

Article 411 of Indonesia's Criminal Code and Bugis Customary Norms on Adultery: A Doctrinal Comparison

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Abstrak

Penelitian ini membandingkan tindak pidana perzinaan menurut Pasal 411 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana dengan pembahasan mengenai zina, siri', dan malaweng dalam kepustakaan hukum adat Bugis. Penelitian hukum normatif digunakan dengan menggabungkan penafsiran peraturan perundang-undangan dan telaah terbatas atas bahan tertulis mengenai hukum adat serta etnografi. Perbandingan mencakup perbuatan yang dilarang, kepentingan yang dilindungi, pihak yang berhak mengajukan pengaduan, otoritas yang berwenang, sanksi, tujuan, dan lingkup penerapan. Pasal 411 memidana persetubuhan dengan orang yang bukan suami atau istri pelaku, termasuk persetubuhan antara orang yang belum menikah, dan penuntutannya bergantung pada pengaduan anggota keluarga yang ditentukan undang-undang. Hidup bersama merupakan tindak pidana tersendiri menurut Pasal 412. Dalam bahan kepustakaan Bugis yang dikaji, pelanggaran kepatutan seksual dapat berkaitan pula dengan kehormatan keluarga dan hubungan sosial; akan tetapi, malaweng merupakan kategori yang lebih luas, sementara prosedur dan sanksi adat berbeda menurut komunitas dan masa. Terdapat titik temu dalam perlindungan perkawinan dan ketertiban sosial, tetapi norma adat yang majemuk tidak dapat diperlakukan sebagai satu rezim penegakan yang seragam. Perdamaian adat tidak dengan sendirinya meniadakan syarat prosedural Pasal 411. Kerangka yang diajukan memerlukan validasi empiris spesifik lokasi sebelum dapat digunakan untuk menyimpulkan praktik penegakan adat saat ini.

Kata Kunci: perzinaan; Pasal 411; hukum adat Bugis; siri'; malaweng; hukum yang hidup

Abstract

This study compares the offense of adultery under Article 411 of Law Number 1 of 2023 concerning the Criminal Code with discussions of adultery, siri' and malaweng in Bugis customary-law scholarship. It uses normative legal research, combining statutory interpretation with a qualified review of written customary-law and ethnographic materials. The comparison addresses the prohibited act, protected interests, persons entitled to initiate proceedings, competent authorities, sanctions, objectives and sphere of application. Article 411 punishes sexual intercourse with a person other than one's spouse, including intercourse between unmarried persons, and makes prosecution dependent on a complaint from statutorily designated family members. Cohabitation is a separate offense under Article 412. In the Bugis materials considered, breaches of sexual propriety may also implicate family honor and social

relationships; however, malaweng is a broader category and customary procedures and sanctions vary by community and time. The article finds points of convergence in the protection of marriage and social order, but cautions against treating plural customary norms as a single enforceable regime. Customary reconciliation does not independently displace the procedural requirements of Article 411. The proposed framework requires location-specific empirical validation before claims can be made about contemporary customary enforcement.

Keywords: Adultery; Article 411; Bugis customary law; siri'; malaweng; living law.

INTRODUCTION

Indonesia's new Criminal Code, Law Number 1 of 2023, has renewed debates over the relationship between criminal law, sexual morality and plural social norms. Any comparison between the national offense of adultery and the understandings found in Bugis customary communities needs to begin with a precise account of what the statute prohibits. In particular, Article 411 governs sexual intercourse with a person who is not the actor's spouse, whereas Article 412 separately governs living together as husband and wife outside marriage. Combining these provisions obscures differences in their prohibited acts, maximum punishments and evidentiary questions.¹

The older Article 284 of the former Criminal Code was closely associated with adultery involving an existing marital bond. Article 411 adopts wider language by referring to intercourse with a person other than a spouse, but criminal proceedings remain conditioned on a complaint from persons exhaustively identified by law. The reform has been discussed in recent literature on sexual autonomy, family integrity, religious values and the problem of state intrusion into private life.² These disagreements cannot be resolved by assuming that all forms of extramarital intimacy are dealt with by the same statutory article.³

Bugis perspectives offer an additional, but methodologically different, source of comparison. Scholarship on siri' describes honor and shame as relational values that may connect individual sexual behavior with family and community reputation. Writings concerning malaweng identify a larger field of conduct perceived as an affront to sexual propriety and social order; the term cannot be equated mechanically with consensual adultery. Historical descriptions of customary sanctions are not evidence that identical practices are currently applied throughout South Sulawesi. The population described as Bugis is geographically and institutionally diverse; customary authority and practical enforcement require specification of locality, community and period.⁴

¹ Republic of Indonesia, Law No. 1 of 2023 concerning the Criminal Code, arts. 2, 411–12.

