

# **Harmonization of Adultery Regulations in Indonesian Criminal Code with Islamic law**

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**ABSTRACT:** Indonesia as a legal state and a country with the largest Muslim population in ASEAN has regulation of adultery. Regulation of adultery can be found in Indonesian Criminal Code. However, do the regulation can solve the adultery issues. It is apparently not, Indonesia has some specific requirements to qualify as adultery. Adultery must be committed by one party that is bound to the marriage. While if the adultery is committed by a person who is not legally married is not regulated. It should be noted also that adultery in the context of the Indonesian Criminal Code is included into a complaint.

Islam answered questions about adultery. As we know Islam has Islamic laws and the strict rules on adultery. In Islam, adultery is included into major sins. People who have sex without marriage or one of the parties who is legally married commits it will be accused in adultery category. The consequence for Indonesia; as the country with Islam as major religion, in judging an adultery case is by adopting Islamic values in the draft of Criminal Code. Harmonization is needed to be applied by Indonesia in view of Indonesian Code of Civil Law was the legacy of Dutch colonial; thus, the social values are conflicting with the culture and the religion of Islam in Indonesia. The problem is : do the adoption and harmonization can be accepted in Indonesian positively today.

**KEY WORDS:** Harmonization, Adultery, the Criminal Code, Islamic Law

## **INTRODUCTION :**

It has been nearly 53 years of the draft of Civil Law has not been completed since in the first form in 1964. Nevertheless it needs to be appreciated that in the end, the draft of Criminal Code has been included in the discussion in the Parliament for two times [1,2]. There are many debates that appear in the Criminal Code draft. If an act of changing the Criminal Code is really urgent and needed by Indonesia at this time or merely as a political game in the government policy. Discussion of the Criminal Code draft in the parliament is pointed out as the first step of criminal law reformation in Indonesia to encourage the enforcement of an integrated law. Therefore it must be recognized alongside that renewal is important to do in the Draft Criminal Code Indonesia

There are many important factors that serve as the basis for the amendments of the Criminal Code such as, amendments and advances in technology and age, the pattern of punishment and liability, criminalization and decriminalization, children and gender issues to touching the protection of human rights.

The amendment can be shortened to three key issues of criminal law, namely the formulation of the act that is against the law (criminal act), criminal liability (criminal responsibility) and the criminal as well as actions that can be applied. The pattern of these amendment is known as the renewal and development of criminal law. [1]

The fact of the renewal of the Criminal Code does have an important mission in which there are efforts to implement decolonization, democratization of criminal law, criminal law consolidation, and the adaptation and harmonization [2]. Decolonization becomes important to be implemented due to our current Criminal Code is a product of the Netherlands therefore historically and ideologically [3] it has differences with traditional eastern culture of. The regulations contained in the Criminal Code enacted by the colonial have not been able to accommodate the action or acts that harm social values in society.

One example of actions that can harm social values in society is the criminal act of decency in which is adultery. Adultery is no longer a matter of one's privacy but can also include into the category of serious crimes that threaten the norms or principles in society [4,5,6]. Although the Criminal Code confirms adultery include into a complaint, Islam regards adultery as part of a violation of public law that is in the violation of God [4]. Then, It is needed the presence of a consolidation by adjusting the current social change by harmonizing.

A critical element used as the basis for the amendment is to including the values of Islam into the Criminal Code draft. Although it is not explicitly said that the Criminal Code draft now has the nuances of Islamic however when it is examined there are many Islamic values which is used as the basis for the amendment. Harmonization of Islamic law that is visible in the Criminal Code draft, especially in the adultery is considered to be accommodating in the enforcement of the law against adultery.

The regulation of the adultery has been used since long time ago. The regulation of adultery was born since the time of ancient Babylon, later known as the Book of Hammurabinya, Egyptian Law, Hindu Law, Chinese Practice, Jewish Law, Greek Persian and Roman Law, and Christian Outlook [8]. Each of the laws is regulating the different types of adultery punishment.

The classical fiqh divides crimes into three categories which are divided based on the punishment, namely, *hudud*, *qisas*, and *ta'zir*. One example is the *Hudud*. Crime in *Hudud* is divided by two types [9]:

1. Crimes against morality consists of adultery and accusing someone else commits adultery
2. Crimes against property assets and public order consists of, burglary, street robbery, and alcoholic beverages.

