

# The Position and Revitalization of Customary Criminal Law in the Perspective of National Criminal Law

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## **Abstract**

*This research aims to describe and analyze the status of customary law in Indonesia and the revitalization of customary criminal law from the perspective of Indonesian criminal law. This study employs normative legal research methods by analyzing various literatures. The research approach used is based on legislation, utilizing secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials, presented in a qualitative descriptive manner. The results indicate that although official authorities such as the police and courts remain significant, customary institutions often serve as the first point of mediation for resolving conflicts within communities, especially in cases involving minor material losses and other issues rooted in local concerns. This suggests that traditional values and culture hold an important place in society and influence how people interact with the formal legal system. Additionally, the revitalization of customary law is necessary, particularly in the recognition of customary legal norms, which is crucial for creating an optimal balance between modernity and the preservation of traditional values. This contributes positively to justice, welfare, and cultural sustainability in Indonesia.*

**Keywords:** National Criminal Law; Customary Criminal Law; Revitalization

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## **1. Introduction**

In a culturally diverse society like Indonesia, the dynamic between local cultures and formal laws often raises intriguing questions. Criminal law, as an instrument of the state designed to regulate individual behavior in accordance with prevailing norms, is not immune to the influence of local cultural backgrounds. Although criminal law is intended to be universal in its application, there are strong local cultural values and norms that frequently interact with positive law.

Societies with diverse languages, cultures, and traditions possess a variety of rules and norms that are distinctive to each region in Indonesia. Each community within these regions has its own customary law, characterized by unique features, and these customary laws include specific sanctions for those who violate norms or act against communal interests. However, the

implementation of customary law within the framework of law enforcement in Indonesia has not yet been fully optimized.<sup>1</sup>

In contemporary times, it can be analyzed that there are both conflicts and synergies between culture and criminal law in Indonesia. Culture, as a system of values and norms that grows and evolves within a community, plays a significant role in shaping society's perceptions of justice, morality, and social order. On the other hand, criminal law aims to create order, protect human rights, and prevent and sanction actions deemed to violate legal norms. The conflict or synergy between local culture and criminal law often becomes an interesting point of discussion, especially in cases where there are differing views on what is considered a crime in formal criminal law and what is considered acceptable or even valued in local culture.

Local wisdom is a heritage from ancestors reflected in the values of life, integrated into beliefs, culture, and traditions. Over time, communities adapt to their environments by developing knowledge or ideas and tools that are integrated with traditional norms, cultural values, and environmental management efforts. All these are done to meet their needs without compromising the preservation of the surrounding nature. Ideally, conflict resolution should be tailored to the situation and background of where the conflict arises. Therefore, a general approach may not be suitable for addressing local conflicts, and more specific methods are needed. One approach that has not been widely explored but has long existed is traditional wisdom or local wisdom.<sup>2</sup>

The phenomenon currently developing shows several cases where formal criminal law has directly interacted or even clashed with customary law applicable in certain regions of Indonesia. In this section, the researcher will provide examples of common cases and highlight the potential linkage between criminal law and customary law, such as:

1. Cases of Customary-Based Murder: In some indigenous communities in Indonesia, there are specific traditions or customs that may allow actions prohibited by criminal law, such as revenge killings using methods like "carok." These customary-based murder cases can be complex, as local

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<sup>1</sup>Asliani Harahap, "Pembaharuan Hukum Pidana Berbasis Hukum Adat," *Jurnal Edutech* 4, no. 2 (2018).

<sup>2</sup>Ahmadulil Ulil Ulil, "PENYELESAIAN TINDAK PIDANA RINGAN MELALUI KEARIFAN LOKAL DALAM PEMBANGUNAN SISTEM HUKUM NASIONAL," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019), <https://doi.org/10.33331/rechtsvinding.v8i1.307>.

communities may view them as fulfilling customary justice, while criminal law considers them criminal acts of murder.

2. Cases of Customary Land Rights: Land rights issues often become sources of conflict between indigenous communities and other parties (e.g., corporations or the government). In some instances, indigenous communities may engage in actions deemed illegal by criminal law, such as burning heavy equipment, because they perceive the land as theirs based on customary law.
3. Cases of Customary Rituals: Some customary rituals in various regions may involve practices prohibited by criminal law, such as animal sacrifices or certain practices believed to honor ancestors but are banned by criminal law.
4. Cases of Natural Resource Utilization: Indigenous communities may have used certain natural resources for generations based on customary law. However, when the government issues regulations or laws prohibiting the use of these resources, indigenous communities can be deemed to violate criminal law.

