



The Role of the Police in the Settlement of Foreign Case in Surakarta

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Abstract

Adultery is a social problem that is often encountered in today's modern life. In positive law in Indonesia, adultery is a complaint offense where Criminal punishment can only be imposed on subjects who commit adultery while married. The problems brought by the act of adultery are not only a matter of morality, but cause many other problems as well as the losses incurred both to the victim, society and even to the perpetrator of adultery. However, the Criminal Code places sanctions on adultery offenses with very light weight. This legal research explains the role of the police as an instrument of law enforcement in resolving adultery cases based on laws and regulations.

Keywords: *Adultery; Complaint Crime; Law Enforcement; Investigation; Police; Foreign; Case; Surakarta*

Introduction

The police have an important role in realizing security and comfort in social life, the police are institutions that protect the community in all chaotic social conditions. The state has the obligation to protect its citizens to avoid all forms of crime, both general crimes and specific crimes, including immoral crimes (*zedelijkheid*). One form of immoral crime is adultery (*overspel*). Indonesia, with its eastern culture, upholds the values of decency and decency in society, but along with the influx of foreign cultures that are inconsistent with Indonesian culture, it erodes the social and religious norms that we uphold so far.

The role of the police can be said to be an aspect related to its position as a protector of society, one of the roles of the police is to enforce the law. Law enforcement is a series of processes to describe values, ideas, ideals that are quite abstract which are the goals of law. The goals of law or legal ideals contain moral values, such as justice and truth. These values must be able to be realized in real reality. The existence of law is recognized if the moral values contained in the law are able to be implemented or not.¹

¹ Konar Zuber, *Peranan Lembaga Polri Dalam Penegakan Hukum*, Jurnal Unpal, Volume 15, Nomor 3, Bulan September, Tahun 2017, hal 382.

Talking about law and law enforcement in Indonesia is the same as linking the two normative sides and the empirical side which are a reflective pair starting from the law-making process, embodiment and implementation of the role of law in the form of law enforcement and justice, in order to respond to the needs of a society that is developing in all areas. field, in achieving legal goals namely realizing justice, creating legal certainty and providing uses and benefits for society.²

Law enforcement is interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law runs properly and should. The law is enforced in the interest of society so that a safe and peaceful society can be achieved. In criminology, law enforcement is necessary because it provides a deterrent effect on criminals both sociologically and economically. In addition, the criminals will get reproach / ridicule from the community and even result in the loss of his life. The law aims to create order and a sense of justice for society. to realize legal justice must be upheld. The function of law enforcement is to actualize legal rules in accordance with what the law itself aspires to. namely manifesting human attitudes or behavior in accordance with the framework (frame-work) that has been determined by an act or law. The actualization or concretization of the rule of law in reality is carried out by the police. A law enforcement system that has good values is a matter of harmonizing values with rules and real human behavior. From the aspect of ontology/the essence of law, it has an interest in guaranteeing the social life of the community, because law and society exist in the surrounding community. A law enforcement system that has good values is a matter of harmonizing values with rules and real human behavior. From the aspect of ontology/the essence of law, it has an interest in guaranteeing the social life of the community, because law and society exist in the surrounding community. A law enforcement system that has good values is a matter of harmonizing values with rules and real human behavior. From the aspect of ontology/the essence of law, it has an interest in guaranteeing the social life of the community, because law and society exist in the surrounding community.³

The police in carrying out their duties as law enforcement officers must be based on RI Law no. 2 of 2002 concerning the Law on the Indonesian National Police. law enforcement, protection, protection and service to the community and service to the community in the context of maintaining internal security.

In Article 13 of Law no. 2 of 2002 stated that the main duties of the Indonesian National Police are:

- a. Maintain public order and security.
- b. Upholding the law; and
- c. Provide protection, shelter, and service to the community.⁴

Based on the provisions above, it seems explicitly stated that one of the roles of the Indonesian National Police is law enforcement. Law enforcement is one of the main tasks that must be carried out by members of the police.