Adultery in Islam itself is included into the *Hudud* that is punished by *Hadd* or *Hudud* [4]. This punishment is the God's absolute right and cannot be changed [7, 8, 9].

Islam actually forbids the restraint and forfeiture of sexual behavior. Since sex is a pure necessity for human nature. Nonetheless not necessarily everyone can satisfy his sexual needs freely. Islam answers the fulfillment of those needs by marriage so that every human being can fulfill their sexual needs in a civilized fashion, appropriate and lawful. In accordance with the hadith narrated by Muslim it was said that: "Anyone who is financially able to marry, but not married him the he is not my adherent. [10]

Today we live in a society with a lifestyle that is westernized, free, then it brings behavior that sometimes tended to be immoral, loss of modesty and shame and low self-respect [11]. People freely have sex, no longer respect older people, and the loss of tolerance and care for others.

Harmonization applied in Islamic law is based on Al-Quran and As-Sunna or Hadith. Although they regulate the prohibited or not prohibited actions to be performed by humans but not necessarily the Al-Quran is seen as the law book on crime and punishment by itself [12]. Al-Quran is the holy book of Muslims and serves as the instructions to regulate the human relationships. Moreover, in adultery which brings more negative effects that do not only affect the perpetrators but it can affect the social life around [13].

The impact of adultery itself diversifies [13,14,15], the most common occurs is divorce, unwanted pregnancies and sexually transmitted diseases. Another effect is loss of job, frequently high anxiety, suffered economic losses, and lack of respect and tolerance and potentially damage to self-esteem.

Muslims believe that the Qur'an reveals about the history and the perfect religion of Allah. Al-Quran has basic principles in Islamic law that is static and can not be changed. So it can be said that Islam is a most essential basic right of the God [16].

The background is the basis for the author to discuss and analyze with comparing the adultery regulations contained in the Criminal Code, the Criminal Code draft, which is then the author will harmonize the Criminal Code draft with Islamic law.

## **METHOD :**

### a. Research Approach

This research approach is using the type of literature approach also known as normative legal research or doctrinal law study, namely legal research using secondary data sources or data obtained through library materials. The literature research is based on the literature in accordance with research materials related with the Harmonization of Adultery Regulation in the Criminal Code in Indonesia by Islamic law.

### b. Data Resources

Secondary data, in the form of legal materials, in which the data obtained from literature research (library research) and study of the documentation consisting of:

1. The primary legal materials, in which is the form of legislation related to adultery, namely Article of 284 of Criminal Code, and Articles of 484-490 of Criminal Code draft.
2. The secondary legal materials, in which the form of literature, electronic data and other data related to the object of research and the results of previous research related to Harmonization of Regulations Adultery in the Criminal Code in Indonesia by Islamic law.

### c. Method of Analysis

The research method used is qualitative descriptive, meaning that the data obtained will be described in such a way with the benchmark to the applicable legislation and corresponds to the title as well as comparing the prevailing theories and obtained facts.

## **RESULT**

### **a. The comparison of Adultery Regulation in the Criminal Code and the Criminal Code Draft in Indonesia**

The applicable regulation of the adultery is contained in Article of 284 of the Criminal Code. While in the Criminal Code Draft there are 7 articles that are divided in Articles of 484-490 and categorized as adultery and obscene acts. The comparison of these regulations can be seen by:

#### 1. The Formulation or Understanding of Adultery

- a) In the Criminal Code, it does not explain about the related formula of understanding of actions that is called adultery clearly. The Criminal Code describes only relevant criteria for adultery, in which who and with whom that commits it and the punishment for adultery. Adultery that is referred here as if everyone knows the understanding or actions that is referred as adultery. Though adultery can mean as intercourse and can be defined as an activity to stimulate each other or making out.
- b) In the Draft of Criminal Code of adultery, it has been mentioned as a form of intercourse. The actual form of sexual intercourse is still vague, because intercourse can be interpreted more broadly than just copulate but also making out with each other can be regarded as intercourse.

It is supposed that both in the Criminal Code moreover in the draft of Criminal Code is now clearly explaining how the adultery or sexual intercourse occurs. If it is withdrawn with the general notion that adultery or intercourse is an act or sexual relation by penetrating the penis into the vagina then it should be clear how these conditions fulfil as the conditions for the occurrence of adultery, whether the condition for the existence of the intimacy can be absolute or remained unfulfilled. Due to the absence of a straightforward understanding of adultery, as a result it can be used as a reason to deny someone of committing adultery. It can be people who are new to petting or foreplay, or just rubbing genitals without penetrating (Petting) argued that he did not commit adultery, but just the beginning of adultery. Then the regulations related to the notion of adultery or sexual intercourse should be strictly regulated, if only requires the sex, or if the beginning of adultery has to be said as adultery.