The enforcement of criminal law in Indonesia often sparks controversy. As the foundation of the judiciary, the Indonesian Penal Code (KUHP), originating from the Dutch colonial era, contrasts with the customary laws that reflect the original character of the Indonesian nation. Despite this, it still requires revision and faces various challenges in its implementation. Structurally, the capabilities of law enforcement officers, such as police, prosecutors, judges, and correctional officers, in terms of quantity and quality, are not yet optimal. Furthermore, from a legal culture perspective, both among law enforcement and the general public, there is not yet full support for effective law enforcement. This situation is exacerbated by practices that undermine the integrity of the judiciary, such as the emergence of wrongful judgments and judicial corruption.<sup>3</sup>

Customary practices are a set of norms and traditions upheld and passed down by a community to regulate the behavior of its members in daily life. These practices encompass various aspects of life, such as traditional ceremonies, social norms, communication methods, and rules governing relationships between individuals and groups. Customary practices often serve as a strong

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<sup>3</sup>Erna Dewi, "Peranan Hakim Dalam Penegakan Hukum Pidana Indonesia," *Pranata Hukum* 5, no. 2 (2010).

pillar in maintaining the identity and sustainability of a culture. Each community has its own unique customs, reflected in their distinct lifestyles, values, and belief systems. These practices are not merely a collection of rules but also a reflection of the community's history, cherished values, and social relationships. Customary practices play a crucial role in shaping character and social solidarity, and they are highly valued cultural heritage upheld by successive generations.

Customary practices play a vital role in fostering societal harmony. Through norms and traditions passed down from generation to generation, they create a framework that governs interactions between individuals and groups. Additionally, these practices play a key role in upholding moral norms that form the basis of societal ethics. By respecting customary practices, communities can create an inclusive and supportive environment where differences are valued, and conflicts can be resolved through time-tested mechanisms. Thus, customary practices serve not only as behavioral guides but also as instruments for fostering harmony that underpins communal life.

The issues within customary criminal law encompass a range of aspects that often become sources of tension amidst the dynamics of modern society. One of the primary problems is the misalignment between the norms of customary criminal law and the standards of human rights and modern justice principles. Some practices in customary criminal law may be considered controversial, such as physical punishment or treatment that does not align with internationally recognized human rights norms. Additionally, differing interpretations and applications of customary criminal law by local authorities can create legal uncertainty, potentially harming individual rights.<sup>4</sup>

Another issue is the potential for discrimination and inequality in the application of customary criminal law, particularly related to gender roles and social justice. Some customary norms may inherently involve gender bias or discriminate against certain groups within society. This inequality can disadvantage women, minorities, or other vulnerable groups in the customary judicial process. Moreover, modernization and globalization often introduce rapid social changes, which can result in friction between customary criminal law and modern values and practices. Conflicts between customary norms and

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<sup>4</sup>Moh Hatta, "Prospek Pemberlakuan RKUHP Pasca Disahkan Menjadi Undang-Undang Dalam Perspektif Maqasid Syariah," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 2 (2022), <https://doi.org/10.15642/alqanun.2022.25.2.248-262>.

formal national legal norms, especially regarding land ownership, inheritance, or dispute resolution, pose serious challenges that can lead to social instability.

Furthermore, issues within national criminal law encompass a range of complex factors that can affect the effectiveness, fairness, and sustainability of the legal system within a country. One frequently arising issue is inequality in the application of the law, which can manifest in harsher law enforcement against certain social groups, such as minorities or economically disadvantaged classes. This phenomenon often creates disparities in legal treatment and can undermine individual rights. Legal uncertainty also poses a serious problem, particularly when criminal laws or judicial processes become convoluted and inaccessible to the public. These gaps can create opportunities for inequality in access to justice and potential abuses of power by law enforcement officials.

The disparity between customary criminal law and national criminal law creates complexity in the context of justice, human rights protection, and the sustainability of the legal system. Fundamental differences in origins, sources of law, and underlying principles can lead to conflicts and inconsistencies. Customary criminal law, rooted in local traditions and cultural norms, may not always align with internationally recognized human rights norms or the principles of formal national law.

In principle, the study of the existence of customary law alongside national criminal law has been examined by several previous authors, such as Stevania Bella Kalengkongan, in her work "Study of Customary Criminal Law in the Indonesian Criminal Law System," which explores the position of customary criminal law within national criminal law. Understanding and addressing these inconsistencies is essential. Such research can explore ways to integrate positive aspects of customary criminal law into the national legal framework without sacrificing human rights principles or justice. Additionally, research can provide insights into how harmonization between customary criminal law and national criminal law can be achieved to minimize conflicts.<sup>5</sup>

Previous research has also been conducted by Marco Manarisip, titled "The Existence of Customary Criminal Law in National Law," which explains that customary law is a law that truly exists in the conscience of the people and is reflected in their actions according to their customs and socio-cultural norms that do not conflict with national interests. This era can now be referred to as

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<sup>5</sup>Winfred Atieno Kaol, "Kajian Hukum Pidana Adat Dalam Sistem Hukum Pidana Indonesia," *Ekp* 13, no. 3 (2017).

