

The Existence and Integration of Customary Courts within the Framework of Indonesia's National Criminal Law

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ABSTRACT: The integration of customary criminal law into Indonesia's national legal system poses a significant challenge. Although Indigenous law communities and their traditional rights are constitutionally recognized, customary courts have yet to be fully acknowledged within the country's formal judicial system. This study aims to examine the existence of customary courts in the national criminal justice system and explore the integration of customary criminal law into the criminal justice system following the enactment of the new Criminal Code (KUHP). Employing a normative juridical doctrinal research approach, this study analyzes relevant legal norms based on legal theories to understand the substance of the new KUHP. The theory of living law serves as a framework for philosophically and sociologically explaining customary criminal law, the institutionalization of customary courts, and their integration into the national legal framework. The findings of this research reveal that although customary criminal law is an integral part of Indonesia's legal system, even being the country's original law, its enforcement has been transferred to state courts, with judges being obliged to explore the living law within society. The promulgation of the new KUHP in 2023 provides space for customary criminal law, reflecting the notion of balance in legal reform. However, challenges remain in aligning customary courts with the state's formal judicial system, particularly in preventing double punishment between customary and state sanctions. This study highlights that criminal law system reform must go beyond mere text and require a comprehensive and balanced approach. With the accommodation of customary criminal law as an integral part of Indonesia's legal system in the new KUHP, it is necessary to develop guidelines and enhance the capacity of law enforcement officers to understand and apply customary criminal law in accordance with Pancasila, the 1945 Constitution, and the principles of human rights. Thus, future criminal law enforcement is expected to provide a sense of justice that is rooted in the nation's identity and values.

KEYWORDS: New Criminal Code, Customary Courts, Customary Criminal Law

I. INTRODUCTION

Customary law is a law that lives and develops within a community, is believed in, and is passed down from generation to generation by that community, and is considered sacred (Silambi dkk. 2022). Customary law emerged as a result of local community habits that became guidelines for behavior, social norms, and tools for resolving issues with an emphasis on restorative approaches; thus, philosophically, it does not merely impose punishment (Helnawaty 2017). Customary law is not the only existing legal system, but its presence plays a very important role in shaping behavior and social control within societies around the world (Utama dkk. 2024).

In terms of criminal law, when discussing legal pluralism in Indonesia, customary law is one of the legal sources that judges are required to explore when deciding cases. This is based on Article 5, paragraph (1) of Law No. 48 of 2009 concerning judicial power, which clearly states that judges and constitutional judges are required to seek out, follow, and understand the legal values and sense of justice that develop within society.

Customary criminal law in the Indonesian legal system has already found its place, and its existence is recognized. The Supreme Court, as the highest judicial authority in Indonesia, through its decision No. 1644 K/Pid/1988 dated May 15, 1991, essentially explained that the Supreme Court respects the decisions of customary leaders that are based on customary deliberations and imposes customary sanctions on those who violate customary norms. This decision clarifies that the rulings of customary institutions or customary deliberations are recognized, and if these sanctions have already been carried out by the perpetrator, then the district court cannot pass a judgment on the perpetrator/defendant to avoid double punishment (Rozah 2024).

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In his inaugural speech as a professor, Barda Nawawi Arief explained that one of the issues that urgently needs to be examined as an alternative for renewing the Indonesian Criminal Code is a study of the legal system that lives and evolves within society. The living legal values that develop in society originate from customs and religion. Therefore, it is appropriate to explore the principles and criminal law norms contained in living law and examine them in light of Pancasila values so that the common principles and norms can be adopted and made the foundation of positive criminal law in the implementation of customary law (Pujiyono 2023).

According to Eko Suponyono in his inaugural professorial speech, reforms in the Indonesian Criminal Code (KUHP) involve the mission of harmonization within customary criminal law in Indonesia as part of the national legal system. He explains that one of the missions of the KUHP is adaptation and harmonization, including the recognition of customary criminal law within it, as a characteristic of Indonesian law. It should be remembered that many regions in Indonesia still implement customary law to determine whether someone's actions violate the criminal law. This is done to fulfill the community's sense of justice. (Pujiyono 2023).