#### 2. Subject

- a) In the Criminal Code, the subject or those who commit adultery are those in which ones that are bound in marriage. The parties could be the husband or wife that commits the adultery with another person who is not legally married and the man or woman who is not married commits adultery with a woman or man who is clearly tied to marriage.

- b) Subject in the Criminal Code Draft has expanded. It is no longer bound to the husband or wife who commits adultery with another person who is not legally married only, and the man or woman who are not married that commits adultery with a woman or man who legally married only, but there are several other criteria that can be categorized as a subject of adultery, namely: men and women, each of which is not bound by marriage, a man who lies with a woman who is not married with a promise to marry but later breaking on that promise, intercourse with children, sexual intercourse with a family member, intercourse with living together as husband and wife without marriage, homeless and wandering on the streets with the intention to prostitution.

The expansion of the concept contained in the Criminal Code Draft should be appreciated together as a major breakthrough in annulling the increasingly adultery. The fact that free sex is implemented by most teenagers in Indonesia at this time makes us see that adultery becomes a normal and common thing. The westernized free lifestyle indeed becomes the beginning of the outbreak of the current free life. Living at home with active sexual activity without marriage becomes common especially in big cities not only in Indonesia but also in all countries that also experience. It is certainly against with the nature of our nation as a country that upholds the eastern norms in which the values of honor, modesty, holiness becomes very important to be maintained.

Frequently we hear how a father or uncle or even grandfather has intercourse with his own children, nieces, or grandchildren, both committed by force or voluntarily. But looking at the phenomenon makes us wondering if the world is indeed approaching apocalypse?. While morality is no longer a priority. The gratification of sexual desires is being cheap and easily obtained, not only to the people that close to us, even there are more people who are deliberately prostituting themselves for the sake of economy.

No wonder that more and more young women lose future because of unwanted pregnancy, a growing number of young men who have to work to account for his actions by making a living, and more and more couples are indicated in sexually transmitted diseases, and reaches to the traumatic stage which is more common in women, especially children.

### 3. Sanctions

- a) In the Criminal Code adultery is punished with imprisonment for a period of nine months.
- b) In the Criminal Code Draft adultery is punished by a maximum imprisonment of five years. Because of the expansion of the subjects of adultery, the sanctions are also adapted to the subject. The man who has sexual intercourse with promise to marry but denying to the punishment shall be imprisonment of four years. Intercourse with a child is punished with maximum imprisonment of fifteen years. People who live together and copulate like husband and wife (cohabiting) is punished with imprisonment at a maximum of one year. Intercourse that is committed with intention to self-prostitution is punished by a fine. While intercourse that is committed with family threatened with a maximum imprisonment of twelve years.

Placement of sanctions in the Criminal Code Draft appears to comply with the portions. Which should be noted is in intercourse that is committed with intention to self-prostitution is only given a fine penalty. Criminal penalties would not give deterrent effect to the perpetrators, it will make the perpetrator freely repeat their actions again. Preferably for the offenders who are deliberately prostituting themselves are given rehabilitation to be returned to the right path by giving education about the negative impacts of prostitution so that they will look for a better job again.

#### 4. Type of Offense

Both the Criminal Code and the Criminal Code Draft include in complaint offense [17]. Therefore, the prosecution will not happen unless the complaint is filed by both the husband, wife or any third defamed party.

Unlike with other complaint-based offense in the Criminal Code that are relative, specifically the act of adultery has complaint offense that is absolute. It has meaning in adultery that should denounce the adultery is the husband or wife who become victims, if the husband or wife who become victims died, the rights of complaints fall by itself. Complaints may be withdrawn during the examination of the trial has not begun yet, although in practice when the trial starts, the judge still offers the peace to both of sides.

Complaints are not processed during the marriage has not been decided due to divorce or before the decision that declares the separation of bed and board becomes permanent. And the last is, the complaint cannot be separated. It means that as a victim both husband or wife should report both adultery offenders, although the victims of both husband or wife still loves their spouses but if already filed a complaint, then the offenders, both of the husband or wife with their partners should be reported together cannot be separated. This is what distinguishes between complaint absolute offense to a complaint relative offense. Complaint relative offense still enables complaints separately.