the resurgence of indigenous communities, as evidenced by the emergence of various wisdoms and decisions. Equally important is the need for further research and development regarding its impact on the formation and enforcement of law in Indonesia.<sup>6</sup>

Lastly, research conducted by Rahmi Susilawati titled "Implementation of Customary Criminal Sanctions Against the Crime of Insulting Ninik Mamak Based on Minangkabau Customary Law" concluded that the implementation of customary criminal sanctions for the crime of insulting ninik mamak in the communities of Jorong Pincuran Tujuh, Jorong Payo, and Jorong Kubu Nan Limo, Nagari Batipuh Baruah, Tanah Datar Regency has not been fully realized. This is due to the offenders not executing the sanctions decided by the customary authorities. Obstacles in the application of customary criminal sanctions include: the constraints of customary law itself, which lacks fixed legal force, creating doubts in enforcing the sanctions; law enforcers' empathy or sympathy, especially towards offenders from underprivileged families; and cultural obstacles where the community lacks awareness of the importance of customary regulations established in Nagari Batipuh Baruah.<sup>7</sup>

Based on the above points, this research will attempt to elaborate and examine the issues of customary law and national criminal law. The study will be limited by the following problem formulations: first, what is the position of customary law in Indonesia, and second, how is the revitalization of customary criminal law viewed from the perspective of Indonesian criminal law?

## **2. Research Method**

This research employs a normative legal research method with a literature review using a descriptive-analytical approach. Data collected based on current conditions are then compared with relevant theories. This study uses legislative and conceptual approaches. The legislative approach investigates the formal legal foundations related to customary law in national regulations, while the conceptual approach formulates theoretical concepts on the revitalization of customary law. The legal materials consist of primary legal materials such as laws and official documents, and secondary legal materials such as legal literature and articles. The collection of legal materials is conducted through literature studies and legal document analysis. The analysis of legal materials is carried out comprehensively on relevant legal norms to identify trends,

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<sup>6</sup>Marco Manarisip, "Eksistensi Pidana Adat Dalam Hukum Nasional," *Lex Crimen* 1, no. 4 (2012).

<sup>7</sup>Rahmi Susilawati., "Implementasi Sanksi Pidana Adat Terhadap Tindak Pidana Penghinaan Ninik Mamak Berdasarkan Hukum Adat MinangkabaU" 9 (2023): 356–63.

patterns, and challenges in the revitalization of customary law at the national level. This research is expected to provide significant contributions to the understanding of the revitalization of customary law within the context of national law.

### **3. Research Results and Discussion**

#### **3.1. The Position of Customary Law in Indonesia**

Customary criminal law in Indonesia has a long history, reflecting the diverse cultures and traditions of communities in various regions. Before the colonial era, customary criminal law systems existed and developed within each ethnic community. Indigenous communities had legal norms that regulated the behavior of their members, and violations of these norms could be punished with customary sanctions, such as fines or physical punishment. During the Dutch colonial period, the customary criminal law system underwent significant transformation. The colonial government integrated elements of customary law with European law to create a more structured and centralized legal system. This process involved codifying customary legal norms into written documents, which then formed the basis of colonial criminal law.

After Indonesia's independence in 1945, the government formalized various efforts to unify and integrate customary criminal law into the national legal system. However, this process has not always been smooth, and the differences between customary law and national law remain a challenge to this day. As time progresses and globalization advances, elements of customary law continue to adapt to contemporary demands, while efforts to preserve and revitalize customary law have also become an important focus in supporting Indonesia's cultural diversity.<sup>8</sup> The sources of customary criminal law in Indonesia can be found in various forms, reflecting the rich culture and traditions of local communities. These sources may originate from customs and traditions handed down from generation to generation. These norms are often documented orally or in writing and include rules regarding ways of life, justice, and sanctions imposed for certain violations.

Customary criminal law can also derive from customary regulations established by local customary institutions. These institutions may include

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<sup>8</sup> T dkk Lindriati, "Efektifitas Penyuluhan Gizi Pada Kelompok 1000 HPK Dalam Meningkatkan Pengetahuan Dan Sikap Kesadaran Gizi," *Efektifitas Penyuluhan Gizi Pada Kelompok 1000 HPK Dalam Meningkatkan Pengetahuan Dan Sikap Kesadaran Gizi* 3, no. 3 (2020).

customary councils, customary leaders, or other customary bodies that have the authority to enforce customary criminal rules within their communities.<sup>9</sup> Sources of customary criminal law are often found in customary decisions made by these institutions. In some cases, sources of customary criminal law can be accessed through classical texts or ancient manuscripts that discuss legal norms and sanctions in the customary context. Over time, updates to customary criminal law sources can also emerge through the adaptation of customary rules to social, economic, and cultural developments. Thus, the sources of customary criminal law in Indonesia remain dynamic and reflect the interaction between traditional heritage and contemporary dynamics.<sup>10</sup>

Customary criminal law in society refers to a system of legal norms recognized and applied by a group or community based on ancestral customs and traditions. This system provides a framework for regulating the behavior of its members, establishing moral norms, and determining sanctions for certain violations. Customary criminal law reflects the values and beliefs held by the community and often includes rules related to social relationships, land ownership, marriage, inheritance, and internal conflicts. In societies that apply customary criminal law, legal decision-making processes typically involve customary leaders or customary institutions that have the authority to resolve disputes or enforce customary legal rules. Customary legal sanctions can vary, including fines, forced labor, social isolation, or other forms of punishment appropriate to the cultural context and values of the local community.

