

## THE IMPLICATIONS OF CUSTOMARY LAW NORMS IN NATIONAL CRIMINAL LAW ON VALUES OF CRIMINAL JUSTICE BY INDIGENOUS PEOPLES

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**Abstract.** The reform of criminal law through Law Number 1 of 2023 concerning the Criminal Code is an important step in the decolonization of law in Indonesia while also providing recognition of the laws that exist within society. This recognition is reinforced through Government Regulation Number 55 of 2025 concerning Procedures and Criteria for Determining Laws that Exist within Society. This study aims to analyze and critically examine the normativization of customary law in national criminal law and assess its implications for the values underlying the handling of criminal acts in indigenous communities. This study is a normative legal study using secondary data consisting of primary and secondary legal materials and employing a regulatory and sociological approach to law. The results of the study show that the recognition of living law or customary law in the National Criminal Code reflects efforts to harmonize national law and customary law. However, through Government Regulation No. 55 of 2025, living law or customary law must go through a formalization process, starting from the administrative recognition of customary law communities, the formation of regional regulations, to verification by the central government. This mechanism places the state as the party that determines the validity of customary norms as customary criminal acts. As a result, customary law, which was previously based on material legality, has shifted towards formal legality that depends on state legitimacy. In addition, restrictions on customary criminal acts so as not to conflict with the Criminal Code and the standardization of fines have the potential to reduce the flexibility and character of customary law and open up the possibility of overlapping authority between customary institutions and state law enforcement agencies.

**Keywords:** Customary law; national criminal law; codification; indigenous values; resolution of criminal offenses

### I. INTRODUCTION

The Indonesian nation possesses a diversity of ethnic groups, religions, races, languages, and cultures spread from Sabang to Merauke. This diversity serves as both a wealth and a strength for collectively building Indonesia. In order to build a nation and a state, all aspects must be prepared as well as possible; this involves not only developing excellent human resources and equitable infrastructure but must also be accompanied by the preparation of a legal system to ensure order and safeguard the rights of the Indonesian people. By taking this into account, we can determine the future of the nation and state to achieve order and prosperity.

Customary law is a legal system that originated, grew, and developed from the customs and values that exist within Indonesian society. Essentially, the laws in force in Indonesia consist of various types. From a formal perspective, based on Aristotle's ideas, law is distinguished into written law and unwritten law [1]. Written law is law codified in legislation, such as the Civil Code and the Criminal Code. Meanwhile, unwritten law refers to customary law or law that exists and evolves within society [2].

The primary characteristic of customary law lies in its unwritten form, yet it is still adhered to and capable of addressing the various legal needs of the communities where it exists and evolves. Several regions in Indonesia still maintain the existence of customary law to resolve issues within their communities. For example, the Manggarai indigenous community possesses local wisdom in resolving disputes through a consultative approach known as *lonto leok* [3]. The existence of such customary law is also constitutionally recognized, as stipulated in Article 18B (2) of the 1945 Constitution, which acknowledges the existence and unity of customary law communities along with the traditional rights inherent within them.

The development of national law, particularly in the field of criminal law, has long been an initiative and aspiration of the Indonesian people to replace the criminal law system inherited from the colonial era. For many years, the application of criminal law in Indonesia remained based on Law No. 1 of 1946 on Criminal Law Regulations, which was essentially an adoption of Dutch criminal law. The validity of that law subsequently ended after it was repealed by the Law on the Repeal of Law No. 1 of 2023. Law No. 1 of 2023 on the

Criminal Code (hereinafter referred to as the National Criminal Code).

The National Criminal Code is the result of the Indonesian people's struggle to establish a criminal justice system that aligns with the nation's identity and values, while simultaneously replacing the colonial-era criminal code that contained elements of colonialism. Therefore, the reform of the National Criminal Code is aimed at decolonizing criminal law through the integration of values that are alive and evolving within Indonesian society, as embodied in Pancasila. This effort aligns with the philosophy of Friedrich Carl von Savigny, who stated that law is a representation of the spirit and character of society [4].

