

Normative Ambiguity of Cohabitation in Indonesia's National Criminal Code

**Shihaf Ismi Salman Najib¹, Sakti Boy Sihombing¹, Balqis Amalia¹,
Fatikha Aisya Rahmi¹**

¹Universitas Airlangga, East Java, Indonesia

Corresponding author e-mail: shihaf.ismi.salman-2025@fh.unair.ac.id

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Abstract: This study examines the normative ambiguity of the cohabitation offense in Article 412 of Law Number 1 of 2023 concerning the Indonesian Criminal Code, particularly the absence of measurable temporal criteria and objective indicators for the phrase “living together as husband and wife outside marriage.” It employs legal research using statutory and conceptual approaches. Primary legal materials include the 1945 Constitution and the national Criminal Code, while secondary materials consist of criminal-law scholarship on legality, legal certainty, privacy, overcriminalization, and evidentiary standards. The materials were inventoried, classified, interpreted, and analyzed deductively. The study finds that Article 412 distinguishes cohabitation from adultery by focusing on an enduring domestic pattern rather than a single sexual act, yet it does not define the duration, frequency, continuity, or corroborating evidence required to establish that pattern. This omission grants broad interpretive discretion to investigators, prosecutors, and judges and may produce inconsistent, arbitrary, or discriminatory enforcement. The article proposes a cumulative operational framework based on sustained co-residence, repeated overnight presence, shared domestic routines, reciprocal representation as a household, and verifiable documentary or testimonial evidence. The framework offers a practical basis for implementing guidelines while preserving the complaint-based character of the offense, the principle of *lex certa*, due process, and constitutional privacy.

Keywords: Article 412, Cohabitation in Criminal Code, Legal Certainty, Normative Ambiguity, Right to Privacy

A. Introduction

Indonesia is constitutionally defined as a state based on law. Article 1 paragraph (3) of the 1945 Constitution places law at the center of social, national, and governmental life, while Article 28D paragraph (1) guarantees recognition, protection, and equal legal certainty. These commitments require more than the existence of written rules. Criminal prohibitions must be formulated in language that allows citizens to understand what conduct is prohibited and enables law-

enforcement institutions to apply the same standard to comparable cases. Legal certainty is therefore inseparable from the quality of legislative drafting and from the way statutory elements are translated into operational evidentiary criteria (Allan, 2026).

Human beings seek personal freedom, but they also live within social relationships that generate expectations, conflict, and demands for order. Law emerges in this interaction between individual autonomy and collective life (Laaser & Karlsson, 2022). Its function is not merely to impose sanctions but to coordinate behavior, protect legitimate interests, and prevent disputes from being resolved through private force. The relationship between law and society is especially sensitive when the state regulates conduct connected with sexuality, family life, religion, and morality because the conduct occurs within intimate spaces while also carrying symbolic meaning for the wider community. Indonesian society recognizes religious, moral, customary, and legal norms. These systems overlap but are not identical. Social disapproval may arise from religious teachings, customary expectations, decency, or community perceptions, whereas criminal liability requires a statutory basis and is accompanied by the coercive power of the state. For this reason, a behavior regarded as morally objectionable cannot automatically be treated as a crime. Criminalization requires a clear legal formulation, a defensible social purpose, proportionality between harm and punishment, and procedural safeguards against arbitrary enforcement. This distinction becomes crucial when changing social practices are perceived as deviations from established values (Krzyżanowski, 2020).

The enactment of Law Number 1 of 2023 concerning the Criminal Code represents a major stage in the renewal of Indonesian criminal law. It replaces the colonial-era code with a national codification intended to reflect constitutional principles, Indonesian legal culture, and contemporary social needs (Butt, 2023). Among its debated provisions is Article 412, which criminalizes a person who lives together as husband and wife outside a lawful marriage. The offense is commonly discussed through the Indonesian expression *kumpul kebo* and the Dutch-derived term *samen leven*. Supporters view the provision as protection for marriage, family integrity, and public morality, while critics question whether criminal law should intervene in private relationships that do not directly injure another person. Article 412 does not make sexual intercourse the central element of the offense. Its normative focus is a pattern of living together as husband and wife outside marriage (Moret et al., 2021; Syrda, 2023). In this respect, cohabitation is conceptually broader than adultery. A sexual act may occur without the parties maintaining a common household, while a couple may share a domestic life that resembles marriage even when sexual conduct cannot be proved. Scholarship on the new Criminal Code accordingly emphasizes that cohabitation must be understood through continuity, domestic interaction, and the reciprocal assumption of roles commonly associated with spouses rather than through a single encounter.