² Reza Nurrahman, Orin Gusta Andini, and Sulung Nugroho, "Pengaturan Tindak Pidana Perzinaan pada Undang-Undang No. 1 Tahun 2023 Ditinjau dari Perspektif HAM," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 4335.

³ Siti Khodijah, Deny Guntara, and Muhammad Abas, "Tindak Pidana Perzinahan Dan Kohabitasi Dalam KUHP Baru: Kajian Yuridis Pasal 411 Dan Pasal 412 Undang-Undang Nomor 1 Tahun 2023," *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum* 5, no. 3 (2026): 499–506, <https://doi.org/10.55681/seikat.v5i3.2347>.

⁴ Achmad, "Perbuatan Malaweng Kesusilaan Siri' Menurut Hukum Adat: Studi tentang Pandangan Pengadilan dan Masyarakat Bugis di Sulawesi Selatan" (*dissertation*, 2007), Universitas Indonesia library record, <https://pdrh.law.ui.ac.id/koleksi/detail/78760/>.

The central difficulty is a mismatch between units of comparison. A statutory offense fixes conduct, authorized complainants and penal consequences in a national legal text. *Siri'* is a wider evaluative concept, and *malaweng* may group conduct that the criminal law separates according to consent, age and family relationship. Comparing their labels alone therefore produces apparent similarities while overlooking who is protected, who can act and what must be proved. The analytical task is to compare rules governing the same conduct before drawing conclusions about their compatibility.

That distinction has practical consequences. A family may regard a relationship as dishonorable without having established the intercourse required by Article 411. A community figure may demand a response without being an eligible statutory complainant. Conversely, an account involving coercion or a child cannot be reduced to a consensual adultery dispute merely because a customary term covers both. The study separates cultural meaning, substantive criminal liability and procedural authority so that comparison does not erase these differences.

Hadziq's earlier analysis locates adultery regulation within the debate about living law.⁵ Much of the recent adultery literature examines reform of the national offense, whereas the cultural studies examine particular expressions of honor and marriage practice. The gap addressed here lies at their intersection: how to compare them without turning a cultural description into a criminal-law authorization. The framework tests conduct, protected interests, initiating parties, institutional authority and consequences. It also treats the requirement that living-law offenses fall outside conduct already regulated by the Criminal Code as a substantive boundary for the comparison.

This article therefore asks two questions. First, what are the legally relevant components and procedural conditions of adultery under Article 411? Second, what similarities and differences can reasonably be identified between that national offense and the Bugis customary concepts described in the limited documentary literature? Its contribution is a variable-by-variable comparison that maintains the distinction between positive criminal law, historical or scholarly descriptions of customary law, and propositions that would require field confirmation.

RESEARCH METHOD

The research is doctrinal and comparative, not an empirical survey of Bugis communities. The principal statutory source is Law Number 1 of 2023, particularly Articles 2, 411 and 412, read together with their explanations and general provisions. Supporting literature comprises legal scholarship on adultery and living law, work on *siri'* and *malaweng*, and a dissertation devoted to these customary concepts. The sources were selected purposively for their direct treatment of the relevant offense or concepts. The limited corpus does not support claims about the absence of all other scholarship, uniform customary sanctions or present-day prevalence of enforcement.⁶

The analysis identifies the statutory elements and complaint mechanism, defines each customary term from the documentary sources, compares equivalent dimensions, and tests the proposed interaction against the Criminal Code and

⁵ Sahran Hadziq, "Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Dari Perspektif Living Law," *Jurnal Lex Renaissance* 4, no. 1 (2019): 26, <https://doi.org/10.20885/jlr.vol4.iss1.art2>.

⁶ Republic of Indonesia, Law No. 1 of 2023, arts. 2, 411–12.

Government Regulation No. 55 of 2025. Conclusions about customary concepts are confined to the communities and periods addressed in the cited studies. The research does not independently observe customary hearings or measure present-day enforcement; that would require geographically defined fieldwork.