In the reform of legislation, one cannot disregard the various foundations that serve as prerequisites for its formation, namely philosophical, sociological, and legal foundations. Philosophically, this demands that legal rules align with the philosophy held by the Indonesian people. From a sociological perspective, the formulation of rules must adapt to the circumstances and conditions of society and align with the norms or living laws that evolve within society [5]. Meanwhile, from a legal standpoint, a legal regulation must not conflict with the Constitution as the supreme source of all law. In this regard, the enactment of the National Criminal Code, which takes effect in January 2026, is part of the reform of the national criminal law system that has integrated customary law or the living law within society into the reformulation of the National Criminal Code. Recognition of this living law within society is enshrined in Article 2, which governs the existence of such living law within society.

In National Criminal Law, the concept of the law in force within a community is essentially indistinguishable from customary law. This is affirmed in the provisions of Article 2, Paragraph (1), which states that the law in force within a community is customary law that defines certain acts as punishable offenses under local customary provisions. This means that the provisions regarding the law that exists within society refer to customary law. Meanwhile, according to Soeripto, customary law encompasses all rules and regulations governing behavior that apply within society and are generally unwritten [6]. Nevertheless, even though they are not codified in written form, society continues to implement and adhere to these provisions in daily life. Furthermore, Van Vollenhoven, who was dubbed the "Father of Customary Law" after introducing the concept of customary law in the Dutch East Indies (Indonesia), stated that customary law consists of rules applicable to both indigenous communities and foreign Eastern groups that carry sanctions and can thus be categorized as law; however, on the other hand, customary law is not codified or compiled into a book, so it remains referred to as "custom" [7]. Based on this view, it can be understood that the law that exists within society is a reflection of customary law that has grown, developed, and been observed from generation to generation in the life of the community.

As previously explained, customary law or the law that exists within society has been incorporated into Article 2, Paragraph (1) of the National Criminal Code. This provision stipulates that the provisions regarding the principle of legality as set forth in Article 1, Paragraph (1) do not diminish the

applicability of the law that is alive within society, particularly regarding certain acts that are prohibited and punishable even if they have not yet been regulated in the national criminal code. The regulation in Article 2 is intended as a form of respect and recognition for the existence of customary law that remains alive and evolving within society. Furthermore, this provision also represents an effort to harmonize the relationship between national law and customary law so that both can operate in harmony.

However, the application of Article 2 of the National Criminal Code has the potential to create overlapping jurisdictions in law enforcement, which could lead to a dual legal system. In the context of criminal law enforcement following the enactment of the National Criminal Code, there are currently no explicit regulations regarding which institution has jurisdiction when a criminal offense involves customary law communities, particularly because the formal criminal law procedures have not been explicitly regulated.

The state has formal law enforcement institutions such as the police, the public prosecutor's office, and the courts that are authorized to enforce positive law. On the other hand, traditional leaders also possess authority in handling criminal offenses based on local customary law. Therefore, the integration and codification of customary law into the national criminal law system must take into account the status and role of traditional leaders, so as not to disregard the values and mechanisms for handling such matters that have long been embedded in indigenous communities.

One indigenous community that is likely to be affected by the codification of customary law within the national criminal legal system is the Lamaholot indigenous community residing in the Lewokluok Traditional Village. This traditional village is administratively and geographically located in Lewokluok Village, Demon Pagong Subdistrict, East Flores Regency, NTT Province. In the handling of criminal offenses by the Lamaholot indigenous community, one of the values that must be applied is the value of *mela sare*. This value dictates that the handling of criminal offenses within the Lamaholot indigenous community must prioritize efforts toward peace and reconciliation. The handling of criminal offenses in the Lamaholot indigenous community is also closely tied to the power derived from God (*Rera Wulan Tana Ekan*) and the Ancestors (*Ama Opo Koda Kewokot*) [8]. Through the incorporation of customary law into national criminal law may also disrupt the mechanisms for handling criminal offenses within the Lamaholot indigenous community, which are guided by the values described above.

Based on this, research is needed to analyze and critique the codification of customary law within national criminal law, as well as to examine its implications for the values underpinning the handling of criminal offenses within indigenous communities. The novelty of this study lies in its focus, which not only discusses the integration of customary law into national criminal law from a normative perspective but also examines the relationship between the codification of customary law and the handling of criminal offenses within indigenous communities. Additionally, this study presents a comparative analysis of the integration of customary law into the criminal justice system with other countries as a basis for

assessing the relevance and direction of reforms in Indonesia's criminal law.