This distinction is important because criminal law previously addressed adultery through a provision centered on sexual relations under specified marital conditions. Article 412 creates a different object of regulation: the outward and continuing form of a non-marital household. The phrase “living together as husband and wife” therefore carries substantial interpretive weight. It must distinguish a criminally relevant domestic arrangement from ordinary conduct such as visiting, temporarily staying at another person’s residence, sharing accommodation for economic reasons, providing emergency assistance, or traveling together. Without that distinction, the provision risks extending criminal liability to conduct that does not express the sustained household relationship targeted by the legislature (Mamak, 2024; Rigotti & McGlynn, 2022). The central normative problem is that Article 412 does not specify how long, how frequently, or under what observable conditions two persons must reside together before their conduct qualifies as cohabitation. The provision does not state whether one week, one month, or a longer period is required. It does not explain whether the parties must use the same address, share domestic expenses, repeatedly spend nights together, present themselves publicly as a couple, or organize their daily lives as one household. The official explanation identifies the offense but does not transform the phrase into measurable indicators. As a result, the boundary between lawful private association and criminal cohabitation remains uncertain (Bohr & Lengerer, 2024).

Temporal ambiguity must be distinguished from the statute of limitations. A limitation period concerns the time within which prosecution may be initiated after an offense has occurred. The problem examined in this article concerns the constitutive duration of the conduct itself: the period and continuity necessary before “living together” becomes an established condition rather than a momentary event. Confusing these concepts weakens analysis because the expiration of prosecutorial authority is different from determining when the elements of an offense first exist. The present study therefore uses the term temporal threshold to describe the duration and repeated pattern required to constitute cohabitation (Ouellet et al., 2022). The absence of a temporal threshold has practical consequences. Investigators may rely on personal moral perceptions, local community attitudes, or unverified reports from neighbors when deciding whether the statutory element has been fulfilled. Prosecutors may formulate charges based on different assumptions about continuity. Judges may give inconsistent meanings to the same phrase because no common operational standard guides the assessment (O’Connor & Joffe, 2020). A person who spends several nights at another person’s residence could be treated differently across jurisdictions even when the underlying conduct is similar. Such variation undermines equal legal protection and increases the risk that stigma rather than evidence drives the criminal process.

The provision also raises constitutional concerns regarding privacy and personal autonomy (Schickhardt et al., 2020). The Constitution protects legal certainty and assigns the state responsibility for respecting, protecting, and fulfilling human

rights. Although privacy is not absolute and may be limited for legitimate public purposes, intervention in intimate life must be lawful, necessary, and proportionate. An imprecise offense may expose individuals to searches, accusations, social labeling, employment consequences, family conflict, and community pressure before guilt is established. The danger is particularly serious for vulnerable groups, including interfaith couples and communities whose customary marriages may face difficulties in state recognition. Article 412 is a complaint-based offense. This mechanism limits who may initiate the criminal process and is intended to prevent unrestricted public reporting. Nevertheless, a complaint requirement does not cure ambiguity in the substantive elements (Polonsky et al., 2025). A family member may still use an unclear provision to exert pressure, retaliate, or intensify a private conflict. Once a complaint is accepted, investigators still require an objective standard for deciding whether the conduct amounts to cohabitation. Procedural restriction and substantive clarity therefore perform different functions and must operate together.

Previous studies have analyzed cohabitation from the perspectives of overcriminalization, fair-trial rights, human rights, social values, proportionality, and protection from vigilantism. Broad interpretation may compromise fair-trial guarantees. Intervention in private life may also have significant implications for vulnerable groups. Criminalization may serve as a means of preventing vigilante action while protecting alleged offenders. These studies demonstrate the controversy surrounding Article 412, but they do not provide a detailed operational account of the temporal and evidentiary indicators needed to prove a continuing domestic relationship (Cairns, 2020). The state of the art therefore reveals a specific gap. Legal scholarship has established why cohabitation is controversial, but less attention has been given to how the phrase “living together as husband and wife” can be interpreted consistently without rewriting the statute through enforcement practice. A workable framework must identify indicators that are sufficiently concrete for evidence assessment while remaining flexible enough to accommodate varied household arrangements. It must also prevent one isolated fact – such as presence in the same room or a neighbor’s suspicion – from becoming conclusive proof (Banaji et al., 2021)b.