Jimly Asshiddiqie wrote in his paper, stating the notion of law enforcement is the process of making efforts to uphold or actually function legal norms as guidelines for behavior in traffic or legal relations in the life of society and the state. Furthermore, he expressed the opinion that law enforcement can be seen from the point of view of the subject and the subject.

Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce the law by the subject in a limited or narrow

² <https://www.esaunggul.ac.id/etika-profesi-perspektif-hukum-dan-penegakan-hukum-dr-h-fauzie-y-hasibuan-sh-mh-wakil-ketum-dpp-ikatan-advokat-indonesia/>, diakses 16 Oktober 2022, pukul 21.40..

³ Konar Zuber, *Op.Cit.*, hal, 388.

⁴ Pudi Rahardi, 2007, *Hukum Kepolisian (Profesionalisme dan Reformasi Polri)*, Surabaya, Laksbang Mediatama, hal 67.

sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules means he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, law enforcement is only interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law operates as it should. In ensuring the upholding of the law, if necessary, law enforcement officials are permitted to use force. The definition of law enforcement can also be viewed from the point of view of the object, namely from a legal perspective. In this case, the meaning also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and the values of justice that live in society. However, in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations.⁵

In carrying out law enforcement, the police are faced with cases that are rife in society in today's modern era, because the police are law enforcement officers who are closest to the community and most often interact directly with the community. One of the cases or cases that are often handled by the police is the case of adultery.

Adultery, as formulated in Article 284 of the Criminal Code, is included in a crime against decency, namely the act of intercourse committed by a man/woman with a member of the opposite sex who is not their married partner. From the formulation of Article 284 of the Criminal Code, it can be interpreted that adultery is intercourse committed by a man with a woman who is not his wife, or intercourse between a woman and a man who is not her husband.⁶

Law is made as a means of social control, a good law must run in sync between legal products, law enforcers and society. The criminal law system regarding criminal acts in Indonesia has a different view of the offense of adultery as part of the offenses regarding decency. This is caused by differences in perspectives and values that lie behind it. The factors that influence a law to function well in society are;

1. Legal rules

Rules of law are living regulations that contain orders, prohibitions and principles made by official state agencies or institutions with the aim of realizing justice and order in society, which if violated (not obeyed) will result in severe sanctions. firm and real.

2. Law enforcer

Law enforcers include individuals serving in the fields of justice, prosecutors, police, lawyers and correctional institutions. Law enforcers must be self-aware and professional in carrying out their roles in society. the methods include being logical, namely being able to distinguish which actions are right or wrong, and then ethically where taking appropriate actions that are not reckless. The above method is not easy to do because the implementation of law enforcement duties is also influenced by group interests and public opinion. However, law enforcers should be able to communicate and gain understanding from the community, in addition to being able to carry out their role.

3. Facilities or facilities from law enforcement

Means and facilities for law enforcement include good organization, highly educated and skilled human resources (HR), adequate equipment, and adequate finances. If these things are not fulfilled, it will be difficult to enforce the law. Highly educated human resources in this case are defined as qualified and qualified law enforcers, namely those who are able to protect and protect the community according to

⁵ Hasaziduhu Moho, *Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan Kemanfaatan*, Jurnal Warta, vol 13 no 1, Januari, 2019.

⁶ Zulfiqar Bhisma Putra Rozi, *Perkembangan Delik Zina Dalam Yurisprudensi Hukum Pidana*, Jurnal Veritas Et Justitia, vol 5, nomor 2, Desember, 2019, hal 287.

their respective duties and fields. The number of law enforcers who tend to be less than the number of people also affects law enforcers in carrying out their duties not optimally.

4. Citizen's awareness

The condition of Indonesian society which is plural or socially and culturally diverse with various ethnic groups, a law enforcer must be familiar with the social stratification or strata of society that exists in an environment as well as the status order or role position that exists for people who do not really understand the law, provision of legal knowledge can make it easier for people to understand and be able to identify the values and norms that apply in their environment. So that an orderly and law-abiding society can be created.

5. Culture

Culture includes the values that underlie applicable law, these values are abstract conceptions of what is considered good so that it is embraced and what is considered bad so it is avoided. In relation to law enforcement, cultural factors influence how people behave before and after knowing existing legal norms.