RESULTS AND DISCUSSION

The Statutory Offense, Complaint Eligibility and Proof

Article 411(1) criminalizes sexual intercourse with a person who is not the actor's husband or wife, with a maximum penalty of one year of imprisonment or a category II fine. Sexual intercourse is the legally relevant act; the provision does not itself criminalize ordinary friendship, residence, communication or all conduct regarded as immoral by a community. The distinct language of Article 412 concerns persons living together as husband and wife outside marriage, not proof that Article 411 contains a general cohabitation offense. These differences should be maintained throughout charging, proof and sentencing.⁷

Article 411 is a complaint-dependent offense. The eligible complainant is the spouse of a person bound by marriage, or the parent or child of a person not bound by marriage. The explanation specifies a biological child aged at least sixteen for the latter reference to a child. Withdrawal is permitted before examination in open court begins.⁸ These conditions determine whether prosecution can proceed. Community disapproval cannot replace the complaint, and a valid complaint does not itself prove the offense or remove the accused's procedural rights.

It is therefore inaccurate to infer a general police power to prosecute every report of private sexual behavior, just as it is inaccurate to reduce Article 411 to conduct involving married people only. The doctrinal debate properly concerns both the substantive enlargement of the offense and the deliberate restriction of those who may initiate state prosecution.⁹ The latter restriction is a legal safeguard relevant to any proposed relationship with customary conciliation.

Januarsyah and colleagues explain the reform of the adultery formulation through the protection of marital and social values.¹⁰ Putri examines moral offenses from the perspective of religious minorities and questions how moral regulation distributes legal burdens.¹¹ Their different approaches reveal why the comparison must include both the protected interest and the persons able to trigger prosecution. A shared concern for morality does not establish equivalence between substantive offenses or their procedural safeguards.

Three questions must be answered in sequence. The first is whether the alleged act falls within Article 411 rather than Article 412 or a distinct sexual offense. The second is whether a complaint has been lodged by a person with the relevant

⁷ Republic of Indonesia, Law No. 1 of 2023, arts. 2, 411–12.

⁸ Republic of Indonesia, Law No. 1 of 2023, arts. 2, 411–12.

⁹ Aji Nugraha et al., "Analisis Tindak Pidana Perzinahan Menurut Pasal 284 Kitab Undang-Undang Hukum Pidana Dibandingkan dengan Pasal 411 Undang-Undang Nomor 1 Tahun 2023," *Pustaka Galuh Justisi* 3, no. 2 (2025): 228–241.

¹⁰ Mas Putra Zenno Januarsyah et al., "The renewal policy of the adultery concept in article 411 of the law number 1 of 2023 on the Indonesian criminal code," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 1 (2023): 1–16, <https://doi.org/10.22304/pjih.v10n1.a1>.

¹¹ Nella Sumika Putri, "Moral Offenses Under Indonesian Criminal Code 2023 in Perspective of Religious Minority," *Jurnal HAM* 16, no. 1 (2025): 61–76, <https://doi.org/10.30641/ham.2025.16.61-76>.

statutory relationship. The third is whether the admissible evidence establishes the elements and the accused's responsibility. A defect at one stage cannot be cured by the strength of a claim at another: widespread disapproval does not create standing, while a valid complaint does not by itself establish intercourse.

Consider an illustration involving two unmarried adults whose relatives object to their relationship. Under Article 411, a complaint by an eligible parent or child and proof of the prohibited intercourse require separate examination. A report from a neighbor does not acquire the same legal effect merely because the neighbor claims to defend community honor. If the allegation concerns shared residence alone, the legally relevant inquiry changes to the separately formulated cohabitation provision. These are hypothetical distinctions drawn from the statutory structure, rather than findings about a particular Bugis community.¹²

Where one alleged participant is married, the spouse's position must be assessed for that person, while the other participant's marital status determines the relevant statutory category. An assumption that a family's collective objection substitutes for every required complaint would remove the very restriction the legislature placed on enforcement. Procedural eligibility should therefore be established with sufficient particularity before the authorities treat a customary grievance as a prosecutable allegation.

The withdrawal rule likewise separates legal effect from social motive. Reconciliation may explain why an eligible complainant wishes to withdraw, but the criminal-law effect depends on the legally permitted act and its timing. A customary leader's declaration that a dispute has ended cannot substitute for the complainant's valid withdrawal. Equally, coercion used to obtain withdrawal undermines the voluntary character claimed for a restorative process. The complaint mechanism must be analyzed as a legal condition, rather than as a mere administrative detail.