## II. RESEARCH METHODS

This study is a normative legal study that utilizes secondary data consisting of primary legal sources, such as laws, government regulations, and court decisions, as well as secondary legal sources, such as books, journals, and expert opinions. This study also employs a statutory approach. According to Peter Mahmud Marzuki, the statutory approach is a method used to analyze legislation related to the legal issues under investigation [9]. This study also utilizes a comparative approach, which involves comparing one subject with another [10]. In the context of this research, the comparative approach is used to compare Indonesia's criminal law system with the criminal law systems of other countries, particularly regarding the recognition and application of customary law within society. The data analysis technique in this study employs qualitative descriptive analysis. Qualitative descriptive analysis is a data analysis method that presents research findings in the form of systematic descriptions and explanations to facilitate understanding and interpretation. This analysis involves describing specific facts identified in the field regarding customary law that has been integrated into the national criminal law [11].

## III. RESULTS AND DISCUSSION

### **The Codification of Customary Law in National Criminal Law**

Indonesia has undergone a transformation through legal reform, particularly in the field of criminal law, as a manifestation of decolonization and the recodification of national law. This transformation was marked by the enactment of Law No. 1 of 2023 on the Criminal Code, which officially replaced the Dutch colonial-era Criminal Code that had been in effect since January 1, 1918. Prior to the establishment of the National Criminal Code, the criminal law system in Indonesia both substantive and procedural criminal law still adopted the provisions of Dutch criminal law. This situation arose as a consequence of a legal vacuum (*rechtvacuum*) following independence [12]. Therefore, pursuant to Article II of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia, enacted on August 18, 1945, all existing laws and regulations were declared to remain in force until new regulations were established. In addition to being grounded in this provision, the historical application of Dutch criminal law in Indonesia was also influenced by the principle of concordance (*concordantie beginsel*) as stipulated in Article 131 of the *Indische Staatsregeling* [13]. This principle was part of colonial legal policy that established the dominance of the colonizer's legal system over the colonized society.

The idea of reforming the national criminal law has actually been discussed for a long time. In 1963, specifically in Semarang, the first National Criminal Law Seminar was held, which specifically discussed the reform of criminal law codification, the formulation of a draft national criminal law,

and the reconstruction of the Indonesian criminal law system [14]. After a long and dynamic process, the National Criminal Code was finally enacted in 2023, rooted in the values, ideology, and national identity of the Indonesian people.

The most notable difference between the old Criminal Code and the National Criminal Code lies in the structure of its books. The old Criminal Code consisted of three books: Book One on general provisions, Book Two on crimes, and Book Three on offenses. Meanwhile, the National Criminal Code consists of only two books: Book One on general provisions and Book Two on criminal offenses. In the old Criminal Code, there was a clear distinction between criminal offenses in the sense of crimes regulated in Book Two and criminal offenses in the sense of misdemeanors regulated in Book Three. In contrast, the National Criminal Code no longer dichotomizes the concepts of crimes and misdemeanors but unifies them under a single term: criminal offenses [15]. This is further reaffirmed in the transitional provision of Article 614 of the National Criminal Code, which states that all terms for crimes and misdemeanors regulated outside the National Criminal Code are replaced with the term "criminal offenses."

In terms of substance, both the old Criminal Code and the National Criminal Code essentially regulate criminal offenses, criminal liability, criminal penalties, and sentencing. However, there are a number of provisions that have undergone significant changes and developments in line with the revision of the National Criminal Code. One of the fundamental changes lies in the provisions regarding subjects of criminal law. In the old Criminal Code, the subject of criminal law was implicitly limited to natural persons, so corporations were not explicitly recognized as subjects of criminal law. Consequently, corporate criminal liability was previously based on provisions outside the Criminal Code, which were regulated on a sector-by-sector basis in various special laws. In contrast to those provisions, the National Criminal Code explicitly stipulates that subjects of criminal law include not only individuals but also corporations or legal entities. Thus, the National Criminal Code has provided a clear and integrated legal foundation regarding corporate criminal liability within the national criminal law system. This regulation reflects the development of modern legal needs and reaffirms the commitment to reforming Indonesia's criminal law to adapt to social and economic dynamics, as well as the increasingly complex nature of crime.