The legal system that applies in a society that still upholds the values of decency. Adultery will be seen as a form of action that can depend on the will of each individual. Adultery will be considered disgraceful if it is committed within the framework of marriage and is not considered a crime against God's law that must be eradicated. The role of law enforcement officials in uncovering and resolving cases of adultery is required to be professionals with high intellectual maturity and moral integrity.⁷

Although adultery has been regulated in positive law in Indonesia and is binding in general, in reality, apart from many cases of adultery that have been resolved until a court decision with permanent legal force (*inkracht*) has been issued, not a few cases of adultery have been resolved through the path of peace (*restorative*). justice). The legal phenomenon that occurs in this society is as if adultery is not a criminal act that is dangerous and seems to be underestimated, even though adultery also causes harm to the victim/reporter and even the people around him. This is certainly related to the role of the police in handling adultery cases. So the formulation of the problem in writing this law is;

1. What are the disadvantages that can result from adultery?
2. What obstacles did the police encounter in resolving adultery cases?

Research Methods

The research method used in writing this legal research is an empirical juridical approach, namely the procedural method used to solve research problems by examining secondary data first and then proceeding with conducting research on primary data in the fields.⁸In this research the type of research method applied is by searching for meaning, understanding, understanding of a phenomenon, event, or direct human life in which the researcher is directly involved step by step and the meaning is concluded during the process from the beginning to the end of the activity. In order to solve the problems taken in writing this law the approach taken is by researching the effectiveness of the law and identifying the law. Researching the effectiveness of law is useful in knowing how a law can operate in society. This research is very relevant in developing countries such as Indonesia, this research does not only require knowledge

⁷ Dimas Wahyu Yuliansah, Iskandar, Ariza Umami, *Upaya Kepolisian Dalam Penegakan Hukum Terhadap Tindak Pidana Perzinahan*, JUSTICE: Jurnal Hukum, Vol 1, No 1, Januari, 2021, hal 27.

⁸ Suratman dan H Philips Dillah, 2013, *Metode Penelitian Hukum*, Bandung, Alfabeta, hal 53

in the field of law but also knowledge in social terms and understanding what factors can affect the function of law in society. whereas legal identification is intended to find out unwritten laws based on those applicable in Indonesian society (eg Islamic law and customary law).

Results and Discussion

In Indonesia, the crime of adultery or what can be referred to as "prejudice" is regulated by the Criminal Code in Chapter XIV on crimes against decency and is specifically regulated in Article 284. The criminal penalty for someone who commits adultery is 9 months. The concept of adultery in Indonesian positive law does not view all sexual relations outside of marriage as an act of adultery. The positive law only sees a sexual relationship as adultery if a person has intercourse with another person who is not a husband or wife and or someone who has intercourse with another person who is already bound by a marriage. So apart from that it is not said to be a criminal act in this case adultery.

The existing legal system in Indonesia has regulated matters related to adultery. Adultery law in Indonesia has its own polemic, from the provisions to the application of sanctions. How could it not be, the law governing adultery in the Criminal Code (KUHP) is considered irrelevant to be applied in Indonesian society, especially adultery in Indonesia is considered an act that is highly inappropriate and contrary to morals and norms in a cultured society. Arrangements regarding adultery are contained in Article 284 of the Criminal Code. The regulation of adultery and sanctions is very clear that Article 284 of the Criminal Code only regulates matters of infidelity, in which the article only applies if one of the perpetrators or both of them are still bound by a legal marriage with another person. Then in paragraph (2) explains that adultery is a violation of complaints, which can only be prosecuted if the legal partner makes objections or complaints. Meanwhile, for cases of sexual relations outside the context of this article, the principle of legality will apply, as in the case of a celebrity in Indonesia in 2010, where the perpetrators were only prosecuted under Article 4 of the Pornography Law, Article 27 of the Information Technology Law and Article 282 of the Criminal Code. This happened because the videos of the perpetrators' actions were spread in cyberspace, so if the video is not there, then the perpetrators are not entangled in any article, because Article 284 of the Criminal Code does not apply to them. This provision caused problems in society. where the perpetrators were only prosecuted under Article 4 of the Pornography Law, Article 27 of the Information Technology Law and Article 282 of the Criminal Code. This happened because the videos of the perpetrators' actions were spread in cyberspace, so if the video is not there, then the perpetrators are not entangled in any article, because Article 284 of the Criminal Code does not apply to them. This provision caused problems in society. where the perpetrators were only prosecuted under Article 4 of the Pornography Law, Article 27 of the Information Technology Law and Article 282 of the Criminal Code. This happened because the videos of the perpetrators' actions were spread in cyberspace, so if the video is not there, then the perpetrators are not entangled in any article, because Article 284 of the Criminal Code does not apply to them. This provision caused problems in society.⁹