#### 5. Proof (Evidence)

Both the Criminal Code (KUHP) and the draft of Criminal Code provisions based on evidence contained in article 184 of the Criminal Procedure Code. The evidence consists of witnesses, letters, expert, guidance and information from the defendant.

To be submitted into the investigation there are at least a minimum of two items of evidence are included. Evidence in criminal law has a similar position or the degree so that there are no records or exceptions to submit certain evidence.

An important point in the comparison of adultery setting in the draft Criminal Code and the Criminal Code is actually more concerned on the expansion of the subject and the penalties adapted to the social conditions of current society. It must be realized and recognized that along with the development of technology, time and access to the society becomes increasingly borderless where the boundaries of a social community become more fading and justify bad behavior positively that do not fit the norm. One of them to be unfolding is adultery or free sex, intercourse with family members and cohabiting that are previously not regulated in the Criminal Code but began to be included in the draft the Criminal Code. This is a major

breakthrough in the enforcement of criminal law in Indonesia in order to protect the honor and descent in a sexual relationship. Therefore, a sexual relationship should really be done by those who are bound in marriage and sticking to a pledge made to faithfully as well as not betray each other; consequently, there is no more adultery. The sanctions provided in the draft of the Criminal Code were considered to be quite firmly to be compared to the Criminal Code that is only threatened with imprisonment for a period of nine months. An important role should be noted in both the Criminal Code and the draft of Criminal Code is related to the formulation of adultery that adultery should be described clearly its actions but do not generalize that everyone knows what it is adultery. It is because the existence of adultery formulation creates the opportunity for someone to argue that he or she does not responsible for his actions.

#### **b. Harmonization Values of Islam in adultery setting in Indonesia**

Based on a comparison of the draft of Criminal Code and the Criminal Code related to the concept of adultery are found that the actual values from the start to adopt Islamic values. It's just that the adoption process is not thoroughly and vividly just touched on certain issues. Harmonization of Islamic values contained in the draft of Criminal Code is currently evident in the expansion of the subject.

The subject of adultery in the draft of Criminal Code as described above are no longer limited to the parties who legally married to other people who are not legally married only. This is in accordance with the rules contained in Islamic law where adultery can be done by everyone not only for those involved in the marriage.

Adultery in Islamic law distinguishes subjects into two categories: *Muhsan* and *ghairu Muhsan*. *Ghairu Muhsan* adultery is adultery by parties who are not married. While *Muhsan* adultery is adultery committed by the parties to be bound or have already done a marriage [18]. This category was the one who actually indirectly adopted in the draft of Criminal Code in section 484-490.

An important note in the harmonization that is supposed to do in adultery is:

##### 1. Formulation or understanding of adultery

Islamic law has strictly defined adultery. Adultery in Islamic law is sexual intercourse outside marriage legitimately and deliberately; and knowing that the act is unlawful. The indications of sexual intercourse are minimal with the inclusion of penis into the vagina even if his penis is not erect [3].

In the Al-Quran Surah Al-Israa explained that "do not go near adultery; in fact adultery is a heinous act. And an evil way "(al-Israa ': 32). So the formulation of adultery in Islamic law is not only limited on the process of inserting the penis into the vagina only, but deeds that lead to sexual intercourse also included as adultery, such as activities petting, rubbing genitals, touching and being touched, the actions that stimulate lust included in the category adultery.

## 2. Sanctions [3]

Sanctions in Islamic law adultery are differentiated by category. *Ghairu Muhsan* adultery will be given punishment of whipped 100 times and exiled for one year. Flogging given to adultery *Ghairu Muhsan* must be done in front of the public as a learning process so that the community take the wisdom of doing so and does not follow it as well as provide a deterrent effect against perpetrators. The body parts were whipped which the shoulder to the waist. Flogging punishment is avoided for parts including the head, face, chest, and pubic. While *Muhsan* adultery will be given punishment of stoning to death. Stoning is a punishment of death by stoning.