In addition to changes regarding the subjects of criminal law, significant updates in the National Criminal Code are also evident in the aspects of types of punishment and the objectives of criminal sanctions. These updates as a whole indicate a paradigm shift in criminal sanctions from a repressive approach toward a more humanistic and contextual approach. In terms of types of punishment, the old Criminal Code was generally still dominated by imprisonment and fines as the primary forms of punishment. In contrast, the National Criminal Code introduces more varied and proportionate types of punishment. This is evident in the provisions of Article 65(1) of the National Criminal Code, which includes probation and community service as part of the principal penalties. This variety of penalties provides more flexible sentencing alternatives and allows for the imposition of penalties that are better suited to the characteristics of the offender and the offense.

Furthermore, the reform of criminal law is also reflected in a shift in the objectives of sentencing. In the old Criminal Code, the purpose of punishment was more oriented toward retributive justice, which emphasized retribution against the perpetrator of a criminal act [16]. Meanwhile, the National Criminal Code prioritizes a more comprehensive purpose of punishment, emphasizing corrective, restorative, and rehabilitative justice. This shift is evident, among other things, in the provision regarding the death penalty as an alternative punishment under Article 67 of the National Criminal Code, in contrast to the old Criminal Code, which treated the death penalty as the principal punishment (absolute punishment). This provision reflects an effort to limit the use of the death penalty and reaffirms a sentencing orientation that prioritizes restoration and rehabilitation, both for the offender and for social balance within society.

The National Criminal Code also introduces a significant innovation by recognizing the existence of living law within society as one of the sources of consideration in sentencing, as stipulated in Article 2, Paragraph (1). This recognition is reflected in provisions that allow for the consideration of customary legal values, social norms, and the sense of justice evolving within society, provided they do not conflict with Pancasila, the 1945 Constitution, and Human Rights. Unlike the old Criminal Code, which was rigid and positivistic, the recognition of living law in the National Criminal Code provides room for criminal law to become more responsive to the social and cultural pluralism in Indonesia. Although formal criminal law has not yet explicitly regulated the procedures for implementing substantive criminal law that accommodates customary law or living law within society, this has been regulated through implementing regulations, namely Government Regulation No. 55 of 2025 on Procedures and Criteria for the Determination of Living Law within Society. This regulation is a derivative regulation of the National Criminal Law that recognizes living law within the community as a limited exception to the principle of formal legality as stipulated in Article 1 Paragraph (1) of the Criminal Code.

Pursuant to Article 4(1) of Government Regulation No. 55 of 2025 on the Procedures and Criteria for the Establishment of Customary Law, customary law may only be established provided it meets two cumulative criteria, namely: (a) it is consistent with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, the principles of human rights, and the general principles of law recognized by the international community; and (b) is recognized and implemented by the local customary law community. Paragraph (2) further stipulates that the customary law community referred to in Paragraph (1)(b) must first be recognized and established in accordance with the provisions of laws and regulations. This normative framework indicates that the recognition of customary law within the framework of the National Criminal Law is not automatic or merely sociological in nature, but rather requires formal legal legitimacy. Thus, the customary law that can be integrated into the national criminal law system is law that is not only actually practiced but has also obtained recognition and designation through positive legal instruments, such as local regulations. Customary law, which previously had a material legality, has

now shifted to formal legality in the provisions of certain customary criminal offenses.

The integration of living law within society demonstrates that national criminal law is significantly influenced by legal pluralism. Legal pluralism acknowledges the existence of more than one legal system in effect within a given territory; for instance, in Indonesia, where society is diverse in terms of religion and customs, these must be respected and recognized [17]. In fact, Indonesia is a country that adheres to a civil law system, which relies on written and codified laws such as statutes or codes as the primary sources of law, and strictly applies the principle of criminal legality as stipulated in Article 1, Paragraph (1) of the old Criminal Code [18]. However, pursuant to Emergency Law No. 1 of 1951, Article 5, Paragraph (3), letter b, acts that are considered criminal offenses under the living law of the community may still be punished as long as there is no corresponding provision in the Criminal Code. Furthermore, with the enactment of the National Criminal Code, there has been a development in the application of the principle of legality. Article 1, Paragraph (1), continues to govern the principle of legality, while Article 2, Paragraph (1), provides room for the application of customary law as enshrined in Regional Regulations. To this day, the principle of legality in Indonesia is no longer applied in its purest form, as criminalization is based not only on written law but also acknowledges the application of customary law.