The offense of adultery in the Criminal Code is an absolute complaint offense, meaning that the offense of adultery can only be prosecuted before the law if there is a complaint from the husband or wife concerned. The nature and position of the adultery offense as a complaint offense (especially an absolute complaint offense) has often caused problems and been questioned by various parties, as a policy that is not oriented towards the values that live in the structure of Indonesian society. In Indonesian society, adultery is not merely a private matter, but has become a social problem and violates religious norms and public morality. In other words, the actual problem in the criminal offense of adultery in the Criminal Code does not solely lie in the aspect of the absolute complaint. The formulation of the offense is also

⁹ Sahran Hadziq, *Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Prespektif Living Law*, Lex Reinnasance, Vol 4, No 1, Januari 2019, hal 29.

inconsistent with the moral values of the Indonesian people, who are religious and the majority embrace Islam. In Islam, the offense of adultery is defined as a sexual relationship (intercourse) between a man and a woman who is not bound by a valid marriage done intentionally.¹⁰

The problem of this absolute complaint offense is an offense which according to its nature under any circumstances can only be prosecuted on the basis of a complaint. The act of complaint here is necessary to prosecute the "event", so that all those related to it must be prosecuted. In other words, the absolute complaint offense is *insplitsbaar* (unsolvable), so that the prosecution does not only apply to the person whose name was mentioned by the complainant, but also to other people participating in the crime even though their names are not mentioned in the complaint. For example, a husband who has complained to the police about adultery committed by a man and his wife with a request that the man be prosecuted for violating Article 284 of the Criminal Code. Because the act is an absolute complaint offense,¹¹

Even though adultery has been regulated in positive law in Indonesia and carries a penalty of imprisonment, in fact adultery is still a social problem that is rife in social life in Indonesia. Problems arising from adultery also cannot be underestimated, if we look at the criminal penalties in Article 284 of the Criminal Code, namely a maximum prison sentence of 9 months, of course it can be said to be relatively light. Whereas adultery can cause problems and losses to the victim/reporter. The losses that can be incurred from adultery include:

1. Get social sanctions if their actions are known by the community

In the culture of Indonesian society, where people still adhere to morality and religion, social sanctions will not only affect the perpetrators of adultery, but victims or reporters will also be affected, for example by being ostracized or being ridiculed by neighbors.

Social sanctions are one of several sanctions for someone who makes a mistake. These sanctions are not written in black and white and are often implicit. Social sanctions often take the form of reprimands to certain groups who commit acts that deviate from existing rules. This is done by people who have lived together for a long time and have the same views. Sanctions will always be given so that someone has a deterrent effect on things that have been done. Social sanctions can last for a long time or only temporarily. The form of the Sanction depends on the things done. The goal is to give sanctions to someone who commits deviations from an applicable rule.¹²

2. Losing self-esteem, dignity and honor

Self-respect and honor, in everyday life, become so important for a person's psychological or psychological condition. Of course, the social sanctions that are obtained from the community for victims or reporters can cause feelings of shame and desire, such as not wanting to meet anyone or locking oneself up. Victims will feel that they have lost their self-esteem, dignity and honor, if this continues for a long time or continuously it can cause stress and depression, the fatal consequences of which can be suicide.

3. Marriages and households are in danger of being destroyed (divorce)

Bertrand Russel, a philosopher from England once said "Love affairs of infidelity among married people of men and women out of wedlock are the main cause of marital strife and divorce. It is not difficult to collect examples of households that have collapsed as a result of the husband's or wife's infidelities."