The significance of customary criminal law in society lies in its role as a guardian of social harmony and order. This legal system also reflects the cultural identity of a community and contributes to the preservation of cultural heritage. However, with modernization and globalization, the interaction between customary criminal law and the national legal system often becomes complex, presenting challenges in integrating traditional values. The emergence of customary criminal law as a tool for resolving violations reflects an organic process and evolution within society. Customary criminal law did not appear spontaneously but is the result of

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<sup>9</sup>Inosentius Samsul, "Penguatan Lembaga Adat Sebagai Lembaga Alternatif Penyelesaian Sengketa," *Negara Hukum* 5, no. 2 (2019).

<sup>10</sup>Setya Indra Arifin, "Rekonstruksi Sifat Melawan Hukum Pidana Materiil Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *AL WASATH Jurnal Ilmu Hukum* 4, no. 1 (2023), <https://doi.org/10.47776/alwasath.v4i1.638>.



an accumulation of values, norms, and traditions that have developed over generations. Resolving violations through customary criminal law often begins with the community's need to maintain internal order and harmony. In this process, customary leaders or institutions play a key role in formulating rules and establishing sanctions to protect community values.

The development of customary criminal law is also closely related to the concept of restorative justice, where dispute resolution is not only about punishment but also about restoring balance and reconciliation among the parties involved. Sanctions in customary criminal law often include rehabilitative elements, such as cleansing ceremonies or compensation to the aggrieved party. Thus, customary criminal law becomes a tool to strengthen social solidarity and maintain moral norms within the community. Changing times and external influences often affect the evolution of customary criminal law. This process may include adjusting customary rules to the evolving social and economic dynamics. Thus, the emergence of customary criminal law is a reflection of the interaction between local traditions and contemporary demands, creating a unique and adaptive legal system amid continuous changes.

Violations of customary law have significant consequences in societies that implement the customary legal system. These consequences reflect the seriousness of the norms and values upheld by the community. Firstly, violations of customary law can result in social sanctions, where the perpetrator may be isolated or excluded from the community. This can impact social relationships, reputation, and individual integration into daily life. Besides social sanctions, violations of customary law may also result in formal legal sanctions imposed by customary authorities or figures of authority. These sanctions might involve fines, forced labor, or other forms of punishment in accordance with the applied customary rules. It is important to note that these sanctions are restorative, focusing on restoring balance and reconciliation within the community, rather than solely punitive.

Consequences of customary law violations may also include efforts toward reconciliation and rehabilitation. Perpetrators of customary law violations may be expected to take certain actions as a sign of remorse or provide compensation to the aggrieved party. This reflects a more holistic approach to justice, emphasizing individual responsibility towards the community and offering opportunities for recovery and improvement. The resolution

of customary law violations involves norms and rules recognized by a community based on long-standing customs and traditions. This process usually begins with identifying the violation by customary authorities or institutions with the authority to handle customary law cases. At the initial stage, reconciliation efforts may be made through mediation or meetings between the parties involved to seek a peaceful solution and restore balance within the community.

If mediation fails or the violation is deemed serious, customary institutions may impose sanctions in accordance with applicable customary law rules. These sanctions may include fines, forced labor, or rehabilitation efforts aimed at correcting the violator's actions. Additionally, perpetrators may be required to conduct cleansing ceremonies or provide compensation to the aggrieved party. The resolution of customary law violations tends to be restorative rather than punitive. The primary focus is on restoring social balance and reconciliation within the community. This approach reflects values of solidarity, restorative justice, and the sustainability of traditional norms. Resolving customary law violations may also involve coordination with the national legal system. While customary law is recognized as part of cultural heritage, integrating customary rules with broader legal regulations presents challenges. Therefore, resolving customary law violations reflects the complex dynamics between local traditions and contemporary demands.

In the customary legal system, authority is generally held by customary figures or institutions recognized within a community. This authority is often inherited traditionally, providing legitimacy to enforce customary norms and rules. Customary figures are usually individuals respected in the community for their knowledge of traditions, wisdom, and ability to understand conflicts within the cultural context. Additionally, customary institutions, such as customary councils or assemblies, may also have the authority to handle customary law violations.<sup>11</sup>

The process of resolving violations of customary law involves active participation from those who possess this authority. They may lead mediations, make decisions regarding sanctions, and oversee the implementation of punishments or reconciliation actions. The sustainability of this authority often depends on the recognition and support of the community towards these customary figures or institutions. The

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<sup>11</sup> Arifin.

boundaries and scope of customary legal authority can vary among indigenous communities. Additionally, with the dynamics of social change and national law, there are challenges in maintaining the relevance and sustainability of customary legal systems. Therefore, in some cases, there are efforts to recognize and integrate customary law into the national legal framework to evolve with the times.