This differs from some civil law countries, such as France, where the principle of legality (*principe de légalité*) is one of the most fundamental principles in criminal law. This principle was first strictly applied through the 1791 Penal Code, which emerged during the French Revolution. Before its codification, the concept of the principle of legality had been developed by Cesare Beccaria and Montesquieu, who emphasized that a person can only be punished based on laws that already existed beforehand [19]. The application of the principle of legality in France is absolute, placing written law as the sole basis for punishment.

### **Implications of the Codification of Customary Law in the Handling of Criminal Offenses by Indigenous Communities**

As defined in Government Regulation No. 55 of 2025, the law that is alive within a community is customary law that is in force and evolving within the community's life, which determines that a person who commits a specific act contrary to the values and norms upheld by the local community is subject to criminal sanctions. This means that the term "law that is alive within a community," as defined by this regulation, refers to customary law. Customary law, or *Adatrecht*, was first introduced by Snouck Hurgronje in 1983 in his book titled *De Atjehnese*. However, customary law only acquired a technical legal definition after C. van Vollenhoven published his book titled *Adatrecht*. According to him, customary law is the law applicable to Indonesian society and is treated as an object of positive legal knowledge [20]. Further elaborating on the definition of customary law in the book *Customary Law in Indonesia* written by Siska Lis Sulistia, it is an unwritten rule that exists alongside the community itself. From this definition, it can be concluded that customary law is an unwritten law



believed in and obeyed by members of a community or indigenous group and carries sanctions.

Referring to the explanation in the previous paragraph, since customary law is unwritten, efforts to codify customary law within customary criminal law may conflict with the very nature or distinctive characteristics of customary law itself. Customary law is fundamentally flexible and dynamic because it constantly adapts to evolving values within society [21]. When customary law is codified, it becomes rigid and will inevitably struggle to adapt to various social changes.

The regulation of living law or customary law within the framework of National Criminal Law is more comprehensively addressed in Government Regulation No. 55 of 2025 on Procedures and Criteria for the Determination of Living Law in Society. Pursuant to Article 4(1) Government Regulation No. 55 of 2025 on Procedures and Criteria for the Designation of Living Law in Society, living law in society may only be designated provided it meets two cumulative criteria, namely: (a) it is consistent with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, the principles of human rights, and the general principles of law recognized by the international community; and (b) is recognized and implemented by the local customary law community. Paragraph (2) further stipulates that the customary law community referred to in Paragraph (1)(b) must first be recognized and designated in accordance with the provisions of applicable laws and regulations. The normative implication of this regulation is the formalization of customary law as a source of criminal law. The state positions itself as a verifying authority that determines the validity of customary law or the living law within a community so that it can be operationalized within the national criminal justice system. A consequence of this regulation is that mechanisms for resolving criminal offenses based on customary law where the community has not yet received legal recognition from the state potentially lack legitimacy within the positive legal system when confronted with National Criminal Law. Thus, customary law or the law in force within a community whose existence as a customary law community has not been formally recognized cannot serve as a basis for handling criminal offenses within the framework of national criminal law; consequently, law enforcement officials remain obligated to adhere to the provisions of National Criminal Law. In fact, conceptually and historically, the mechanism for handling criminal offenses based on customary law is part of the traditional rights of indigenous communities that have grown and developed as a manifestation of their socio-cultural autonomy.