¹⁰ Eman Sulaeman, 2008, *Delik Perzinaan Dalam Pembaharuan Hukum Pidana Di Indonesia*, Semarang, Walisongo Press, hal 9.

¹¹ *Ibid.*, hal. 104.

¹² <http://mh.uma.ac.id/apa-itu-sanksi-sosial/>, diakses 18 November 2022, pukul 23:25.

4. can contract sexually transmitted diseases

Zina is the cause of sexually transmitted diseases. Data so far shows that men and women who suffer from this dangerous disease are those who often have sexual intercourse with multiple partners. Concrete evidence of the influence of adultery on the spread of venereal diseases is that these diseases are common in countries that adhere to free sex. The horror is that adultery is not only dangerous for the adulteress but also for the spouse of a legal marriage and their offspring, that it is true that syphilis can be suffered by three successive generations in the family.

Judging from the aspect of the losses incurred above, this adultery also has a negative damage impact that is not inferior to general crimes such as theft, embezzlement, fraud and others. When viewed from the obvious loss, it is very inappropriate to place this adultery offense with a criminal sanction that is relatively light, namely 9 months in prison. In the concept of the Criminal Code, offenses that weigh less than one year in prison fall into the category of "very light" offenses, which can only be punished with a fine. The qualification of the offense of adultery as a very light offense in the Criminal Code is a policy that is very inconsistent with the moral values and religiosity of the Indonesian people. And from the point of view of punishment, will be very far from achieving public protection (general prevention) and individual protection (special prevention). Very light punishment for actions that are considered by the community as serious and dangerous crimes, will hurt the sense of social justice so that people do not feel protected by the law, which in turn will lead to public distrust of the law and in the end they often commit acts of taking the law into their own hands (mass courts).¹³

The level of development of the society where the law is enforced influences the pattern of law enforcement, because in a modern society which is rational and has a high level of specialization and differentiation, law enforcement organizations are also increasingly complex and highly bureaucratic. A systematic study of law enforcement and justice is theoretically stated to be effective if the 5 pillars of law are running well, namely: legal instruments, law enforcement officials, community factors affected by the scope of legal regulations, cultural or legal culture factors, facilities and facilities factors that can support the implementation law.¹⁴

Law enforcement against this crime of decency must be carried out, this certainly cannot be separated from the role of law enforcement officials, in this case the police. As the first gate in the context of criminal justice, the role of the police is very dominant because the police are like a filter that screens an action or action and whether the act can be categorized as a criminal act or not.

Police as regulated in Law Number 2 of 2002 concerning the Indonesian National Police. The Republic of Indonesia National Police has the duties and functions of maintaining public order and security, law enforcement, protection, protection and service to the community. In order to increase law enforcement and implementation efforts for both the community and law enforcement officials themselves, the Indonesian government has renewed several regulations to improve the existing legal system in order to achieve a just and peaceful society, with improved regulations for law enforcement officers. According to law, each party is expected to be able to carry out their respective duties, functions and authorities responsibly, this implementation cannot be separated from the supervision of the government and the community.¹⁵

Adultery cases will be processed by law enforcers, namely the police if there is sufficient evidence that the crime of adultery has occurred and at that time it must also be accompanied by a divorce claim from the husband or wife who was harmed, (article 284 paragraph 5 of the Criminal Code). Without

¹³ *Op.Cit.*, Eman Sulaeman, Hal 150.

¹⁴ Sanyoto, Penegakan Hukum di Indonesia, Jurnal Dinamika Hukum, vol 8 no 3, September 2008, hal 199.

¹⁵ *Ibid*, hal. 203.

a divorce suit, the adultery case cannot proceed to court even though the adultery event can be proven to have actually occurred.