This study addresses that gap through a normative analysis connecting Article 412 with *lex certa*, due process, evidentiary reliability, proportionality, and constitutional privacy. Its novelty lies in proposing a cumulative framework that separates a sustained household pattern from temporary proximity. The study asks two questions: (1) How should the legal elements of cohabitation under Article 412 be understood in relation to the structure and purpose of the national Criminal Code? and (2) What legal consequences arise from the absence of temporal and objective indicators, and what interpretive framework can reduce those consequences? The contribution is both conceptual and practical: it clarifies the

offense and offers guidance for future implementing regulations, prosecutorial policy, and judicial interpretation.

B. Methods

This study employed legal research using statutory and conceptual approaches. The term legal research is used to emphasize that the object of analysis is law as a normative system rather than an empirical measurement of social behavior. Following Marzuki (2013), the study examines authoritative legal materials, legal concepts, and scholarly arguments to determine the meaning, coherence, and practical implications of the relevant rule. The research is prescriptive because it not only describes the ambiguity in Article 412 but also formulates recommendations for resolving it (Keiff, 2024; Rosander & Kadehors, 2023). The statutory approach focused on the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, the provisions governing adultery and cohabitation, the complaint mechanism, and general principles relevant to legality and criminal procedure. Particular attention was given to the wording "living together as husband and wife outside marriage," the relationship between Articles 411 and 412, and constitutional guarantees of equal legal certainty, due process, and human-rights protection. The analysis distinguished the constitutive temporal element of the offense from limitation periods governing prosecution.

The conceptual approach examined *lex certa*, the principle of legality, criminalization, overcriminalization, privacy, proportionality, due process of law, presumption of innocence, evidentiary objectivity, and the protective function of criminal law. Secondary legal materials consisted of books, journal articles, theses, and doctrinal studies discussing cohabitation in the national Criminal Code, Indonesian marriage concepts, legal certainty, customary and religious values, and the potential misuse of criminal provisions. The selected materials were relevant to the two research questions and represented both supportive and critical positions regarding the criminalization of cohabitation (Reeves et al., 2025). Legal materials were collected through inventory, identification, and classification. Primary materials were organized by constitutional principle, substantive offense, complaint requirement, and procedural implication. Secondary materials were grouped by conceptual theme: the definition of cohabitation, arguments for criminalization, objections based on privacy and human rights, risks of overcriminalization, and evidentiary problems. Duplicate references were consolidated, and claims were compared across sources to identify areas of agreement, disagreement, and unresolved ambiguity (Calliari et al., 2020). Analysis was conducted deductively. The study first established the requirements of legality and legal certainty, then tested the wording of Article 412 against those requirements. It subsequently interpreted the statutory elements in relation to the distinction between cohabitation and adultery. Finally, it assessed the consequences of ambiguity at the investigation, prosecution, adjudication, and social levels. The proposed operational framework

was formulated from the structure and purpose of the offense rather than from an arbitrary numerical rule. Each proposed indicator was evaluated according to whether it could be verified, whether it reflected a sustained domestic arrangement, and whether it reduced the risk of treating temporary presence as criminal conduct (Piquero et al., 2020).

C. Results and Discussion

The Normative Structure of the Cohabitation Offense

Article 412 positions cohabitation as an offense against morality within the national Criminal Code. The conduct is commonly associated with two unmarried persons who share a residence and organize their relationship in a manner resembling marriage. Indonesian debates frequently connect this conduct with religious and customary values that treat marriage as a legitimate and socially recognized basis for domestic life. From this perspective, criminalization is defended as a way to protect the institution of marriage, public decency, family order, and the moral foundations of society. The normative basis, however, cannot be reduced to the fact that a community disapproves of the conduct. Criminal law is the most coercive legal instrument and can result in investigation, arrest, prosecution, punishment, and enduring stigma. The transformation of a social or moral norm into a criminal offense must therefore satisfy stricter requirements than ordinary community regulation. Criminalization refers to the legislative designation of previously non-criminal conduct as punishable behavior. That designation is legitimate only when the prohibited conduct, protected interest, offender, and evidentiary elements can be identified with sufficient precision (Fröwis et al., 2020).