The basic principle of formal legality from the old Criminal Code, which is a teaching of Dutch colonialism, is indeed deeply rooted in Indonesian criminal law, so that any act considered a criminal offense must be formally written into the law. (Adhari dkk. 2021). Thus, conflicts often arise between customary law and positive criminal law in Indonesia (Yu, Du 2013). Thus, conflicts often arise between customary law and positive criminal law in Indonesia (Yu & Du, 2013). Astuti et al., in their research findings, state that there is a dichotomy between customary law and Indonesian criminal law, which ultimately often creates complex dynamics (Handayani dan Prabowo 2024).

The reform of criminal law in Indonesia has reached a new phase with the enactment of Law No. 1 of 2023 concerning the Criminal Code (hereinafter, Law No.1/2023). Article 2, paragraph (1) acknowledges the existence of customary law as an integral part of the national legal system in determining whether a person deserves to be punished (Ardiansyah et al., 2024). The spirit of Article 2 paragraph (1) aligns with the Indonesian national ideology as stated in the 1945 Constitution of the Republic of Indonesia, Article 18B paragraph (2), which states: "The state recognizes and respects traditional law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law."

According to Satjipto Rahardjo, the existence of customary law does not consider or take into account whether it is recognized by state authorities; instead, it must emerge and exist autonomously from within the society itself, and thus is referred to as authentic. Such a position of customary law is termed by Hart as the "primary rule of obligation," while state law is referred to as the "secondary rules of obligation." This perspective actually highlights the urgency of customary law and the values it contains in the life of its community, including those related to customary criminal law (Yoserwan 2023).

The explanation above clarifies that, on the one hand, customary criminal law is recognized and guaranteed by the Indonesian Constitution, and its implementation is acknowledged following jurisprudential decisions from the Supreme Court. Moreover, it has been further accommodated through Article 2 of Law No. 1 of 2023 concerning the Criminal Code (KUHP). However, on the other hand, issues still arise in practice, as Indonesia's criminal justice system does not yet have a uniform and clear pattern or guidelines for integrating customary sanctions into formal criminal proceedings, preventing double jeopardy between customary sanctions and state-imposed penalties. Furthermore, the criminal justice system institutionally remains very "state-centered," causing customary courts to often be seen merely as a form of "non-formal resolution" rather than an essential part of the national criminal justice system. Therefore, it is important to explore the existence of customary courts for indigenous communities within the national criminal law system and to explain the integration of customary criminal law and the criminal justice system following the enactment of the new Criminal Code (KUHP).

II. RESEARCH METHOD

This study falls into the category of doctrinal research with a normative juridical approach, which aims to identify and examine relevant legal norms based on legal theory to gain an understanding of the legal substance of the new Criminal Code (KUHP). The main focus of this research is to analyze the existence of indigenous community courts within the national criminal law system and explain the integration of customary criminal law into the criminal justice system after the enactment of the new Criminal

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Code. In this context, the living law theory explains that society is the primary source of law; binding rules that are truly followed arise from social needs and interests, growing with the formation of society itself. Thus, state law should not be viewed as separate from social factors but must consider, acknowledge, and integrate existing and developing laws within the community, using this approach as an entry point to philosophically and sociologically explain customary criminal law and its adjudication, as well as its integration into the national legal framework. The data used consisted of primary data sourced from Law Number 1 of 2023 concerning the Criminal Code, the academic draft of the Criminal Code Bill, and secondary data from various academic literature, books, legal journals, and research reports. Data collection was conducted through a literature study, while data analysis was carried out qualitatively, by elaborating on legal norms (laws and regulations), legal theories, and expert opinions, which were then integrated with the legal issues addressed. Several steps were taken in the analysis: the collected data were classified according to predetermined themes, and then the collected data were interpreted or explained until finally reaching conclusions. Thus, a systematic analytical pattern can be found to address the legal issues studied.

III. RESULTS AND DISCUSSION

A. Customary Criminal Law as the Original Law of Indonesia

Customary criminal law is Indonesia's indigenous law, unwritten in the form of legislation, containing elements of religion, and is followed and obeyed by the community continuously from generation to generation. Therefore, if there is a violation of a customary provision that can cause unrest in society, it is considered capable of disrupting the cosmic balance. For this reason, those who violate such customary provisions are subjected to customary reactions, corrections, or sanctions/obligations by the community through the local customary authorities (Rozah 2024).

Ter Haar defines an offense as any disturbance of balance or interference with the material or immaterial possessions of an individual or a group (association) of people, which causes a customary reaction to arise. The customary reaction is an effort to restore balance within the customary communities. The type and extent of the customary reaction are determined by the customary law of the community. (Rozah 2024).