In determining whether an act is classified as a crime or not, the police are given authority by law. In article 13 of Law No. 2 of 2002 that the main task of the police is to enforce the law. The police as an instrument of law enforcement in Indonesia are authorized by the state to carry out inquiries and investigations. Investigation and investigation duties carried out by the police include activities;

1. Determine whether or not an investigation can be carried out
2. Search and collect evidence
3. Make clear the crime that occurred
4. Determining the suspects of the crime

In order to find out about the existence of alleged criminal incidents, it can be identified through reports or complaints from the public, either through victims directly or other parties who come to state law enforcement officials in criminal cases, or are known by law enforcement officials themselves. Then the obligation of the law enforcer must make a report or record in the register of reports or cases reported or found by the law enforcement officials themselves.¹⁶ However, in the case of adultery which is an absolute complaint offense. This means that even though adultery has occurred as stated in Article 284 of the Criminal Code, the perpetrator cannot be prosecuted if there is no complaint from the injured husband or wife.

Losses in adultery cases are the key to determining whether a legal event is true or not. Many people mistakenly understand that in the context of this loss, the loss will give meaning to the direction of the loss. Words or events that cause harm must be watched out for and understood by all parties, not only by the general public but also by state apparatus for enforcing criminal law.¹⁷

The following is the flow of solving adultery cases according to Sri Heni Novianti, SH. The Heads of Units who serve as Heads of PPA (Protection of Women and Children) at Polresta Surakarta are as follows:

1. Conduct an examination of the victim or reporter
2. Investigators go to the scene of the crime scene
3. Investigators secure evidence
4. Investigators confiscate evidence
5. The female perpetrator underwent an autopsy at Rs Moewardi Surakarta
6. Officers examine evidence at the Semarang branch forensic laboratory (underpants, bed linen with sperm stains, etc.)
7. The investigator conducts a case title whether the case can be raised to the level of investigation
8. Investigation process
9. Transfer of stage I case files to the public prosecutor
10. Delivery of phase II case files and evidence

That is the flow of the mechanism or procedure for resolving adultery cases in the jurisdiction of the Surakarta Police¹⁸. However, in the process of resolving adultery cases, there are often obstacles in the process. Adultery is a crime that is difficult to prove. The case of adultery is a complaint offense, therefore the victim or complainant will feel reluctant to report it to the police because they feel

¹⁶ Hartono, 2010, *Penyidikan Dan Penegakan Hukum Pidana Melalui Pendekatan Hukum Progresif*, Jakarta, Sinar Grafika, hal 21.

¹⁷ *Ibid.*, hal. 23.

¹⁸ Sri Heni Novianti, *Kanit PPA Polres Surakarta, Wawancara Pribadi*, Surakarta, 6 Oktober 2022, pukul 11:30 WIB.

embarrassed because there is an assumption among the public that this victim has exposed the shame of his own family.

In people's lives, adultery is a social problem that seriously injures ethics and morals, but in practice, adultery cases are rarely legally processed, considering the very complicated system of evidence. In a criminal case, evidence and witnesses are needed to support the course of the prosecution process. It is these constraints on evidence and witnesses that make it difficult for law enforcers to uncover cases of adultery. In most cases of adultery, it is also very difficult to get witnesses who want to take their statements. Considering this was a disgrace made people reluctant to interfere in this case.¹⁹

To uncover an adultery case, good cooperation between the police, the victim, and the community must be needed. If a case of adultery occurs, immediately report it to the authorities so that an investigation is carried out regarding this case. Coordination with the surrounding community is the next way to assist in uncovering cases of adultery. Where society becomes a social control that can observe and provide information on this adultery case. If the community has or already has evidence of initial clues about the occurrence of a criminal act of adultery, then hand-catching is the best way to uncover the adultery case. Because the operation to catch hands will facilitate the investigation process. Even though adultery is a complaint offense or a klacht delict,²⁰

Furthermore, according to Sri Heni Novianti, SH., Head of the Surakarta Police PPA unit, the obstacles encountered by investigators in dealing with adultery cases included the lack of supporting evidence because the suspect was not caught red-handed and there was no confession from both parties after the arrest.