The first element of Article 412 is the subject expressed through the general term “every person.” The provision does not require that either party already be married to another person. The offense is concerned with the absence of a lawful marriage between the persons who form the household (Dhawan & Bhasin, 2024; Singh & Bhandari, 2021). The complaint mechanism identifies the limited parties entitled to initiate proceedings, but the status of the complainant is procedurally separate from the substantive question whether the accused persons actually maintained a marital-like domestic arrangement.

The second element is “living together.” This phrase implies more than physical presence in the same building. Ordinary language associates living with a place of residence, repeated return, continuity, and the organization of daily life. The verb therefore differs from visiting, meeting, staying briefly, or being found together on one occasion. The statutory object is a condition or pattern that persists over time (Grady et al., 2021). The cohabitation element should not be equated with temporary contact but must be connected with repeated conduct resembling the life of spouses.

The third element is “as husband and wife.” This is a relational qualifier. Two persons may share accommodation as relatives, coworkers, tenants, students, caregivers, or friends without assuming spousal roles. The phrase requires evidence that the parties organize their relationship in a manner comparable to a household formed by spouses. Such evidence may include shared domestic routines, mutual care, common use of living space, collective management of household needs, reciprocal representation as a couple, and continuity in the arrangement (Piel & Robra, 2023). No single indicator is universally decisive because lawful marriages themselves vary in economic organization, residence, and division of roles.

The fourth element is “outside marriage.” Indonesian marriage law connects the status of husband and wife with a lawful marital bond. Article 412 addresses persons who live as spouses without such a bond between them. This element differentiates the targeted arrangement from a legally recognized marriage, although difficult questions may arise where a religious or customary marriage has occurred but state administration does not recognize or record it. The potential effect on such groups reinforces the need for careful interpretation and coordination with marriage law (Dowuona-Hammond et al., 2020).

The relationship between Article 411 and Article 412 clarifies that sexual intercourse cannot be the only proof of cohabitation. Article 411 regulates adultery, whereas Article 412 regulates a domestic pattern. Sexual conduct may be relevant as supporting evidence, but requiring it would collapse two distinct offenses. Conversely, proof of one sexual act cannot establish the duration and household character required by the phrase “living together.” The difference should guide investigation: evidence must address co-residence and domestic continuity, not merely intimacy (Duncan et al., 2025).

The offense is complaint based. This design recognizes that the criminal process should not be activated by any observer who morally objects to a relationship. Limiting complaints may reduce public surveillance and opportunistic reporting. Yet the mechanism can also be used within family disputes and may create pressure on the accused. Criminalization may prevent extrajudicial persecution by channeling conflict into a formal legal process, although critics argue that it may also intensify state interference in private life. These positions are not mutually exclusive: a complaint mechanism can reduce vigilantism only when the formal process is predictable, restrained, and evidence based (Magaloni et al., 2022). The normative structure therefore contains a legitimate legislative distinction but an incomplete operational definition. The offense targets a sustained non-marital household, not isolated proximity. Its elements can be conceptually identified, yet the statute does not state how those elements should be established. This gap is the source of the ambiguity examined in the following sections.

Temporal and Evidentiary Ambiguity

The most visible ambiguity concerns time. A person cannot logically “live” with another person for only an instant, but the statute does not identify the point at which repeated presence becomes residence. The difference between a brief stay and cohabitation is qualitative and temporal. A weekend visit, a week of assistance during illness, temporary shelter after a disaster, or shared lodging during travel may involve overnight presence without creating a common household. An objective interpretation must therefore examine duration together with the purpose and pattern of the arrangement (Tuthill et al., 2020).

A rigid minimum duration could provide clarity but may also create artificial results (Jansen et al., 2023). A couple that openly maintains one household for twenty-nine days might not be fundamentally different from one that does so for thirty days. Conversely, two persons may use the same address for several months while living independently as tenants. For that reason, duration should function as a threshold indicator rather than the sole element. Implementing guidance may identify a presumptive minimum period, but the period should be combined with evidence of continuity and domestic integration. The purpose is not to criminalize a relationship immediately after a numerical deadline but to prevent momentary presence from being treated as cohabitation.