Nationally recognized legal sources refer to documents or legal rules that have legitimacy and legal force at the national level. In Indonesia, nationally recognized legal sources include four main levels: the 1945 Constitution as the state constitution, legislative enactments, government policies, and court decisions. The 1945 Constitution, as the highest constitution, serves as the foundation and basic framework for the formation of law in Indonesia. Legislative enactments, whether produced by the legislature or the government, hold a strong position as legal sources, including laws, government regulations, and regional regulations.<sup>12</sup>

Government policies also serve as nationally recognized legal sources, encompassing presidential decrees, ministerial decisions, and executive instructions issued by executive institutions. Court decisions, especially those from the Supreme Court, also hold high authority as legally binding national legal sources. Additionally, provisions of international law ratified by Indonesia are considered as important legal sources at the national level. These legal sources form the legal framework governing life, business, and governance in Indonesia. The validity and authority of these legal sources serve as the foundation to uphold justice, order, and legal certainty at the national level.<sup>13</sup>

The Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) is the primary criminal law basis in Indonesia. KUHP guides the enforcement of criminal law and establishes norms and sanctions for various criminal acts. As a comprehensive legislative regulation, KUHP covers various aspects ranging from common crimes such as theft, murder, and rape, to crimes related to national security. Adopted from the Dutch Penal Code of 1848, KUHP has undergone several revisions to adapt to social and legal developments. Despite these changes, KUHP remains the

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<sup>12</sup>Maruarar Siahaan, "Uji Konstitusionalitas Peraturan Perundang-Undangan Negara Kita: Masalah Dan Tantangan," *Jurnal Konstitusi* 7, no. 4 (2016), <https://doi.org/10.31078/jk742>.

<sup>13</sup>Enrico Simanjuntak, "Peran Yurisprudensi Dalam Sistem Hukum Di Indonesia," *Jurnal Konstitusi* 16, no. 1 (2019), <https://doi.org/10.31078/jk1615>.

main legal framework guiding criminal judicial processes in Indonesia. Enforcement of criminal law based on KUHP is carried out by law enforcement agencies such as the police and prosecutors, involving judicial processes conducted by courts at various levels.<sup>14</sup>

As the foundation of criminal law, KUHP provides legal certainty and a basis for justice in response to criminal acts. However, it should be noted that discussions and debates continue regarding the relevance and suitability of KUHP with the values and needs of contemporary society. There is often a push for reform or revision of KUHP to align criminal law with the evolving times and the values of justice developing within society.

The emergence of national criminal law in a country is the result of its history and the development of its legal system. This process often reflects the social, political, and cultural evolution that has influenced that society. In many cases, national criminal law emerges in response to the need to maintain order, security, and justice within a country. With the passage of time, societies face various challenges that require clear and effective legal rules to respond to criminal acts. The emergence of national criminal law often involves the drafting of criminal law codes that regulate various criminal acts and appropriate sanctions. Such legislative processes involve the participation of various stakeholders, including legal experts, legislators, and the general public.<sup>15</sup>

National criminal law is the legal framework that governs criminal acts at the national level of a country. It encompasses a set of norms, rules, and sanctions established by the state to maintain order, security, and justice. National criminal law typically covers various criminal offenses, ranging from common crimes such as theft, murder, and fraud, to crimes involving national security. The process of forming national criminal law involves the participation of various parties, including legislative bodies, legal experts, and stakeholders. National criminal law sets limits on penalties that can be imposed on offenders and establishes judicial procedures to be followed in prosecution and trials. Fundamental principles such as legality, culpability, and fairness are generally integral parts of national criminal law.

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<sup>14</sup>Henny Saida Flora, "UBELAJ, Volume 3 Number 2, October 2018 | 142," *Ubelaj* 3, no. 2 (2018).

<sup>15</sup>Cindy Destiani et al., "Etika Profesi Polisi Republik Indonesia Sebagai Perangkat Penegak Hukum Dan Pelayanan Publik," *Jurnal Pengabdian West Science* 2, no. 6 (2023), <https://doi.org/10.58812/jpws.v2i6.412>.