the difficulty of investigators in uncovering cases of adultery is that there are no witnesses who saw the incident, this action was carried out in private, only a pair of the opposite sex. Because the location of the incident or the crime scene of adultery cases is mostly private. Investigators did not get enough evidence from the testimony of witnesses, the complainant came to make a complaint that if the public had or already had evidence of initial clues about the occurrence of a crime of adultery then hand-holding was the best way to uncover the case of adultery. Because the operation to catch hands will facilitate the investigation process. Even though adultery is a complaint or overspel offense, the police still have the authority to carry out operations to catch hands and handle cases of adultery that occur in the community. Police efforts in enforcing and handling adultery criminal cases, the police must continue to use the guidelines set out in the Criminal Code and Criminal Procedure Code. Considering that in implementing the law there are still obstacles in the implementation of its enforcement.²¹

Based on the obstacles and obstacles encountered by investigators, it is known that the percentage of cases resolved through mediation or withdrawing reports reaches 70%. This is because the reporter still wants to maintain his household. Complaints about adultery cases can be withdrawn as long as the trial of the case has not yet started (article 284 paragraph 4 of the Criminal Code). This is different from other complaint offenses which can only be revoked within a period of 3 (three) months from the time he submits the complaint to the Police (article 75 of the Criminal Code).

Adultery cases will only be processed by the police if there is sufficient evidence that an affair has occurred and must also be accompanied by a divorce claim from the injured husband or wife (article 284 paragraph 5 of the Criminal Code). Without a divorce suit, the adultery case cannot proceed to court,

¹⁹ Arina Silviana, *Kendala Dalam Penegakan Hukum Bagi Pelaku Pidana Perzinaan*, Tolis Ilmiah: Jurnal Penelitian, Vol 1 no 2, November 2019, hal 122.

²⁰ Dimas Wahyu Yuliansah, *Op.Cit*, Hal 33.

²¹ Roy Oka Mahendra, Ruslan Ranggong, Yulia A. Hasan, *Analisis Penanganan Tindak Pidana Perzinahan di Direktorat Reserse Kriminal Umum Polda Sulawesi Selatan*, Indonesian Journal of Legality of Law, vol 4, no 2, Juni 2022, hal 227.

even though the adultery event can be proven to have actually occurred.²²This is the background for the many reports of adultery cases that were withdrawn by the victim and the process of handling the case did not reach the indictment or trial stage, because the victim or complainant still wanted to defend their household.

Conclusion

Even though adultery has been regulated in positive law in Indonesia, adultery is still often encountered in the life of today's modern society. The reason is that the criminal threat for adultery in Article 284 of the Criminal Code has a relatively light weight, namely a maximum imprisonment of 9 months, even though it is known that adultery causes harm to the victim both materially and immaterially. Adultery is no less dangerous than other crimes such as fraud, embezzlement, etc. Adultery offenses which are absolute complaint offenses also have weaknesses, where adultery cases can only be processed if there are complaints or reports from the aggrieved party, namely the husband or wife. So that the article on adultery does not apply to couples who are both single and have sexual relations, which is very contrary to the culture of Indonesian society which adheres to moral and religious values. In Indonesia, where the socio-cultural structure of society is more religious, adultery is not merely a private matter and individual freedom, but also a social problem (a common problem).

The police, especially the PPA (Women and Children Protection) Unit of the Surakarta Police, in carrying out their role as law enforcers also often encounter various obstacles, namely the lack of supporting evidence in uncovering adultery cases, for example the lack of witnesses or suspects who are not caught red-handed.

The author's hope is that in the future there will be an update regarding the criminal law governing this adultery offense, with the hope that it can provide legal certainty to the people of Indonesia. The Indonesian Criminal Code which is a legacy from the Dutch colonial era whose substance is no longer relevant to the development of today's Indonesian society so as to create an orderly and just legal order and society. For example, a complaint offense is changed to an ordinary offense and a criminal sanction is changed to become weightier, bearing in mind that the impact of losses arising from adultery is not small.

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²² <https://kantorhukum-lhs.com/perkara/kasus-perselingkuhan-perzinahan/>, diakses 1 Desember 2022, pukul 21:30.

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Interview

Novianti S.H., Alur Penyelesaian Perkara Zina, Wawancara Pribadi, 6 Oktober (2022), Polresta Surakarta.

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