This framework neither proves that the wider offense is necessarily beneficial nor resolves every objection to its regulation of private life. It makes those policy disagreements more precise: the enlargement of prohibited conduct and the limitation of prosecution are distinct choices. A legally useful comparison must preserve both instead of inferring that a broad moral concern authorizes unrestricted investigation.

Bugis Concepts and Comparison Through Equivalent Variables

The Bugis concept of *siri'* is generally discussed as an ethical framework of dignity, honor and shame, in which family relationships and communal standing may be important. In some literature, unlawful sexual activity is discussed through notions of moral disgrace and restoration of disrupted relationships. These concepts explain why the social consequences of prohibited conduct may extend beyond two individuals; they do not, by themselves, constitute a single written criminal code or uniform procedural statute for every Bugis community.¹³

The term *malaweng* calls for even greater caution. The cited customary-law study considers misconduct of sexual propriety in a broader sense than the narrowly defined act of consensual adultery. It may include different acts with different victims, degrees of coercion, family relationships and social consequences. Rape, child sexual abuse and incest require distinct criminal and protective responses;

¹² Republic of Indonesia, Law No. 1 of 2023, arts. 2, 411–12.

¹³ Achmad, "Perbuatan Malaweng."

their customary categorization cannot be used to obscure differences in consent or to treat victims as offenders. Only the subset of materials specifically addressing consensual intercourse outside marriage is comparable with Article 411.

The customary literature refers to possible fines, ostracism and other traditional responses. Without dated decisions from an identified locality or contemporary field observations, these remain reported descriptions rather than evidence of a sanction's current enforcement or legal validity. Who may initiate a customary meeting, whose participation is required and how an agreement is reached must be established for the particular community. Historical recognition of a practice also leaves a separate question: whether its present operation is compatible with statutory protections and the rights of the people affected.

Idris's work in Jeneponto locates siri' within a particular social setting.¹⁴ Tanra and Amat's study of Bugis along in Tawau examines its expression through cultural texts in another setting.¹⁵ Neither establishes a nationwide customary criminal procedure. Ipandang and Darlis's study of passampo siri' concerns Bugis marriage practices in East Kolaka.¹⁶ Hartono and Lestari examine modernization in the same field.¹⁷ These studies support attention to locality and change, while leaving the occurrence and handling of a particular alleged offense to be established separately.

The boundary of consent is particularly important. Mappaselleng and Kadir's discussion of honor-related violence illustrates the danger of moving from a cultural account of siri' to an assumed authorization of force.¹⁸ Hijriani and Ramadani's analysis of incest addresses a form of sexual crime requiring its own legal assessment.¹⁹ These materials strengthen the reason for limiting the adultery comparison to an equivalent subset of conduct. They do not make victims responsible for repairing an affront to collective honor.

A comparative claim should identify the source and status of each proposition. A dissertation's description of a customary sanction is evidence of the author's account, whose locality and period matter. A current statute establishes a national legal rule. A field observation could establish an actual contemporary process, but this study does not collect such observations. Keeping these levels distinct prevents a statement about cultural vocabulary from becoming a conclusion about how a present-day dispute will be resolved.

¹⁴ Muhammad Idris, "Siri dalam Masyarakat Bugis-Makassar di Kabupaten Jeneponto," *Al-Hikmah* 23, no. 1 (2021): 1–10, <https://doi.org/10.24252/al-hikmah.v23i1.19652>.

¹⁵ Mansur Tanra and Asmiaty Amat, "Siri' dalam elong masyarakat bugis di daerah tawau, sabah," *Jurnal Pengajian Melayu* 32, no. 1 (2021): 29–48, <https://doi.org/10.22452/jomas.vol32no1.3>.

¹⁶ Ipandang and Syamsul Darlis, "Passampo Siri' in the Bugis Marriage Practices in East Kolaka, Indonesia: A Sociological Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): 873–889, <https://doi.org/10.22373/sjkh.v6i2.12874>.

¹⁷ Rudi Hartono and Ayu Lestari, "The Influence of Modernization on the Implementation of Passampo Siri' in Bugis Marriages in East Kolaka: Sociological Perspective of Islamic Law," *Indonesian Journal of Islamic Law* 5, no. 1 (2022): 20–38, <https://doi.org/10.35719/ijil.v5i1.2012>.