Purbacaraka and Soekanto state that, in custom, order exists within the universe or cosmic order. Activities to meet the needs of society and its citizens are placed within the lines of this cosmic order. For each individual, this line of cosmic order must be carried out spontaneously and immediately. Deviations or attitudes (behaviors) that disrupt the cosmic balance require perpetrators to restore the balance to its original state. (Soerjono Soekanto 1981) .

According to Soepomo, a customary crime is any act or incident that seriously disturbs the spiritual power of society. Any act or incident that pollutes the spiritual atmosphere and damages the sanctity of society is a crime against society. He also stated that the most serious crime is any violation that violates the balance between the physical world and the supernatural world, as well as violations that violate the foundations of the social structure. Thus, attitudes and actions that constitute crimes are those that reflect the spiritual order of society and the order of the supernatural world. (Mujib 2013) .

The definition of customary criminal law according to these experts can be concluded that customary criminal law is an original Indonesian law, which grows, develops, is followed, believed in, and carried out from generation to generation by the Indonesian people, and contains elements of religion and beliefs of the community. Therefore, if there is a violation of the customary provisions, it is believed that it will disturb the cosmic balance; therefore, the customary violators are subject to customary reactions/sanctions/obligations to restore the balance that was previously disturbed.

Thus, from this definition, it is appropriate to understand that customary criminal law is a law that lives in society and is a reflection of the socio-cultural order of the local community; therefore, it cannot be abolished by law. If laws in the sense of positive law abolish them, this will be in vain; on the contrary, positive legal rules in the form of laws will lose the source of their legal wealth. (Nyoman Serikat Putra Jaya 2016) .

The emergence of customary law violations simultaneously gives rise to customary crimes, so their prevention becomes the prevention of customary crimes. According to the *Beslissingen Leer theory*, also known as decision theory, a regulation concerning human behavior becomes legal when it is decided and upheld by law enforcement. A person commits an act deemed wrong, and therefore, punishment is imposed on the person who commits it. This situation gives rise to customary crimes, coinciding with the emergence of customary law. (Soetoto et al. 2021). This contrasts with Logemen's theory, which states that a judge's decision does not become the customary law. A judge's decision requires equal treatment in subsequent decisions. Customs used by previous judges to resolve a case are then repeated and followed by other judges, thus becoming a custom, which then becomes the customary law. (Yulia 2016) .

The legal sources of customary criminal law are both written and unwritten. Written sources, such as those that have developed and occurred in Lombok, are awig-awig (Hamlet, Village). These awig-awig contain and regulate prohibitions that may

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not be carried out by members of the customary community, or obligations that must be followed by the community, which, if violated, will result in sanctions being imposed by the community through its customary leaders.

Based on these sources, *the addressees* of these legal norms are citizens and state apparatuses, such as judges, prosecutors, police, and bailiffs. They are expected to act according to norms, or vice versa. Likewise, the state apparatus must obey legal norms. (Soedarto 1977). Customary criminal law applies only to members of the community and administrators of the customary community where existing customary law applies. Therefore, Lombok customary criminal law applies only to the people of Lombok and not to other Indonesian communities.

Customary criminal law remains in effect if the customary law community still exists and maintains it. Therefore, everything depends on the place, time, and circumstances of the event. This means that if an act was not originally prohibited in a local customary community, it could be considered a crime, even without a provision prohibiting it (criminalization), based on the consideration that it violates legal balance, public safety, and can cause unrest in society. Likewise, if the community no longer considers it a violation of customary norms, then it may no longer be subject to sanctions (decriminalization). (I Made Widnyana, 2013).

Customary criminal law is an integral part of Indonesia's indigenous legal system, which has been alive and developed through generations in indigenous communities, reflecting the socio-cultural order and beliefs that contain religious elements of these communities. Violations of customary provisions are not only considered to disrupt social balance but also cosmic balance, so that perpetrators are subject to customary reactions or sanctions to restore this harmony. The existence of customary criminal law is dynamic, depending on the context of place, time, and the circumstances of the local indigenous community, and cannot be abolished by positive law without eliminating the source of the legal wealth. Therefore, customary criminal law remains relevant and valid as long as Indigenous communities still exist, while also serving as important evidence that customary law and positive law must respect and complement each other in maintaining order and balance in society.