Frequency is equally relevant. Continuous daily residence is the clearest pattern, but modern employment, study, migration, and family responsibilities often require persons to spend substantial time away from home. A marital-like household may still exist when one party works in another city or follows a rotational schedule. The relevant question is whether the residence operates as a stable common base to which the parties regularly return, not whether they are physically present together every day. Enforcement guidance should therefore consider repeated overnight presence and the regularity of return within an identified period (Colomb & Moreira de Souza, 2024). The location of the conduct also requires clarification. Cohabitation ordinarily involves a residence, but the parties may alternate between two addresses or maintain a room within a larger family home. A shared official address is strong evidence but should not be mandatory because informal housing arrangements are common. At the same time, mere ownership or rental of property does not prove that the parties actually live there. Investigators should compare address records with observations, access patterns, personal belongings, utility use, correspondence, and other lawful evidence (Meterko & Cooper, 2022).

Domestic routines provide another category of evidence. Shared preparation of meals, joint maintenance of living space, coordinated daily schedules, mutual caregiving, and common management of household needs may support the conclusion that the parties function as one household. These facts must be interpreted cautiously because relatives and housemates can perform similar

activities. The evidentiary value lies in the combination of routines with an intimate partnership and continuity, not in stereotyped assumptions about gender roles or the division of domestic labor (Radcliffe et al., 2023).

Economic integration can corroborate a household relationship but should not be indispensable. Parties may share rent, utilities, groceries, or other living expenses. They may maintain joint accounts or designate each other as emergency contacts. However, many married couples keep separate finances, while unrelated tenants often share expenses. Financial evidence is therefore relevant only as one part of a cumulative assessment (Gleißner et al., 2022). Treating economic dependence as necessary would discriminate against economically independent couples; treating shared expenses as sufficient would expose ordinary co-tenants to suspicion.

Public or reciprocal representation may also be considered. The parties may introduce each other as partners, receive visitors as a couple, participate jointly in neighborhood activities, or make decisions concerning the residence together. This evidence can illuminate the character of the arrangement, but community reputation alone is unreliable (Greany, 2020). Neighbors may draw conclusions from moral prejudice, limited observation, or conflict. Testimony should describe specific facts—frequency of arrival, duration of residence, shared activities, or statements made by the parties rather than simply label the relationship immoral or unlawful.

Digital evidence may reveal continuity through location history, communications about household matters, delivery addresses, or recurring payments. Its use raises privacy and procedural concerns. Investigators must obtain such evidence through lawful authority, maintain authenticity, and avoid broad searches unrelated to the statutory elements. The availability of personal data does not justify unrestricted intrusion (Elrick, 2020). Evidence collection should be proportionate to the complaint and targeted to proving the existence of a sustained common household.

The ambiguity is particularly dangerous when one fact is treated as conclusive. Finding two persons in the same residence cannot by itself prove cohabitation. Neither can a photograph, a single overnight stay, possession of personal items, or a neighbor's allegation. Each may be relevant, but the offense concerns an integrated pattern (Campedelli et al., 2021)a. A cumulative standard reduces false positives because it requires several mutually reinforcing indicators. It also makes reasoning reviewable: investigators, prosecutors, and judges must explain which facts establish duration, continuity, domestic organization, and the spousal character of the relationship.

An operational framework should therefore contain both negative and positive indicators (Mergaliyev et al., 2021). Negative indicators identify conduct that should ordinarily be excluded: a single visit, short-term emergency accommodation, family caregiving, commercial lodging, shared residence without an intimate partnership,

or presence caused by work and travel. Positive indicators include sustained or repeated overnight residence, regular return to a common domestic base, personal belongings maintained at the residence, shared household routines, mutual representation as one household, and documentary evidence consistent with co-residence. The indicators should be assessed cumulatively and rebuttably.