¹⁸ Nur Fadhilah Mappaselleng and Zul Khaidir Kadir, "Reconstructing Honor Killing Through Siri': A Cultural Perspective from Bugis-Makassar Society," *Ganaya : Jurnal Ilmu Sosial dan Humaniora* 8, no. 4 (2025): 358–366, <https://doi.org/10.37329/ganaya.v8i4.4858>.

¹⁹ Hijriani and Rizki Ramadani, "From Criminal Law to Customary Law: Incest as a Sexual Crime," *Yuridika* 37, no. 2 (2022): 399–414, <https://doi.org/10.20473/ydk.v37i2.32830>.

Table 1. Comparison of Article 411 and Bugis Customary Law Across Common Variables

Comparison variable	Article 411 (national law)	Bugis customary literature (qualified)
Defined conduct	Sexual intercourse with a person other than one's spouse	Sexual propriety and siri'; malaweng is broader than adultery
Protected interests	Marriage and legally protected family interests	Family dignity and social relations described in some scholarship
Initiation	Complaint by statutorily designated spouse, parent or child	Potential family/community participation; local procedure unverified
Authority	Police, prosecution and judiciary according to procedural law	Community/recognized customary figures; local authority requires proof
Consequences	Maximum one year imprisonment or category II fine	Historically reported remedies/sanctions; current enforceability not established
Application	National criminal law with statutory territorial and personal rules	Local community norms, varying by group and locality
Source note	Law No. 1 of 2023, Article 411	Authors' synthesis of Achmad and cited literature; not an official customary code

The comparative table makes two methodological distinctions. The first is between norms backed by nationwide state institutions and norms whose meaning and operation depend on a recognized living community. The second is between the conduct formally prohibited under a statute and social harms discussed in cultural scholarship. Protecting marriage and social order may be shared concerns, but the protected interests and means of enforcement are not identical. In particular, the complaint requirement in Article 411 is a specific procedural rule, whereas participation by family or community figures in an informal customary resolution must be empirically documented before it can be treated as a customary-law requirement.

The claim that state criminal law is only retributive is also too broad. The National Criminal Code contains wider purposes of sentencing and recognizes interests such as reintegration and restoration alongside proportional punishment. The difference is therefore not between a purely punitive national system and an always restorative customary system, but between the statute's prescribed criminal sanctions and the forms of social settlement reported in particular customary-law literature.²⁰

The table can be read as a sequence of tests rather than a catalogue of opposites. At the conduct stage, the relevant customary material must concern consensual intercourse outside marriage. At the institutional stage, a named customary body and its actual authority must be identified. At the consequence stage, a social agreement must be distinguished from a legally authorized penal sanction. If one dimension is undocumented, the comparison records that gap instead of filling it with an assumption about Bugis society as a whole.

²⁰ Ika Oktaviani and Agusmidah, "Pembaharuan hukum dan rasa keadilan masyarakat yang religius: pengaturan tindak pidana zina dalam kuhp terbaru," *Law Jurnal* 3, no. 2 (2023): 187, <https://doi.org/10.46576/lj.v3i2.3104>.

Restoration also requires more than an asserted communal purpose. A settlement that resolves family disagreement through voluntary dialogue differs from exclusion or pressure imposed on a vulnerable participant. The former may have a social value that can be described without treating it as a criminal judgment. The latter requires scrutiny of its effects on dignity, safety and freedom of choice. Calling both 'restorative' would obscure the mechanism that determines whether reconciliation protects or burdens the people concerned.

The resulting comparison is asymmetrical in evidentiary strength. The statutory side has an ascertainable offense and complaint rule; the customary side has documentary accounts of varying scope. The appropriate conclusion is consequently narrower than a finding of complete equivalence or incompatibility. Family interests may overlap, but a claim about matching procedures or current sanctions requires evidence at the level of the particular community.

Living-Law Recognition, Legal Boundaries and Implications

Article 2 of Law Number 1 of 2023 recognizes the relevance of law living in society under statutory conditions and limits. It should not be read as requiring every court to enforce any locally asserted sanction without examining legal recognition, territorial and personal connection, consistency with higher law and the rights of affected people. The actual operation of living-law provisions depends on the structure of the Criminal Code and authorized implementing arrangements; this study does not assert a free-standing customary prosecution power over the offense under Article 411.²¹

Kusworo and Fauzi identify the difficulty of compiling living norms without losing their social setting.²² Fadilla and colleagues examine the constitutional position of their expression in regional regulations.²³ Andini distinguishes recognition of customary obligations from the legal structure of criminal sanctions.²⁴ Wijayanto and Makarim subject proposed customary-offense regulations to human-rights scrutiny.²⁵ Together these inquiries require a decision-maker to identify the norm, the recognized community, the authorized legal instrument and the safeguard relevant to its application.