The next normative implication relates to Article 5 of Government Regulation No. 55 of 2025 on Procedures and Criteria for the Determination of Living Law in Society. This provision stipulates that Customary Criminal Offenses contained in Living Law in Society must meet the following criteria: (a) they are unlawful or contrary to the living law of the community; (b) they are punishable by the fulfillment of customary obligations; (c) not regulated under National Criminal Law; and (d) applicable to any person committing a Customary Criminal Offense within the relevant customary legal jurisdiction. In particular, the provision in subparagraph (c) carries significant legal consequences: if an act occurring

within a customary law community has been classified and regulated as a criminal offense under National Criminal Law, its handling can no longer be based on customary law but must instead be subject to National Criminal Law. Thus, the existence of customary law as a basis for resolving criminal cases is subordinate to the provisions of the Criminal Code. Normatively, this framework indicates a limitation on the scope of application of customary law within the national criminal justice system. Consequently, the participation of customary law communities in preventing and addressing criminal offenses within their territories is restricted to cases not covered by the National Criminal Code.

In Part Two of Government Regulation No. 55 of 2025, which governs the procedures for establishing customary criminal offenses, it is emphasized that the law existing within a community does not automatically apply as a criminal norm; rather, it must first be codified through a formal mechanism namely, by being proposed to the Regional Government or the Regional People's Representative Council for review and formulation into a Draft Regional Regulation, and subsequently submitted to the Minister for review. This multi-layered procedure demonstrates that the applicability of customary criminal offenses is entirely within the framework of state institutional control.

This provision can be viewed as problematic because it reflects state intervention in the existence and validity of values that inherently grow, thrive, and are observed autonomously by customary law communities. Conceptually, customary law is a living law that derives its legitimacy from social acceptance and the continuity of practices that subsequently become customary law, not from formal state ratification. However, through the verification and review mechanism by the Minister, the state positions itself as the final authority determining whether a customary norm is valid to be recognized as a customary criminal offense. Thus, recognition of customary law becomes conditional and subordinate to the state's legal structure. This also creates tension with the spirit of constitutional recognition of customary law communities as stipulated in the 1945 Constitution of the Republic of Indonesia, particularly Article 18B Paragraph (2), which states that the state recognizes and respects customary law communities and their traditional rights as long as they remain alive and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia. In practice, the mechanisms in the Government Regulation have the potential to shift the meaning of recognition and respect into control and filtering. The state not only recognizes but also determines the boundaries, substance, and even the validity of customary norms to exist within the national legal system.

Furthermore, the requirement that customary criminal sanctions must be equivalent to the fines prescribed in the National Criminal Code contradicts the principle of proportionality. Sanctions imposed by customary institutions are typically varied, depending on the resolution process involving all parties to the case to seek a resolution of the criminal act, and are oriented toward restorative or reparative sanctions [22]. Even within certain indigenous communities, sanctions of a religio-magical nature are still found. This means that such sanctions are not directly imposed by traditional

figures or leaders but are believed to originate from God, manifesting as misfortune or calamities befalling the perpetrator [23]. The codification of customary law implies that customary sanctions themselves become standardized, as they must be equivalent to a Category Two criminal fine as stipulated in Article 15(2) of the Criminal Code.

Furthermore, regarding the provisions of Article 22(1) of Government Regulation No. 55 of 2026, perpetrators who fail to fulfill customary obligations may be prosecuted under Law No. 20 of 2025 on the Criminal Procedure Code. The process of resolving criminal offenses such as this has the potential to lead to overlapping in law enforcement, such as duplication or double proceedings in the resolution of such criminal offenses. Such conditions may result in violations of the perpetrator's rights, particularly the right to legal certainty and the right not to be prosecuted or tried more than once for the same act (*ne bis in idem*), which are integral to the principles of human rights protection within the criminal justice system.

Through the codification mechanism in Government Regulation No. 55 of 2025, customary law which is inherently flexible, contextual, and evolves dynamically within the social practices of communities risks losing its original character. Customary law grows from customs, moral values, and communal agreements that can adapt to social changes without having to go through formal legislative procedures. However, when these norms must be formulated in writing, their scope limited, their elements defined, and their sanctions standardized through Regional Regulations and state verification mechanisms, that flexible and adaptive nature transforms into something rigid and administrative. This process shifts the basis of customary law's legitimacy from social acceptance by the community toward formal state ratification. Consequently, customary law or "living law," which originally derived its binding force from collective practice transforms into state law whose validity depends on the structure and authority of positive law. This transformation is not merely procedural but also substantive, as customary norms which once existed within cultural spaces and communal social relations are now subject to the logic of the state's formal, hierarchical, and standardized legal system.