B. Legal Implications of Indonesian Regulations on the Existence of Customary Courts

Legally, the Criminal Code in force in Indonesia originates from the *Wetboek van Strafrecht voor Nederlandsch-Indie* (Staatsblad 1915 No. 732). After Indonesian independence, its validity was maintained based on Article II of the Transitional Provisions of the 1945 Constitution. Until 1958, Indonesia experienced dualism in criminal law. Uniformity in national criminal law was achieved only after the enactment of Law Number 73 of 1958, which unified the criminal law system throughout Indonesia.

Since independence, various efforts have been made to adapt the Criminal Code WVS to the socio-political conditions of the Indonesian nation, including through Law No. 1 of 1960 concerning Amendments to the Criminal Code; Law No. 16 Prp. of 1960 concerning Several Amendments to the Criminal Code; Law No. 18 Prp. of 1960 concerning changes to the amount of fines, and Law No. 2 PNPS of 1964 concerning Procedures for the Implementation of the Death Penalty; Law No. 1 PNPS of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion; Law No. 7 of 1974 concerning the Control of Gambling; Law No. 4 of 1976 concerning Aviation Crimes; Law No. 27 of 1999 concerning Crimes against State Security; and Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

However, these reforms were partial and ad hoc in nature, thus failing to create systemic change. Therefore, a new, comprehensive, fundamental, and systematic National Criminal Code is needed to replace the colonial legacy of the Criminal Code and reflect the legal independence of the Indonesian nation. The enactment of the Judicial Power Law in 1964, through Law No. 19 of 1964, in Article 3, clarified that the law used is Pancasila-based law, that is, law rooted in the nation's character. However, Article 3 does not refer to customary laws. Article 17, paragraph 2 of Law No. 19 of 1964, as well as the explanation for Article 10, states that there are both unwritten and written laws. The question arises as to whether these unwritten laws include customary law. The general explanation of Law No. 19 of 1964 affirms that "the judiciary is state justice. Therefore, there is no place for autonomous and customary courts. If these courts still exist, they will be abolished as quickly as possible, as has been done gradually." Ultimately, Law No. 19 of 1964 was revoked because it contradicted the 1945 Constitution, and on December 17, 1970, it was replaced by Law No. 14, 1970.

Law as the basis of the principles of judicial power. This law is important for the validity of customary law in Indonesia, and there are several articles, namely Article 23 paragraph (1) and Article 27 paragraph (1). These provisions provide guidelines for judges to explore the values that live in society and explore unwritten laws as material or basis for judging in a decision. Law No. 14 of 1970 was amended by Law No. 4 of 2004 and then by Law No. 48 of 2009, but the provisions as referred to are still maintained in Article 28 of Law of the Republic of Indonesia Number 04 of 2004 in conjunction with Article 5 paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, giving judges the obligation to explore, follow, and understand the legal values and sense of justice that live in society.

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In addition to the validity of customary law, each customary community has its own customary court or institution to enforce the law when there are problems related to the customs. Through the second amendment to the 1945 Constitution of the Republic of Indonesia in 2000, Article 18B, paragraph (2) and Article 28I, paragraph (3) state the following: first, recognizing and respecting the existence of customary law community units along with their traditional rights; second, respecting the cultural identity and rights of traditional communities as part of human rights that must receive protection, advancement, enforcement, and fulfillment from the state, especially the government. (Maladi 2010).

The 1993 State Policy Guidelines (GBHN) mandate that development in the legal field must formulate written and unwritten rules that apply to the implementation of community life, the nation, and the state, and bind all residents. In the GBHN, MPR-RI Decree Number II/MPR/1999 determines the direction of law, especially the national legal system in Chapter IV letter A number 2, which organizes a comprehensive and integrated legal system by recognizing and respecting religious law and customary law and renewing discriminatory colonial and national legacy legislation, including gender injustice and inconsistencies with the demands of reform through legislative programs. Furthermore, the MPR Decree No. III/MPR/2000, Article 1, paragraph (2), states that legal sources consist of written and unwritten legal sources. (I Made Widnyana 2013) .

The recognition and respect for the rights of customary law communities in the 1945 Constitution can be interpreted both philosophically and legally. Philosophically, this recognition and respect represent the state's appreciation of humanitarian values and human rights. Legally, this provision provides a constitutional basis for the legal policy direction of recognizing the traditional rights of customary law communities. However, this constitutional right has not yet been given space, especially in the current legislation. Customary justice institutions have not been given space, except for Law No. 1 of 1951, which concerns the validity of customary law related to criminal provisions and the regulation of customary criminal sanctions in the Indonesian legal system. (Zulfa, n.d.) .