The framework also requires an evidentiary sequence. First, authorities should confirm that a legally entitled person has submitted a valid complaint. Second, they should identify facts suggesting more than temporary presence. Third, they should gather evidence concerning duration, frequency, and continuity. Fourth, they should assess whether the parties functioned as spouses rather than as ordinary co-residents. Fifth, they should consider explanations and exculpatory evidence. This sequence protects the presumption of innocence and prevents investigation from beginning with a moral conclusion that authorities then attempt to confirm (Yu, 2022). The temporal threshold should be formulated through implementing regulation, prosecutorial guidance, or a consistent judicial interpretation. Legislative amendment would offer the strongest certainty, but guidance may provide an interim solution. The instrument should avoid prescribing a single inflexible household model (Walton & Tiede, 2020). Its function is to define the minimum evidentiary conditions under which the statutory phrase may reasonably be alleged and proved.

Consequences for Legal Certainty, Due Process, and Privacy

The first consequence of ambiguity is inconsistency. *Lex certa* requires a criminal norm to be sufficiently clear that citizens can foresee the legal consequences of their conduct and that state officials are constrained by a common standard. Absolute linguistic precision is impossible, but the core elements must not depend primarily on the personal views of the decision maker. Article 412 identifies the general conduct yet leaves its decisive boundary undefined. Without operational indicators, similar relationships may receive different treatment across police units, prosecution offices, and courts (Satcher et al., 2024).

Criminal law must clearly communicate the boundary between permitted and prohibited conduct. This communicative function is weakened when citizens cannot determine whether temporary residence, repeated visits, or an unregistered partnership will be treated as a crime. Uncertainty may produce a chilling effect in which individuals alter lawful behavior because they fear accusation. It may also encourage selective enforcement against unpopular persons or groups, particularly where local moral attitudes are strong (Charman et al., 2023).

The second consequence concerns the misuse of investigative discretion. Law-enforcement officials necessarily exercise judgment, but discretion must be guided by law and subject to review. An undefined temporal element allows suspicion to be

converted into suspect status before objective evidence of a household pattern has been established. Suspect status itself carries reputational and social consequences (McDonnell & Nurmohamed, 2021). Due process requires the accused to be treated as a rights-bearing legal subject, not merely as an object of investigation.

The third consequence is evidentiary distortion. When direct legal indicators are absent, authorities may rely excessively on community testimony (Selim et al., 2023). Such testimony can be valuable, but it is vulnerable to rumor, personal conflict, moral disapproval, and limited observation. Proving *samen leven* is complex because the relevant conduct occurs within private space. A standard based on specific, corroborated facts is therefore essential to protect the presumption of innocence.

The fourth consequence is overcriminalization. A provision becomes overbroad when it captures conduct beyond the harm or interest that justified criminalization (Bero & Sarch, 2020). Unclear moral offenses can turn criminal law into an instrument of subjective morality. If temporary visits or ordinary co-residence can be interpreted as cohabitation, Article 412 may reach conduct that does not threaten marriage, public order, or any identifiable victim. Proportionality requires both a legitimate purpose and a carefully delimited scope.

The fifth consequence is intrusion into privacy. Proving a domestic relationship may invite examination of bedrooms, personal communications, finances, movement, and intimate associations. Some inquiry may be legally justified after a valid complaint and a reasonable evidentiary basis, but ambiguity encourages broad and speculative searches. The state must demonstrate that any intrusion is connected to a statutory element and is the least excessive means of obtaining the evidence. A complaint cannot function as a general authorization to expose the entire private life of the accused (Banet-Weiser, 2021).

The sixth consequence is discrimination. Relationships that fall outside dominant social expectations may be more readily suspected and reported. Interfaith couples, migrants, students, low-income persons in shared housing, and communities with customary marriage practices may experience different exposure to enforcement. A cumulative, fact-based standard cannot remove all bias, but it can require authorities to articulate reasons that are independent of social identity or moral reputation.

The seventh consequence is the possible use of the offense as leverage in family conflict. Because only specified relatives may complain, the provision may become part of disputes concerning marriage, inheritance, parental control, or personal relationships. The complaint requirement is designed as a safeguard, yet it also concentrates power in parties who may have conflicting interests. Clear substantive elements allow investigators to reject complaints that allege disapproval without facts establishing the offense.

These consequences demonstrate that ambiguity is not a minor drafting issue. It affects every stage of the criminal process and can transform a protective rule into a source of insecurity. Human-rights protection in criminal justice is closely connected with preventing the abuse of authority. Legal certainty is closely associated with public trust in judicial decision-making. When the rule governing intimate conduct is unclear, the legitimacy of both the provision and its enforcement is weakened (Kira, 2024).