Implementation of adultery is classified as severe when applied under criminal law in Indonesia. However, Islam does not mean religion that provides for punishment to be cruel. Islam gives such penalties are based to maintain and protect the honor and moral self. Additionally Islam firmly maintain and protect the holy offspring are actually born within a marriage legitimate. It is because the child born of adultery without marriage will not get a fair inheritance rights. Besides the implementation of sanctions against *Muhsan* adultery get a lot of debate. Stoning to death is regarded as a very inhumane punishment stripped of human rights particularly in a world now a days. Stoning is rated as a barbaric punishment and does not need to be sentenced today. Besides the absence of Qur'anic verses; explain plainly about the stoning to make the application of this penalty, raises the pros and cons although there are some hadiths that justifies the associated stoning. However, adultery is included in the Hudud; and punishment is what has been establish by Allah.

## 3. Evidence [3,17]

Evidence in Islamic law in proving adultery actions are: witness, recognition, indications of pregnancy (*qarinah*).

A witness in a criminal act of adultery must be male, a mature age, rational, *hifzun* (able to remember), can speak, fair, and a *moslem*. The witness must also be including four men. Recognition by Imam Malik and Imam Shafi'i must do one while according to Imam Abu Hanifah recognition must be performed four times presented one at a time in different places. *Qarinah* or the indications may be shown in the form of pregnancy experienced by women. Women; who do not have a husband while it is known that she was pregnant, had penalties.

Some important points of harmonization; besides the expansion of the subjects that have been applied which may be included in the draft of Criminal Code, is related to the formulation of adultery. Sanctions and evidence in Islamic law if it is applied in Indonesia law will get a huge challenge and difficulties in its enforcement.

Seen in the sanctions system, penalties in Islamic law is considered impossible to apply due to the nature of adultery contained in the criminal law is to a complaint which is very privacy. Nevertheless, one of the provinces in Indonesia, Nangroe Aceh Darussalam is already applying such penalties as stipulated in *Qanun* Aceh governing adultery. In addition to the sanctions that were considered very heavy for this type of crime on complaint, the evidence required in Islam is by its nature must be met testimony of four witnesses and the man has to be testifying. The witness must be absolutely certain he had seen adultery and there is no doubt whatsoever.



It is considered difficult to fulfill; moreover, there will be definitely a lot of resistance from various stakeholders nuances of Islam brought along with new arrangements related to adultery.

## **DISCUSSION**

Almost all countries in the world realize that adultery had an enormous impact, particularly in the persistence of the marriage institution. The rise of pregnancy outside marriage, the spread of sexually transmitted diseases, and the psychological impact resulting from adultery make countries think to minimize the impact of the adultery.

Elizabeth Pfeiffer [19] explains how adultery in traditional Islamic law. Traditional Islamic criminal law is based on the fulfillment of four objectives:

1. Certainty of truth
2. Compliance responsibilities
3. Recovery of the victim
4. Social Recovery

Indonesia indirectly adopts those values. Although it is not regulated in the Criminal Code, the draft of Criminal Code gives a little color in compliance with the certainty of truth and fulfillment of responsibilities. One chapter looks in the fulfillment of responsibilities are described in the draft of Criminal Code which is: men who have sex with the woman with the promise that it would be liable if pregnant but then he reneged on it then he will be threatened with imprisonment. The article is a manifestation of the fulfillment of the certainty of truth and responsibility. Unfortunately, the recovery of victims and social recovery are not yet a discourse in the draft of Criminal Code because it is not explained mainly psychological recovery for victims of adultery. Besides the stigma attached to the adultery mainly prostitutes do not easily disappear even though they already get a penalty.

In Turkey adultery is viewed as an act or sexual intercourse included in the private sphere. Nevertheless adultery can be used as an excuse to initiate divorce if one of the parties is bound by marriage. If it is not bound in marriage, the adultery action has no impact or risk [20]. Although in Indonesia adultery is a complaint but it will be keep punished if there is a complaint from the victim both husband and wife. So in Indonesia to punish adultery is not based on file for divorce but whether their complaints or not.

Along with the development of era and cross-border activities turned out to give birth to new types of crimes. The new crime is born with a giving mode, actors, and new places that had not previously been thinking. The sophistication of age are supported by Internet communication makes that a crime is no longer able to be done with it, however the crime can be born indirectly anyway without being limited by time or place.

Adultery is one of the types of crimes that can be "a new type of crime" in today's globalized world. Supported by technological advances and the Internet provides the ability to commit adultery virtually via the Internet or social media. Kathryn Pfeiffer [21] explained that the adultery is not only done with it but also can be done indirectly. Indirectly adultery with irregularities is the use of social media. The affair began when typing "Hi, can did I see your picture, your body, let's make

love!" The process of "making love" to do then is to mutual masturbation with a view sex through a video call or message each other until both intimate feel sated. This is clearly a new kind of adultery that is supported by social media facilities are increasingly easy to use.