Another fact is that these customary institutions or courts are often in conflict with formal state courts, which is a sad fact that is a result of Dutch colonialism, which dominates the legal system in Indonesia. However, these customary institutions or courts are still an alternative that is often taken by justice seekers, especially for communities that are still based on tradition with norms that form their social order. (Suhariyanto 2018).

Customary justice continues to exist and is practiced in community life, although this reality has not been fully recognized in state law, particularly in the laws governing the judiciary. The need for customary justice mechanisms arises not only from geographical constraints that hinder access to formal systems regulated by law, as in rural communities, but also for normative reasons. (Rochaeti et al. 2023). The resolution and sanction mechanisms in the formal system are sometimes not considered fair, compounded by the lengthy process that must be gone through. (Rahman 2023).

Given this fact, the provisions of current laws and regulations do not limit or eliminate unwritten laws within society. Instead, its enforcement has been transferred to state courts, ultimately impacting the existence of customary institutions and courts. With the guidelines that judges are required to explore the law within society, it is hoped that this will integrate and realize the unification and unity of existing law in Indonesia. This will enable State Courts to apply unwritten or customary law.

The existence of customary law and customary courts in Indonesia demonstrates the complex dynamics between the national legal system and local values within society. Although customary courts have not yet been fully recognized in the country's formal legal system, their existence remains relevant and is an important alternative for dispute resolution, particularly in traditional communities. (Watkati and Budiman, 2022). Efforts to integrate customary law through the obligation for judges to explore the legal values that exist in society are expected to strengthen the unity and independence of the national legal system, replacing the partial and non-systemic colonial legacy that remains. Therefore, a comprehensive and systematic reform of national criminal law must accommodate the existence of customary law as an integral part of the Indonesian legal system to create justice rooted in the nation's identity and values. (Faturrahman 2010)

C. The Integration of Customary Criminal Law Within the Framework of National Judiciary

The previous explanation has clarified that, fundamentally, customary criminal law is Indonesia's original legislation (Al Arif F 2020). However, since the arrival of the Dutch, who introduced their legal system in Indonesia, customary law has been sidelined. Efforts to uncover and raise the submerged roots—such as customary criminal law—so that they may become part of the national criminal law have come to fruition with the birth of the new Criminal Code (KUHP) in 2023, which provides space for it. However, the existence of customary courts is often at odds with the state's formal judiciary. In fact, the enforcement of customary criminal law in material terms has been transferred to the national court by requiring judges to explore the living laws in society.

his complex intersection should be viewed through the concept of living law introduced by Eugen Ehrlich, which serves as an important entry point for understanding the sociological and philosophical foundations of the reform of Indonesia's Criminal

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Code (KUHP), which now accommodates customary criminal law as a manifestation of balance. Ehrlich positions living law as the law that lives and operates in the daily life of society, different from state law, which is written in statutes, court decisions, or legal doctrines (Hadi 2017). According to him, society is the primary source of law; rules that are truly binding and obeyed are born from social needs and interests, growing together with the very formation of society. Therefore, state law should not be seen as separate from social factors but rather must pay attention to, acknowledge, and integrate laws that have already existed and developed within the life of the community. (Hadi 2017)

In the context of seeking comprehensive justice (perfect justice), the character of living law holds a very important function. Muladi emphasized that the application of the doctrine of material unlawfulness shows that the living law can play several roles: (1) as the basis for criminal punishment when there is no explicit regulation in positive law, (2) as a reason for the elimination of punishment (justification) when the perpetrator has undergone the resolution mechanisms that exist within the community, and (3) as a basis for consideration in sentencing. Therefore, judges in general courts are required to be courageous in assessing the validity of the living law: whether it is a culture that deserves appreciation or a counter-culture that contradicts the nation's core values and therefore must be set aside. Here, Pancasila serves as a philosophical benchmark for evaluating and filtering living laws within society (Hardiyanti dan Sugiyanto 2023).

The interpretation of Ehrlich's concept of living law in the Indonesian context does not mean separating state law from living law, but rather positioning living law as part of the national legal system (Shcherbaniuk dan Manyk 2023). Countries that recognize unwritten laws, such as Indonesia, can make living law one of the elements of state law, as long as it aligns with fundamental constitutional values. Indonesia adheres to a plural legal system that recognizes the existence of written and customary laws that live within the social practices of society.