The primary purpose of national criminal law is to maintain public safety and order, impose appropriate sanctions for lawbreakers, and protect individual rights. With the passage of time and changes in social demands, national criminal law may undergo revision and adjustment to remain relevant and effective. Therefore, national criminal law plays a crucial role in defining accepted norms of behavior within a society and provides a basis for the criminal justice system.<sup>16</sup>

Violations of national criminal law occur when individuals or groups commit acts that contravene the norms and rules established by criminal law at the national level of a country. Such violations encompass various types of criminal offenses, ranging from minor offenses to serious crimes that harm society or the state. Violations of national criminal law may involve actions such as theft, fraud, physical violence, narcotics, and organized crime. The process of committing violations of national criminal law begins with actions that breach applicable legal norms. These actions may then be reported by aggrieved parties or discovered by law enforcement authorities during investigations. Subsequently, the prosecution and trial processes proceed in accordance with the provisions of national criminal law in force.<sup>17</sup>

### **3.2. Revitalization of Customary Criminal Law from the Perspective of Indonesian Criminal Law**

Customary law in Indonesia is a cultural heritage deeply rooted in community life. As an integral part of local wisdom, customary law plays a central role in shaping the social order and norms of Indonesian society. However, alongside the rapid development of time and the increasingly pervasive impact of globalization, the existence of customary law is often neglected or even disregarded within the national legal system.

Rapid changes in social and economic structures, coupled with the currents of globalization, bring new challenges to the sustainability of customary law. Rapid modernization often displaces the role of tradition and local wisdom, posing risks to cultural identity loss. Nevertheless, amidst these changes, there emerges an awareness of the importance of preserving and

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<sup>16</sup>Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023), <https://doi.org/10.37680/almanhaj.v5i1.2815>.

<sup>17</sup>Safaruddin Harefa, "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam," *University Of Bengkulu Law Journal* 4, no. 1 (2019), <https://doi.org/10.33369/ubelaj.v4i1.7303>.

maintaining local wisdom. Modern societies increasingly recognize that cultural diversity is a valuable asset that needs to be preserved, as local wisdom not only reflects the identity of a community but also upholds noble values that can provide moral guidance to society.

Despite the increasing awareness of the importance of local wisdom, challenges in recognizing customary law within the context of national law remain significant. One of the main obstacles is the lack of clarity in regulations governing the relationship between customary law and national law. The asynchrony between customary legal norms and the broader legal system often leads to conflicts and confusion. Moreover, limited government support for the existence of customary law presents a serious barrier. The lack of understanding of local wisdom among law enforcement officials also poses its own challenges, especially in integrating customary legal norms into the larger legal system.

Formal recognition of customary law is further complicated by differing views between customary law and national law. In some cases, customary legal norms are perceived to contradict more modern national legal principles. Therefore, the process of harmonizing and integrating customary law into the national legal system requires a careful approach to avoid disadvantaging any party.

In addressing the complexity of these challenges, revitalization of customary law within national law becomes a crucial step. This effort is not only about recognizing the existence of customary law but also about protecting and advancing the values and norms of indigenous communities. Formal recognition of customary law can provide a strong legal basis for protecting the rights of indigenous communities, promoting environmental conservation, and fostering sustainable development.

The revitalization of customary law also demands active involvement from the government. It requires the formulation of regulations that support the integration of customary law into the national legal system while ensuring that the rights of indigenous communities are respected and protected. Furthermore, involving indigenous communities in the policy-making process can ensure better representation and build a sense of ownership towards these revitalization efforts.

By understanding that local wisdom is a valuable asset that can contribute positively to society and the nation, the revitalization of customary law is

not merely about preserving culture but also stimulating sustainable development. Through these measures, Indonesia can achieve an optimal balance between modernity and the preservation of local wisdom, benefiting all layers of society and contributing to the rich and unique cultural diversity in Indonesia.

Adapting existing laws to better suit the developments of the times and the demands of modern society. However, this process of modernization does not simply abandon traditional values; rather, it seeks to integrate them. In many societies, customary law plays a crucial role in governing the social life of communities. This law is deeply rooted in culture, norms, and values passed down from generation to generation. Therefore, customary law is often more deeply understood and accepted by society compared to formal laws imposed by the state. Considering the existence and strength of traditional law, the modernization of criminal law must ensure that the changes brought about are not merely cosmetic but also substantive. This means that every change must consider and respect existing traditional values.

The essence and core of criminal law reform are closely related to the reasons and needs for such reforms. The reasons and needs for criminal law reform can be seen from social-political, social-philosophical, socio-cultural perspectives, or from various policy perspectives (especially social policy, criminal policy, and law enforcement policy). In other words, the essence and core of criminal law reform are also closely related to these aspects. Thus, reforms in criminal law should reflect changes and innovations in various policies that form their backdrop.

The Cultural Impact in the Enforcement of Traditional Legal Sanctions and Criminal Sanctions According to the Criminal Code for Offenders of Common Crimes. Criminal sanctions can be interpreted as consequences of actions that have repercussions for the perpetrators, where there are causes and outcomes. If it is proven that a defendant has committed a criminal act related to the misuse of motor vehicles for profit, which continuously harms others, whether individuals or business entities, and has negative implications for society, then the government is obligated to take action such as customary conflicts, social, and cultural, which often occur in Indonesia.