#### IV. CONCLUSIONS

The codification of customary law within the national criminal code through the recognition of living law within society in the National Criminal Code and its further regulation in Government Regulation No. 55 of 2025 demonstrates the state's efforts to accommodate the existence of customary law within the national legal system. This recognition conceptually reflects a process of harmonization between state law and the legal values embedded in indigenous communities. However, the established mechanisms place customary law within a fairly strict framework of formalization, ranging from administrative recognition of customary law communities, the formulation of local regulations, to verification by the central government. This situation indicates that the applicability of customary law within the national criminal law system remains subject to state legitimacy; consequently, customary law which previously operated autonomously within communities is shifting toward

a more formalized legal framework. The implications of this codification affect the values underlying the handling of criminal offenses within indigenous communities. Customary law, which is fundamentally flexible, contextual, and oriented toward restoring social balance, risks being diminished when it must be aligned with the state's normative legal standards such as restrictions to avoid conflict with the Criminal Code and the adaptation of sanction forms to the defined categories of criminal offenses. Consequently, the restorative and communal character that distinguishes case resolution in indigenous communities may diminish. Furthermore, such regulations also open the possibility of overlapping authority between indigenous institutions and state law enforcement agencies in handling criminal offenses rooted in customary norms.

#### V. REFERENCES

- [1] C. A. K. Salsabila, M. D. S. Al-Imron, R. R. Sp, Dan S. Hastriani, "Konsep Hukum Dan Keadilan Dalam Perspektif Aristoteles," *Nusant. J. Pendidikan, Seni, Sains Dan Sos. Hum.*, Vol. 1, No. 01, 2022.
- [2] Y. Lago, Y. P. Ginting, Dan F. Sugianto, "Dilema Keadilan Hukum Antara Hukum Tidak Tertulis Yang Hidup (Ongeschreven Recht) Dan Asas Legalitas Dalam Hukum Pidana Indonesia Ditinjau Dari Aspek Filo-Sofis," *Dih J. Ilmu Huk.*, Hal. 71–84, 2023.
- [3] Y. L. Ngompat, Y. Pedo, Dan D. W. Rabawati, "Lonto Leok (Sebagai Mekanisme Penyelesaian Tindak Pidana Pada Masyarakat Adat Manggarai)," *J. Ilm. Glob. Educ.*, Vol. 6, No. 3, Hal. 1339–1350, 2025.
- [4] N. Apriani Dan N. S. Hanafiah, "Telaah Eksistensi Hukum Adat Pada Hukum Positif Indonesia Dalam Perspektif Aliran Sociological Jurisprudence," *J. Huk. Lex Gen.*, Vol. 3, No. 3, Hal. 231–246, 2022.
- [5] D. R. Tene, A. Mulyono, Dan N. Lahangatubun, "Implikasi Penerapan Hukum Pidana Adat Dalam Penyelesaian Tindak Pidana Pasca Pembaruan Hukum Pidana Nasional Indonesia," *Ekspose J. Penelit. Huk. Dan Pendidik.*, Vol. 22, No. 2, Hal. 29–41, 2023.
- [6] A. A. Burhanudin, "Eksistensi Hukum Adat Di Era Modernisasi," *Salimiya J. Stud. Ilmu Keagamaan Islam*, Vol. 2, No. 4, Hal. 96–113, 2021, Doi: <https://doi.org/10.2906/Salimiya.V2i4.466>.
- [7] A. M. Silalahi, C. D. Widagdo, M. J. Seroy, M. Rizky, V. Prasetyo, Dan J. Neltje, "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali," *Multiling. J. Univers. Stud.*, Vol. 3, No. 4, Hal. 237–248, 2023.
- [8] M. G. M. Maran, "Peran Lembaga Peradilan Adat Suku Lamaholot Dalam Penyelesaian Pelanggaran Adat Saat Murung Keneber (Musim Tanam)," *Mendapo J. Adm. Law*, Vol. 6, No. 1, Hal. 41–58, 2025.
- [9] P. M. Marzuki, *Penelitian Hukum, Cetakan Ke 4*. Jakarta: Kencana Prenada Media Group, 2008.
- [10] A. Muhtarom, "Titik Temu Sunni-Syiah: Studi Pendekatan Komparatif Dalam Pemahaman Islam Mazhab Sunni Syiah," *Saintifika Islam. J. Kaji. Keislam.*, Vol. 2, No. 02, Hal. 61–72, 2015.