In Indonesia, customary law, as a concrete form of living law, receives constitutional recognition. Article 18B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that the state acknowledges and respects the units of customary law communities and their traditional rights for as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law. This provision serves as the sociological and juridical foundation for the reform of the national Criminal Code: Indonesian criminal law must reflect Indonesian characteristics, be rooted in the values of a free and sovereign nation's culture, and serve as a correction to the colonial legal legacy that does not fully align with the social and cultural realities of Indonesian society (Adi Satya Nugraha dan Ade Adhari 2025).

Social changes, both at the national and global levels, demand a criminal justice system that is adaptive to the demands of justice and legal certainty in Indonesia. Many provisions in the Dutch WvS Penal Code are no longer adequate to address contemporary forms of crime or the dynamics of a pluralistic society. Therefore, criminal law reform must be designed comprehensively and in a balanced manner, including, among other things, balancing the interests of individuals, society, and the state; protecting both perpetrators and victims; harmonizing legal certainty with justice; recognizing both written law and living law within society; integrating national values with universal values; and harmonizing human rights with human obligations (Arief 2022).

This is where the idea of monodualistic balance becomes the philosophical foundation for the renewal of the Criminal Code. By accommodating unwritten laws, especially customary criminal law, the new Criminal Code seeks to balance the normative-positive and socio-cultural dimensions. This is important considering the highly diverse condition of the Indonesian nation; the old Criminal Code, a colonial product, was not born from the historical experience and core values of the Indonesian people, thus it needs to be aligned with Pancasila, national legal ideals, and human rights. Ideally, the content of national criminal law should reflect a balance between the moral and religious values of Belief in the One and Only God, humanity, nationalism, people's sovereignty, and social justice for all the people of Indonesia. (Pujiyono 2011).

This reform is also part of the effort to decolonize criminal law, shifting the paradigm from a formalistic and centralized colonial law to a just legal system rooted in the identity of the Indonesian nation. (Susanto dkk. 2025). Sociologically, the concept of living law introduced by Eugen Ehrlich serves as an important foundation for understanding law as a product of real and dynamic social life. Customary criminal law, as a manifestation of living law, is constitutionally recognized and integrated into Indonesia's pluralistic national legal system. Living law functions as a source of law that is alive and evolving within society, and must be recognized, respected, and accommodated in the formation and application of criminal law. This requires judges to assess the validity of customary law based on its alignment with the nation's core values and Pancasila. (Susanto dan Prasetyo 2025).

The philosophical and sociological aspects of the reform of the Criminal Code (KUHP) complement each other in creating a living, pluralistic, and just paradigm of national criminal law, which not only upholds positive law but also respects and integrates evolving social and cultural values within Indonesian society (Barda Nawawi Arief 2007). The integration of the living law concept in the enforcement of criminal law has several significant practical implications. First, judges and law enforcement officers must be able to assess and accommodate customary criminal law as a legitimate legal source, as long as customary law aligns with the

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nation's core values and Pancasila. This requires courage and wisdom from judges to evaluate the validity of customary law—whether it is a culture that deserves appreciation or contradicts national values and therefore must be set aside. Second, the application of living law allows for a more contextual and equitable resolution of criminal cases, especially in cases that are not explicitly regulated by positive law. Customary criminal law can serve as a basis for sentencing, grounds for the elimination of punishment, or a consideration in sentencing decisions, making the judicial process more responsive to social dynamics and local values. Third, the integration of living law requires an adaptive and inclusive criminal law system capable of balancing the interests of individuals, society, and the state. This necessitates the renewal of norms and law enforcement practices so that they not only focus on written legal texts but also respect and accommodate the law that lives within society. Fourth, the constitutional recognition of customary criminal law strengthens national legal pluralism and enriches the sources of criminal law, enabling law enforcement to better reflect the identity and cultural values of Indonesia.