Indonesia in addressing the shift in sexual behavior in social media or internet facilities is regulated in Article 27 paragraph 1 of Law No. 11 Year 2008 on information and electronic transactions and expressly set forth in Article 1, paragraph 1 and Article 4, paragraph 1 of Law No. 44 Year 2008 on Pornography. The formulation is not included in the act of adultery but is included in the formulation of pornography. Although the act of adultery could be interpreted broadly without having any sexual contact, but the Indonesian criminal law provisions have not been annulled by the virtual adultery.

Islam is not only religion, but also describes the way of life that cannot be separated [22]. Adultery is one that is described in Islam as a form of crimes that fall under *Hudud*. So that the regulations related to the subject of adultery, evidence and sanction are all arranged in accordance with the Right of God [22]. Therefore, Indonesia governing adultery in Article 284 Criminal Code has a very big difference in categorization, evidence and sanctions in adultery.

In the last two thousand years, the punishment for adultery changes drastically. The change of the legal properties of private law to public law aims to restore the rights and privacy claim, especially for those who are victims [5]. Nevertheless, there are some countries that classify adultery as a misdemeanor so that prosecution is rarely performed [14].

Adultery is no longer a crime in South Africa, the UK and Turkey. Consequently many people are freely doing adultery. The difference is both in South Africa and Turkey can still be sued if required. But the outline of the sexual intercourse is still free to do as long as no complaints. Adultery is used as one of the requirements to file for divorce [5]. South African Constitution does not actually forbid adultery, because some of the opinion that the ban violates the constitutional rights, freedom of dignity, freedom of conscience, freedom of privacy, and freedom of association. So that the rules regarding adultery in South Africa are referred to "strange bedfellows"; and the fact is contradictory [6].

Indonesia remained consistent for entering adultery cases into the realm of public law set out in criminal law and entered into a complaint type. This consistency can be seen with the inclusion of adultery in the draft of Criminal Code. There are even expansion of the subject and firmer sanctions. Undeniably the draft of Criminal Code also has limitations, especially in the formulation process related to adultery.

United States is committed to legality. These countries emphasize that the law applies to everyone without exception. The commitment shown in this country has five meanings, namely [24]:

1. Wisdom
2. Each rule must have a reasonable scope
3. The rules should be defined in advance of legal behavior
4. The law should be similar even in different environment
5. It should not be punishing one's intention to divorce.

The draft of Criminal Code which had twice included in the discussion in the Parliament should start to address the problems and became the focus point for the government. It is not easy to change the entire Criminal Code that there will be a lot of pros and cons arising. However, through remembering that the draft of Criminal Code has been made for long time, the government should start paying attention and giving commitments on it entirely; as a result, the draft of Criminal Code be legalized as soon as possible. Consequently it can begin to accommodate bad deeds or crimes regulated on a new law primarily on adultery law.

## **CONCLUSION**

Based on the results of the discussion and analysis for the harmonization of adultery laws between the Criminal Code in Indonesia and Islamic law, it can be concluded that:

1. Comparison Settings for adultery in the Criminal Code and the draft of Criminal Code in Indonesia is based on: adultery formulation, adultery subject, adultery sanctions, type of offense, and evidences. An important point in the comparison setting of adultery in the draft of Criminal Code and the Criminal Code is actually more concerned with the expansion of the subject and the penalties have to be adapted correctly to the social conditions of today's society. A point should be noted in both the Criminal Code and the draft of Criminal Code related to the adultery formulation is that adultery should be described clearly his actions, do not generalize that everyone knows what it is adultery. It is because with the existence of adultery formulation may create an opportunity for someone to argue that he does not account for responsibility of his actions. Related to the type of offense and the evidence of both the Criminal Code and the draft of Criminal Code is still similar which adultery is still a crime on complaint and the evidence used was based on the provisions of Article 184 in Criminal Code.
2. Harmonization of Islamic values in the adultery setting in Indonesia can be done by expanding the subjects that have been adopted in the draft of Criminal Code. Besides a point that can be included in the draft of Criminal Code as a form of harmonization of Islamic values is related to the formulation of adultery which is still vague in both the draft of Criminal Code and the Criminal Code. Sanctions and evidence in Islamic law is hardly implemented in criminal law in Indonesia since it will get a huge challenge and difficult in enforcement.

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