- [11] R. A. S. Hernawati Dan J. T. Suroso, “Kepastian Hukum Dalam Hukum Investasi Di Indonesia Melalui Omnibus Law,” *J. Manajemen, Ekon. Dan Akunt.*, Vol. 4, No. 1, Hal. 392–408, 2020.
- [12] S. H. Rodliyah, H. S. Hs, Dan M. S. Sh, *Pengantar Hukum Pidana Mengacu Pada Kuhp Baru (Uu No. 1 Tahun 2023)*. Sinar Grafika, 2024.
- [13] K. Kristanto Dan K. Ismail, “Transformasi Paradigma Hukum Pidana Indonesia Dari Asas Konkordansi Menuju Kuhp Nasional,” *Proc. Ser. Soc. Sci. Humanit.*, Vol. 23, Hal. 70–77, 2025.
- [14] F. Faisal Dan M. Rustamaji, “Pembaruan Pilar Hukum Pidana Dalam Ruu Kuhp,” *J. Magister Huk. Udayana (Udayana Master Law Journal)*, Vol. 10, No. 2, Hal. 291–308, 2021.
- [15] S. H. Alvi Syahrin, I. M. Anggusti, M. Mm, A. A. Alsa, Dan M. H. Sh, *Dasar-Dasar Hukum Pidana: Suatu Pengantar (Buku Kesatu Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana)*. Merdeka Kreasi Group, 2023.
- [16] B. B. A. Gizella, “Menuju Sistem Pemidanaan Berkeadilan Untuk Mewujudkan Keseimbangan Antara Kepastian Hukum Dan Kemanusiaan Dalam Pembaharuan Kuhp,” *Al-Balad J. Const. Law*, Vol. 7, No. 2, Hal. 21–30, 2025.
- [17] H. T. W. Sagala, “Kajian Teori Pluralisme Hukum Terhadap Sistem Hukum Di Aceh,” *Interdiscip. J. Law, Soc. Sci. Humanit.*, Vol. 3, No. 2, Hal. 115–129, 2022.
- [18] F. Aulia Dan S. Al-Fatih, “Perbandingan Sistem Hukum Common Law, Civil Law Dan Islamic Law Dalam Perspektif Sejarah Dan Karakteristik Berpikir,” *Leg. J. Ilm. Huk.*, Vol. 25, No. 1, Hal. 98–113, 2017.
- [19] F. Irfandy, F. Amlizyan, Dan R. Windari, “Asas Legalitas Dalam Perspektif Filsafat Hukum: Kajian Perbandingan Asas Legalitas Indonesia Dan Prancis,” *J. Hukum, Adm. Publik Dan Negara*, Vol. 2, No. 3, Hal. 87–96, 2025, [Daring]. Tersedia Pada: <https://ejournal.appisi.or.id/index.php/hukum/article/view/269/258>
- [20] S. L. Sulistiani, *Hukum Adat Di Indonesia*. Bumi Aksara, 2021.
- [21] H. Harniwati, “Hukum Adat Di Era Modernisasi,” *J. Glob. Leg. Rev.*, Vol. 2, No. 1, Hal. 41–52, 2024.
- [22] A. Tahali, M. S. Alhabsyi, R. A. R. Massi, Dan A. A. Almahdali, “Efektivitas Sanksi Hukum Adat Di Desa Binangga Kecamatan Marawola Kabupaten Sigi,” *Comp. J. Ilm. Perbandingan Maz. Dan Huk.*, Vol. 6, No. 1, Hal. 1–26, 2025.
- [23] M. G. M. Maran, M. T. Geme, Dan B. P. Lay, “Belajar Nilai-Nilai Kearifan Lokal Dalam Penataan Ruang Kampung Adat Bena,” *Perspekt. Huk.*, Hal. 244–268, 2024.