Practical implementation strategies for applying the concept of living law in the criminal justice system require a multidimensional approach involving regulatory reform, capacity building for law enforcement officers, and strengthening cultural and legal awareness. First, judges, prosecutors, and other law enforcement officials need special training and education to understand, assess, and appropriately accommodate customary criminal law based on the values of Pancasila and national objectives. This includes enhancing legal interpretation skills, not only textually, but also contextually and socioculturally. Second, establishing technical guidelines and law enforcement protocols that integrate living law is essential to ensure the consistent and measurable application of customary criminal law. These guidelines must include criteria for the validity of customary law, mechanisms for evaluating alignment with the nation's core values, and procedures for handling cases involving customary law. Third, dialogue and collaboration between the formal justice system and Indigenous community institutions must be strengthened to ensure effective communication and respect for local norms. This participatory approach helps minimize potential legal conflicts and enhances the legitimacy of the court's decisions. Fourth, legal system reform must be supported by legislative updates that explicitly accommodate the existence of customary law while also providing flexibility in the application of criminal law so that it can adjust to socio-cultural dynamics. Fifth, regular monitoring and evaluation of the implementation of living law in judicial practice are necessary to identify obstacles, refine mechanisms, and ensure that the integration of customary law does not cause legal uncertainty or human-rights violations.

Challenges in implementing living law include resistance from law enforcement officials who remain oriented toward formalistic and textual approaches, a lack of deep understanding of customary law, and the potential for conflict between customary norms and the universal principles of human rights and the values of Pancasila. In addition, the vast and dynamic diversity of customary law in Indonesia creates difficulties in standardizing and assessing its validity at the national level. Limited resources and supporting infrastructure also pose obstacles to the effective implementation of these strategic measures. The success of implementing living law in the criminal justice system depends on the synergy between normative reform, capacity building of human resources, cross-cultural legal dialogue, and strengthening adaptive and inclusive oversight mechanisms.

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In the future, cases applying the living law in criminal law enforcement can be found in the resolution of cases involving Indigenous communities, where customary criminal law is used as the basis for consideration or even for sentencing. For example, in the case of violating customary norms within an indigenous community, the judge may assess whether the resolution through customary mechanisms carried out by the perpetrator and the community is sufficient as grounds for eliminating criminal liability (a justification). If this customary resolution aligns with the values of Pancasila and does not conflict with human rights, the judge may decide not to impose a formal criminal sentence according to the Criminal Code (KUHP) but instead respect the resolution practiced by the community. This practice demonstrates how judges and law enforcement officials accommodate customary criminal law as part of a pluralistic national legal system, balancing written law with the law that lives among the people, in accordance with the principle of living law and the values of Pancasila.

The revision of Indonesia's Criminal Code (KUHP), which integrates the concept of living law as a sociological foundation and the philosophy of monodualistic balance, reflects a transformation in the national criminal law paradigm towards greater inclusivity, adaptability, and justice. By recognizing and accommodating customary criminal law as an integral part of the pluralistic

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national legal system, this reform not only strengthens national legal sovereignty but also respects social and cultural diversity, as well as the values of Pancasila as a fundamental benchmark for the Indonesian nation. The implementation of living law in criminal justice practice requires judges and law enforcement officials to exercise courage and wisdom in contextually assessing the validity of customary law so that law enforcement can be more responsive to social dynamics and the need for justice in society. Thus, this KUHP reform is not merely a textual revision but a decolonization effort in criminal law that shifts the formalistic paradigm towards a legal system rooted in the identity of the Indonesian nation, while also creating a criminal justice system that is living, pluralistic, and just.

V. CONCLUSIONS

Customary criminal law, as an integral part of Indonesia's national legal system, reflects the social and cultural diversity and values of indigenous communities. The constitutional recognition of customary law through the amendment of the Criminal Code (KUHP) No. 1 of 2023 marks an important step in harmonizing written law with living law, thereby creating a criminal law paradigm that is inclusive, adaptive, and just. Customary courts have often been positioned in opposition to state courts; therefore, the enforcement of substantive customary criminal law has been transferred to the state judiciary by obligating judges to explore the values of society, which inevitably impacts customary judicial institutions. However, customary courts within Indigenous communities still operate and are often sought as an alternative to resolving legal issues faced by traditional communities. Although challenges in integrating customary courts with the formal judicial system persist, especially concerning standards of validity and the protection of human rights, efforts to strengthen the capacity of legal officials and update regulations are key to successful implementation of the law. By placing the values of Pancasila as a benchmark, the national criminal law system is expected to balance the interests of individuals, society, and the state while also respecting customary law as a legitimate and dynamic source of law. Therefore, the amendment of the Criminal Code is not merely a textual revision but a transformation of the legal paradigm towards criminal law that is rooted in the nation's identity and capable of holistically and sustainably addressing the justice needs of Indonesian society.

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