Indonesia, with its multi-ethnic, multicultural, and multi-religious background, has experienced various conflicts throughout its history. Some of these conflicts arise from social tensions, political disputes, or economic issues. Here are several examples of conflicts that have occurred in Indonesia: Poso Conflict (Central Sulawesi): A prolonged conflict between Muslim and Christian groups from the late 1990s to the early 2000s. Sampit Conflict (Central Kalimantan): Occurred in 2001 between Dayak residents and Madurese migrants, resulting in hundreds of casualties and thousands displaced. Ambon Conflict (Maluku): Religious conflict between Muslim and Christian groups lasting from 1999 to 2002, causing thousands of deaths and tens of thousands displaced.

Several issues that emerge in society often stem from the lack of firmness, justice, and benefits from existing legal regulations regarding social conflict prevention. Furthermore, traditional wisdom and the participation of indigenous communities have not been fully implemented in efforts to prevent conflicts at the community level. It is evident that various indigenous communities in Indonesia frequently face various challenges, such as attacks on places of worship, disputes over inheritance, conflicts arising from marriages, disputes during local elections, clashes between youth groups from different religious or ethnic backgrounds, and various other emerging conflicts.

Renewal of the criminal justice system based on justice in handling minor offenses by considering policies based on the wisdom of traditional customary law. The renewal of the criminal justice system based on justice when dealing with minor offenses proposes a holistic and cultural approach. In the context of Indonesia, many communities still deeply feel the values and principles of customary law in their daily lives. Therefore, there is an urgency to integrate the wisdom of traditional customary law into the formal criminal justice system, especially in handling minor offenses.

Such renewal considers that justice is not only interpreted as the strict enforcement of laws but also considers the cultural background, history, and social norms that exist in society. By incorporating customary law into the system, it is expected that there will be adjustments to the local context so that the sanctions or resolutions provided are more relevant, fair, and accepted by the community.



For example, in certain indigenous communities, the resolution of minor offenses may emphasize mediation, restitution, or other forms of reconciliation that reflect local values and traditions. Therefore, in the renewal of the criminal justice system, policies based on the wisdom of local customary law can be an alternative in handling minor offenses, thus fostering a deeper sense of justice within the community. Indigenous institutions act as mediators to encourage community participation in achieving justice in their environment. Despite having authority in maintaining order in their territories, there are times when indigenous institutions choose to collaborate with legal institutions.

As entities that have existed for a long time in several regions, indigenous institutions have established specific norms and rules based on communal agreements. With a rich history and tradition, the approaches taken by indigenous institutions have gained recognition from the government. Problem resolution through customary justice is considered one alternative method for handling disputes. Considering Indonesia's cultural diversity, each indigenous institution may have unique dispute resolution methods, which may sometimes be lighter or stricter than formal law. However, the essence of customary justice is to create a harmonious and peaceful atmosphere among its members.

Challenges faced in recognizing customary law in the national legal context include regulatory issues. One of the main obstacles to recognizing customary law in Indonesia is the lack of clear regulations governing the relationship between customary law and national law. The lack of clear guidelines leads to ambiguity in the formal recognition of customary legal norms. This legal uncertainty creates an environment that is not conducive to protecting and developing local wisdom, as indigenous communities often have to deal with legal uncertainties in protecting their rights and traditions.

The lack of government support in endorsing customary law poses a serious challenge in recognizing and integrating customary law into the national legal system. The lack of commitment to understand and appreciate local wisdom can hinder concrete steps towards formal recognition of customary law. Without strong government support, efforts

by indigenous communities to uphold their rights and promote their cultural values become more difficult.<sup>18</sup>

The minimal understanding of local wisdom among law enforcement officials is another barrier. Most law enforcement officials may not have a deep understanding of the values, norms, and traditions of indigenous communities. This can lead to inaccurate interpretations or a lack of sensitivity towards issues related to customary law. Such limited understanding can complicate the enforcement of customary law at both local and national levels.

Differences in perspectives between customary law and national law pose a serious obstacle to integrating customary legal norms into a broader legal system. At times, customary legal norms are perceived as contradictory to the more modern principles of national law. The adjustments required to achieve harmony between them are often complex and necessitate active involvement from various parties, including indigenous communities, legal experts, and policymakers.<sup>19</sup>

There is a paradigm shift in the recognition of customary law. It is important to understand that recognizing customary law involves not only regulatory and policy aspects but also a paradigm shift within society and law enforcement agencies. Deeper education and training on local wisdom are needed to foster better understanding and build bridges between customary law and national law. This requires collaborative efforts from various parties to create an environment supportive of improved integration.

The need for open and inclusive dialogue. Overcoming these barriers requires open and inclusive dialogue between the government, indigenous communities, and stakeholders. Building shared understanding of the values and principles underlying customary law and creating space to reconcile different perspectives can be a first step towards more effective integration. By systematically addressing these barriers, Indonesia can advance in recognizing and promoting customary law as an integral part of its cultural heritage and national identity.