Government Regulation No. 55 of 2025 gives the interaction a more definite boundary. Article 2 concerns regional establishment of customary offenses not regulated in the Criminal Code, and Article 3 applies the Code where the customary conduct has the same or equivalent elements as a codified offense. Articles 4–6 require recognized local practice, compatibility with higher legal values and

²¹ Republic of Indonesia, Law No. 1 of 2023, arts. 2, 411–12.

²² Daffa Ladro Kusworo and Maghfira Nur Khaliza Fauzi, "Living Law Dalam KUHP: Suatu Gagasan Menginventarisasi Kompilasi Hukum Adat," *Jurist-Diction* 7, no. 3 (2024): 439–456, <https://doi.org/10.20473/jd.v7i3.56266>.

²³ Aisha Nurul Fadilla, Defa An Nur Kusumajakti, and Rangga Maulana Fauzi, "Analisis Pengaturan Living Law dalam RUU KUHP yang Dituangkan pada Peraturan Daerah Ditinjau Berdasarkan Konstitusi," *Jurist-Diction* 7, no. 2 (2024): 223–244, <https://doi.org/10.20473/jd.v7i2.56121>.

²⁴ Orin Gusta Andini, "Membedah living law dalam kuhp 2023 dari perspektif pembedaan dan jenis sanksi," *Jurnal Yuridis* 11, no. 2 (2025): 349–373, <https://doi.org/10.35586/jjur.v11i2.9348>.

²⁵ Enggar Wijayanto and Muhammad Haris Makarim, "Politik Hukum Living Law Dan Hak Asasi Manusia Terhadap Rancangan Perda Tindak Pidana Adat Dalam KUHP," *Jurnal Legislasi Indonesia* 22, no. 2 (2025): 176, <https://doi.org/10.54629/jli.v22i2.1354>.

prescribed criteria, with qualifying offenses expressed in regional regulations.²⁶ Thus recognition of living law does not authorize relabeling Article 411 conduct to avoid its complaint mechanism.

The decisive inquiry is equivalence of elements. If a purported customary adultery offense describes the same prohibited act as Article 411, the Code's framework applies under Article 3 of the regulation. If a different act is asserted, a decision-maker must identify its elements and satisfy the living-law requirements; the broad term *malaweng* is insufficient. This prevents a generic moral category from silently extending state penal liability to conduct outside the national offense.

Documentation is also an institutional requirement. Article 7 requires research involving members of the customary community, academics or researchers, and relevant civil-society organizations, including direct research in the community.²⁷ The documentary comparison offered here cannot replace that process. It can identify issues for investigation, such as the territory of the norm, actual recognition, who participates in its enforcement and whether an obligation is imposed consistently with rights protections.

A customary agreement can have social significance, particularly when parties seek family reconciliation or wish to avoid further conflict. Its legal effect on a complaint-dependent state offense, however, must be traced to the statute. If an eligible complainant withdraws the complaint before the statutory cutoff, that act matters because Article 411 permits withdrawal in the relevant circumstances, not because a customary settlement independently annuls criminal jurisdiction. Once the lawful complaint and prosecution process have advanced beyond that point, the legal consequences require separate procedural analysis. Any consensual customary process must also avoid intimidation, discrimination and pressure on vulnerable persons.

A defensible model treats customary dialogue as an optional and rights-sensitive social response, distinguishes it from official criminal liability, and documents the applicable community and procedure before making broader doctrinal claims. The existence of a customary moral concern cannot displace statutory evidence, due process or the eligibility rules governing complaints.²⁸

Santoso and colleagues frame the problem as one of reconciling ascertainable legal limits with substantive justice.²⁹ Ario and colleagues connect living-law recognition with legal certainty and human rights.³⁰ Mandala and Herman place the National Criminal Code in a historical comparison with Emergency Law No. 1 of

²⁶ Republic of Indonesia, Government Regulation No. 55 of 2025 concerning Procedures and Criteria for Establishing Law Living in Society, arts. 2–7.

²⁷ Republic of Indonesia, Government Regulation No. 55 of 2025 concerning Procedures and Criteria for Establishing Law Living in Society, arts. 2–7.