The proposed framework balances competing interests. It does not argue that Article 412 must be ignored or that public morality is legally irrelevant. Rather, it requires the state to prove the specific continuing domestic pattern chosen by the legislature as the object of criminalization. Supporters of the provision benefit from a standard capable of distinguishing the intended offense from rumor, while critics benefit from limits on intrusion and arbitrary interpretation (Whitten, 2023). Legal certainty is therefore not an obstacle to enforcement; it is a condition for legitimate enforcement.

A practical guideline could state that cohabitation may be alleged only where the evidence, considered as a whole, demonstrates: (1) a relationship between the parties that is presented and organized as an intimate partnership; (2) sustained or regularly repeated use of a common residence over a meaningful period; (3) continuity shown by regular return, personal belongings, or household routines; and (4) corroboration from more than one category of evidence. The guideline should expressly state that sexual intercourse, one overnight stay, or community opinion alone is insufficient (Kosec & Wantchekon, 2020). The guideline should also require a written assessment at key procedural stages. Investigators should record the temporal period alleged and identify the facts supporting continuity. Prosecutors should explain how the evidence establishes each element and why alternative explanations are insufficient. Judges should evaluate not only whether the parties were found together but whether the total evidence proves a sustained marital-like household beyond reasonable doubt. Written reasoning would promote consistency and allow appellate review to develop clearer doctrine (Drápal & Plesničar, 2025).

A final safeguard concerns the burden and standard of proof (Mökander et al., 2022). The accused should not be required to prove that a visit, shared address, or personal relationship was innocent. The prosecution must establish every element, including the continuity and domestic character of the arrangement, beyond reasonable doubt. Explanations offered by the accused—such as temporary caregiving, economic co-tenancy, emergency shelter, or separate living routines—must be tested against the evidence rather than dismissed as excuses. This allocation of proof is essential because the relevant facts arise in private settings where outsiders often observe only fragments. A cumulative framework must therefore increase the prosecution's obligation to demonstrate a coherent pattern; it must not become a checklist through which authorities shift the burden to citizens to justify their private associations.

Finally, education and training are necessary. Police, prosecutors, judges, community leaders, and legal-aid providers should understand the distinction between adultery, cohabitation, temporary presence, and unregistered marriage. Training should address privacy, digital evidence, witness reliability, and bias (Wilson-Kovacs et al., 2023). Public information should explain the complaint-based nature of the offense and discourage vigilantism, intimidation, and unauthorized searches. Protection from *eigenrichting* requires both formal legal procedures and a public commitment to allow the legal system, rather than community coercion, to determine liability.

D. Conclusions

Article 412 of Law Number 1 of 2023 establishes cohabitation as living together as husband and wife outside a lawful marriage, but it does not define the temporal, behavioral, or evidentiary threshold that separates a sustained domestic relationship from temporary presence. The study finds that the offense is normatively distinct from adultery because it concerns a continuing household pattern rather than a single sexual act. Its central elements are co-residence, continuity, a relationship organized in a marital-like manner, and the absence of a lawful marriage between the parties. The absence of measurable indicators creates broad discretion for investigators, prosecutors, and judges and may lead to inconsistent enforcement, premature suspect designation, excessive reliance on community stigma, overcriminalization, discriminatory application, and disproportionate intrusion into privacy. A complaint requirement limits access to the process but does not resolve the ambiguity of the substantive elements. The practical implication is the need for implementing guidance or authoritative judicial interpretation based on a cumulative assessment. Relevant indicators should include sustained or regularly repeated overnight residence, regular return to a common domestic base, personal belongings maintained at the residence, shared household routines, reciprocal representation as one household, and corroborating documentary or fact-specific testimonial evidence. No single fact—particularly one visit, one overnight stay, sexual conduct, or neighborhood opinion—should be sufficient. Investigators and prosecutors should identify the alleged period of cohabitation and explain how the evidence establishes duration, continuity, and the marital-like character of the arrangement. Future research should compare the interpretation of cohabitation across jurisdictions after the Criminal Code becomes operational, examine complaint and prosecution patterns, evaluate impacts on vulnerable groups, and assess whether implementing regulations reduce inconsistency. Clear operational limits are essential so that Article 412 functions as a lawful protective norm rather than as an instrument of intimidation or arbitrary interference in private life.

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