).

The third parameter is proportionality and ultima ratio. Before using criminal law, legislators should identify less restrictive means and explain why they are inadequate (Husak, 2023; Joyce, 2025). The fourth is normative clarity: the offense must define the protected interest, prohibited conduct, relevant marital status, evidentiary threshold, authorized complainant, and consequences with sufficient precision (Shcherbanyuk et al., 2023). The fifth is value harmonization. Pancasila, religious morality, living law, and human rights should be interpreted as mutually limiting sources rather than as competing absolutes. Moral values may shape prevention, education, family policy, and restorative measures, while constitutional rights establish the outer boundary of penal coercion (Danial et al., 2023). Human-rights-based criminalization principles help formalize that boundary (Malby, 2024). Table 3 and Figure 2 summarize the model.

Operationally, the five parameters can be applied as a sequential legislative test. First, the lawmaker identifies the person or public interest exposed to harm. Second, it determines whether the conduct belongs predominantly to private life and whether consent is present. Third, it compares criminal punishment with civil, family-law, administrative, restorative, educational, and community-based responses. Fourth, it drafts measurable elements and procedural safeguards. Fifth, it reviews the resulting norm for consistency with Pancasila, constitutional rights, and international obligations. A negative answer at any of the first three stages creates a presumption against criminalization. The history of European decriminalization initiatives confirms that rights protection may require reducing penal reach rather than continually adding offenses (Pinto, 2023). Indonesian debates on moderating the death penalty also demonstrate that Pancasila values and human rights can be reconciled through calibrated rules instead of absolute positions (Riyadi & Prasetyo, 2021; Triantono & Marizal, 2022). The same method should guide reform of decency offenses.

Table 3. Parameters and indicators of the reconstruction model of decency offenses

Parameter	Normative indicator	Theoretical basis	References
Harm threshold	Presence of a real victim or harm to others	Harm principle	(Feinberg, 1984)
Private–public boundary	A firm line between private life and public interest	Privacy as a negative right	(Bakshi, 2025; Cinar, 2020)
Proportionality and ultima ratio	Non-penal means first; proportionate sanctions	Ultima ratio	(Husak, 2023; Joyce, 2025)

Parameter	Normative indicator	Theoretical basis	References
Clarity of the norm	Formulation free of multiple interpretation and measurable	Legal certainty	(Shcherbanyuk et al., 2023)
Value harmonization	Consonant with Pancasila, human rights, and the living law	Penal reform	(Abdillah et al., 2024; Danial et al., 2023)

Source: authors' analysis (2026)

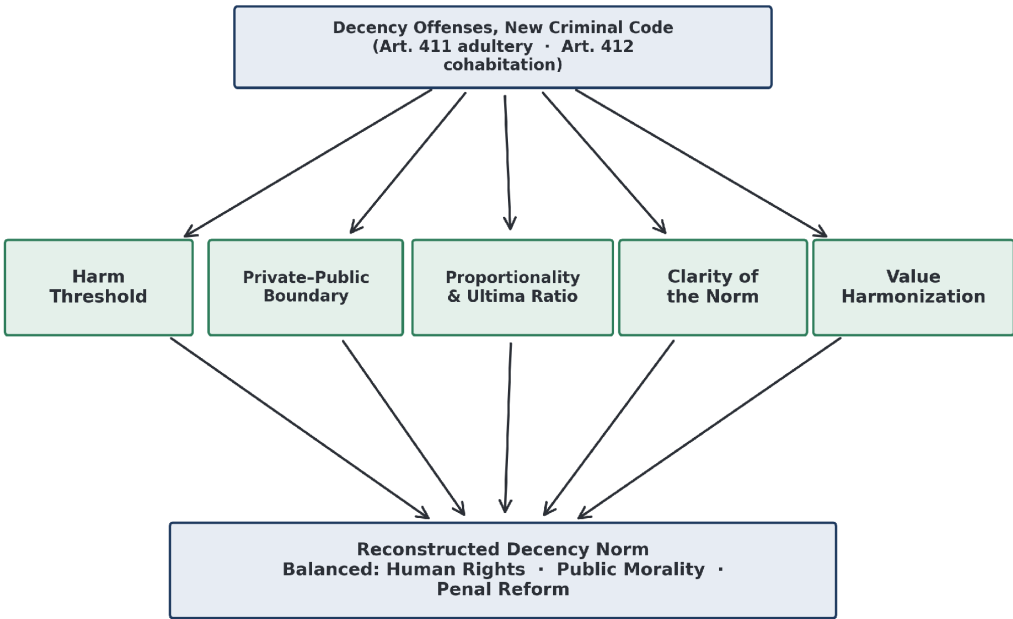


Figure 2. A reconstruction model of decency offenses based on the balance between human rights and public morality.
Source: authors' analysis (2026)

Applied to Article 411, the model supports limiting criminal liability to conduct that causes a direct legal injury, particularly a breach of an existing marriage accompanied by a complaint from the injured spouse. Consensual intercourse between two unmarried adults should fall outside criminal law. Article 412 requires more fundamental reconsideration because the condition of cohabitation does not itself establish harm, and its proof invites sustained inquiry into private domestic life. If the provision is retained, its reach should be restricted to clearly defined aggravating circumstances involving exploitation, abuse, or a demonstrable public harm, with non-custodial measures prioritized. The complaint mechanism should operate as an additional safeguard rather than as the principal justification for the offense. Legislative and enforcement resources should instead be concentrated on implementing Law Number 12 of 2022 and strengthening victim-centered responses to sexual violence (Republik Indonesia, 2022; Siregar & Prihatini, 2024; Setiawan et al., 2022).

This model provides a middle course. It acknowledges that public morality and the institution of marriage may be protected by law, but denies that every moral breach is a public wrong requiring punishment. Linked to Radbruch's triad, the model improves certainty through defined elements, justice through respect for equal liberty and proportionality, and utility by directing penal resources

toward conduct that causes concrete harm. Its principal contribution is a review framework that legislators and courts can use to distinguish legitimate protection from overcriminalization.

CONCLUSION

Articles 411 and 412 of the new Criminal Code give public morality a stronger position than individual privacy. Article 411 extends adultery beyond the protection of an existing marriage, while Article 412 criminalizes a domestic arrangement whose harmful consequence is not inherent in the prohibited conduct. Although prosecution depends on a complaint by specified family members, that procedural limit does not resolve the substantive question of why consensual adult intimacy warrants criminal punishment. The provisions also invite intrusive and potentially selective enforcement because proof may depend on disputed marital status, household arrangements, and evidence drawn from private life.

Measured against legal certainty, justice, and utility, the provisions require revision. Their key terms are insufficiently precise for consistent penal enforcement; their restrictions on privacy are difficult to justify where no identifiable person is harmed; and their institutional costs may exceed their preventive benefit. The proposed reconstruction uses five cumulative parameters: a demonstrable harm threshold, a clear private-public boundary, proportionality and ultima ratio, precise statutory formulation, and harmonization of Pancasila values with constitutional and international human rights. On this basis, adultery should be confined to conduct that directly injures an existing marital relationship, while consensual relations between unmarried adults should not be criminalized. Cohabitation should be reconsidered or limited to clearly harmful circumstances. Future empirical research should examine complaints, charging decisions, judicial reasoning, and differential enforcement after the Code's implementation to test and refine the model.

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