²⁸ Akbar Sani, "Tinjauan Yuridis terhadap Pasal Kontroversial tentang Perzinaan dalam KUHP Baru dan Dampaknya terhadap Penegakan Hukum Pidana," *Jurnal Fakta Hukum* 2, no. 2 (2024): 104, <https://doi.org/10.58819/jfh.v2i2.152>.

²⁹ Budi Iman Santoso, Ivans Januardy, and Rizki Setyobowo Sangalang, "Kontroversi living law dalam kuhp 2023: antara kepastian hukum dan keadilan substantif," *Dinamika Hukum & Masyarakat* 8, no. 2 (2025): 1–16, <https://doi.org/10.30737/dhm.v8i2.7246>.

³⁰ Dion Ario et al., "Living Law, Kepastian Hukum, dan Hak Asasi Manusia: Politik Hukum dalam KUHP 2023 di Indonesia," *Lentera: Indonesian Journal of Multidisciplinary Islamic Studies* 7, no. 1 (2025): 31–42, <https://doi.org/10.32505/lentera.v7i1.13426>.

1951.³¹ Salwa and Tongat examine its relationship with legality.³² These analyses inform the interpretation of customary recognition; they do not supply a separate route for prosecuting Article 411 without the complaint required by that provision.

A practical sequence follows from these limits. Authorities should identify the allegation and applicable national offense, verify any complaint requirement, and then distinguish social dialogue from an asserted customary penal rule. A proposed living-law rule requires its own territorial, institutional and legal foundation. A voluntary agreement may be recorded for its appropriate legal relevance, but it cannot supply missing evidence or authorize punishments unsupported by the applicable framework. This sequence preserves space for culturally meaningful reconciliation while keeping coercive state action tied to a defined legal basis.

This is a literature-based comparison, not proof of current enforcement of particular sanctions in a named Bugis village or district. The available dissertation and studies are informative about concepts but cannot establish all contemporary variations. The research does not collect customary judgments, interviews or local government decisions, and thus cannot verify who currently initiates proceedings, how disputes are resolved or whether any sanction persists. The analysis should not be generalized beyond the documents examined.

Follow-up research should sample clearly identified Bugis communities, date the customary materials, separate nonconsensual offenses from consensual adultery, and document institutional authority and safeguards. Such evidence would allow a more exact analysis of the limited circumstances in which a customary norm could be legally relevant under the National Criminal Code without undermining human rights or complaint-based prosecution.

CONCLUSION

Article 411 of Law Number 1 of 2023 defines the offense of adultery in terms of sexual intercourse outside a spousal relationship and imposes a restricted complaint mechanism; Article 412 separately addresses cohabitation. Any doctrinal comparison must keep these provisions distinct. Bugis customary scholarship places aspects of sexual conduct within a broader discussion of *siri'* and *malaweng*, but those concepts are not coextensive with statutory adultery and do not establish uniform sanctions or procedure throughout Bugis communities.

The defensible similarity lies in the concern for family relationships and the maintenance of social order. The principal differences lie in legal form, source of authority, institutional competence, initiating parties and sanctions. A voluntary customary settlement may support social reconciliation but does not automatically replace Article 411's statutory complaint and criminal procedure. Before positive claims are made about present-day Bugis sanctions or institutional practice, geographically defined empirical research is required.

Government Regulation No. 55 of 2025 reinforces this boundary by directing conduct with the same or equivalent elements to the Criminal Code and regulating the establishment of distinct customary offenses. The article's contribution is a

³¹ Subianta Mandala and KMS Herman, "Pemberlakuan Living Law Dalam Undang Undang Darurat Nomor 1 Tahun 1951 dan KUHP Baru: Studi Komparatif," *Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora* 5, no. 2 (2025): 15, <https://doi.org/10.53697/iso.v5i2.3629>.

³² Berliana Aisyah Nur Salwa and Tongat, "Korelasi Antara Living Law dan Asas Legalitas dalam Konteks Pembaharuan Hukum Pidana Nasional Berdasarkan KUHP 2023," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 5, no. 2 (2026): 214–224, <https://doi.org/10.55606/jurrish.v5i2.7214>.

structured comparison of equivalent variables and a sequence for assessing asserted legal effects. Cultural recognition and legal certainty are compatible when the applicable conduct, community, authority and safeguards are specified; they become difficult to reconcile when those questions are replaced by an undifferentiated appeal to honor.

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