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<sup>18</sup>Jawahir Thontowi, "Perlindungan Dan Pengakuan Masyarakat Adat Dan Tantangannya Dalam Hukum Indonesia," *JURNAL HUKUM IUS QUIA IUSTUM* 20, no. 1 (2013), <https://doi.org/10.20885/iustum.vol20.iss1.art2>.

<sup>19</sup>Edi Mulyadi and Eki Furqon, "Sistem Pemerintahan Masyarakat Hukum Adat Baduy Dalam Kerangka Sistem Otonomi Daerah," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021), <https://doi.org/10.30656/ajudikasi.v5i2.3536>.

Furthermore, customary law contributes to revitalizing communities for the development of better livelihoods. Its contribution to the sustainability of local culture and sustainable development is significant. Customary law, as local wisdom, enhances justice and welfare among local communities. Revitalizing customary law in Indonesia holds great potential to improve justice and welfare among local communities. Providing formal recognition of customary law helps protect the rights of indigenous peoples more effectively. This creates a strong legal foundation to address inequality and provide better access to resources and public services for indigenous communities.<sup>20</sup>

Formal recognition of customary law also has positive impacts on environmental preservation. Many customary legal norms naturally support ecosystem balance and environmental sustainability. By legitimizing traditional practices that support environmental conservation, revitalizing customary law can be a force for biodiversity preservation and reducing negative impacts on ecosystems.

Revitalizing customary law also opens doors to promoting sustainable development. By integrating customary legal norms into development planning, policies can be designed considering local values and the needs of indigenous communities. This approach ensures that development is not only economically efficient but also sustainable, taking into account social and environmental impacts.

Formal recognition of customary law plays a central role in protecting the rights of indigenous communities. Customary law often encompasses rights to land, natural resources, and unique local wisdom. By providing a strong legal basis, revitalizing customary law ensures that these rights are recognized, respected, and protected, thereby preventing indigenous communities from the risk of losing their lands and traditional resources.<sup>21</sup>

The participation of indigenous communities in policy-making processes is key to producing sustainable policies. Revitalizing customary law can include strategies to amplify the voices and aspirations of indigenous communities in decision-making processes. Direct involvement ensures

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<sup>20</sup>Syaikhu Syaikhu et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah* 7, no. 1 (2023), <https://doi.org/10.22373/sjkh.v7i1.12410>.

<sup>21</sup> Sisca Debyola Widuhung and Aris Machmud, "Indonesian Islamic Banking In Mastering The Global Halal Value Chain: Opportunities And Challenges From Economics And Legal Aspects," *Jurnal Ekonomi, Manajemen, Akuntansi Dan Keuangan* 3, no. 4 (2022), <https://doi.org/10.53697/emak.v3i4.600>.

better representation and ensures that policies reflect the needs and values of indigenous communities.

Revitalizing customary law does not only focus on formal legal aspects but also on the sustainability of local wisdom. By supporting traditional practices and cultural values, this revitalization creates an environment where local wisdom can continue to thrive and be passed down from generation to generation. Preserving and developing local wisdom is a long-term investment in Indonesia's cultural heritage. Therefore, revitalizing customary law provides a solid foundation to support justice, welfare, and sustainability at both local and national levels.

## **4. Closing**

### **4.1. Conclusions**

Customary criminal law in Indonesia, as part of local wisdom, holds a limited position and has not yet been formally recognized by national criminal law. Despite playing a crucial role in maintaining harmony and cultural identity within local communities, its integration with national criminal law faces various challenges. The state emphasizes the application of national criminal law as the primary framework for regulating criminal acts. However, efforts are being made to recognize and integrate certain aspects of customary criminal law into the national legal system as a form of respect for cultural diversity. The Indonesian Criminal Code (KUHP) serves as the main basis in national criminal law covering various aspects of crimes, including narcotics, corruption, and organized crime. The challenge of integrating customary criminal law with national criminal law creates a complex dynamic in achieving a balance between cultural diversity and the protection of human rights. The revitalization of customary law aims not only to recognize customary norms but also to create a legal foundation supporting the preservation of local culture and sustainable development.

### **4.2. Suggestions**

The government needs to strengthen the legal framework supporting the recognition and integration of customary criminal law into the national legal system. This can be achieved by revising existing regulations to provide greater space for customary criminal law and clarify the mechanisms for its integration. Additionally, efforts to enhance the capacity of law enforcement officials and customary institutions in understanding and applying customary criminal law need to be intensified through training and budgetary support. The government should also promote community participation in the process of

revitalizing customary law to ensure that traditional values and local culture are preserved. Thus, it is expected that an optimal balance between modernity and the preservation of traditional values will be achieved, contributing positively to justice, welfare, and cultural sustainability in Indonesia.

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