

QUESTIONING THE ROLE OF ADAT CRIMINAL LAW IN INDONESIA'S CRIMINAL LAW REFORM: A KUHP NASIONAL PERSPECTIVE

Bagus Hermanto¹, Rengga Kusuma Putra², Aziz Widhi Nugroho³, Mariko Hattori⁴,
I Gede Yusa⁵, Ni Ketut Ardani⁶

¹ Faculty of Law, Udayana University, Indonesia, E-mail: bagushermanto9840@gmail.com

² Universitas Sains & Teknologi Komputer, Indonesia, E-mail: renggakusuma@stekom.ac.id

³ Faculty of Social Sciences and Law, Universitas Veteran Bangun Nusantara, Indonesia, E-mail: azizwidhi6@gmail.com

⁴ Graduate School of Economics, Yamaguchi University, Japan, E-mail: mariko_hattori@yamaguchi-u.ac.jp

⁵ Faculty of Law, Udayana University, Indonesia, E-mail: gd_yusa@unud.ac.id

⁶ Study Program of Law, Faculty of Social Sciences and Humanities, Universitas Bali Dwipa, Indonesia, E-mail: niketutardani26@gmail.com

Article	Abstract
<p>Keywords:</p> <p>Adat Criminal Law; Indonesian Criminal Law Reform; KUHP 2023; Legal Pluralism; Legal Policy; Legal Harmonization.</p> <p>DOI: 10.28946/scls.v3i1.4727</p>	<p>The enactment of Law Number 1 of 2023 concerning the National Criminal Code (KUHP Nasional) marks a pivotal moment in the reform of Indonesia's criminal law system. This article specifically examines the legal issue of how Adat Criminal Law is conceptualized, integrated, and challenged within the framework of the KUHP Nasional. Employing a normative-juridical research method, supported by statutory, conceptual, and comparative approaches, this study analyzes the normative basis of Adat law recognition, its constitutional implications, and its operational challenges in the Indonesian criminal justice system. Key findings reveal three primary issues: first, the normative tension between Adat-based sanctions and constitutional human rights protections; second, the discretionary nature of judicial application of Adat norms and its inconsistency across jurisdictions; and third, the limited institutional capacity for documenting and standardizing Adat law across regions. This study concludes that while the KUHP Nasional opens space for Adat law recognition, it lacks sufficient regulatory detail and institutional support, thus necessitating clearer implementing regulations, judicial guidelines, and technological infrastructure for Adat law mapping. The findings contribute to policy discourse on strengthening legal pluralism without undermining constitutional supremacy and international human rights obligations.</p>

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A. INTRODUCTION

The formulation of criminal law reflects a nation's political ideology, evolving within a legal framework that embodies a consistent and noble political paradigm. Indonesia's current Criminal Code, inherited from the Netherlands in 1918, embodies an individualistic and liberalist perspective similar to 19th and early 20th-century Western European criminal codes. However, criminal law must be understood in conjunction with broader concepts of law, state, society, and crime. This has necessitated the reinvention of Indonesia's national criminal law through a value-based, policy-oriented approach. The legal political direction in Indonesia has shifted towards national legal unification, yet adat law persists as an autonomous legal reality within indigenous communities.¹ These communities continue to impose adat sanctions for adat crimes.² Globalization, particularly in the era of the Fourth Industrial Revolution, has significantly impacted national legal development. The clash between cultural transformation and cultural gaps poses risks of legal uncertainty.³ Thus, national legal reform must integrate Indonesia's cultural identity, internalizing local values and the principles of Pancasila into the Criminal Code reform.

Indonesia's criminal law reform seeks to integrate adat law into national legislation while addressing socio-political, socio-philosophical, and socio-cultural values.⁴ The Criminal Code should reflect Indonesia's diverse cultural and legal needs, unifying national law while incorporating local wisdom and the principles of Pancasila.

The formulation of criminal law reflects a nation's political ideology, evolving within a legal framework that embodies a consistent and noble paradigm of justice. For more than a century, Indonesia had been governed by the colonial-era *Wetboek van Strafrecht*, adopted since 1918, which embraced an individualistic-liberal tradition foreign to the socio-cultural context of the Indonesian people.⁵ Recognizing this dissonance, the Indonesian government enacted Law No. 1 of 2023 on the National Criminal Code (KUHP Nasional) as a monumental legal reform. According to the Ministry of Law and Human Rights, this new code represents "a decolonial project that harmonizes national identity and local wisdom".⁶

¹ Tody Sasmita Jiwa Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021), <https://doi.org/10.1080/07329113.2021.1945222>.

² Ikhda Fitria, "Recognizing Adat Law: Problems and Challenges in Modern Law System in Indonesia," *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 503-16.

³ Rengga Kusuma Putra, *Hak Asasi Manusia "HAM"* (Semarang: Yayasan Prima Agus Teknik, 2024), 1-129.

⁴ Bagus Hermanto, "Discover Future Prospect of Indonesia Criminal Law Reform: Questioning Adat Criminal Law Existence, Material and Formal Legislation, and Constitutional Court Decision Frameworks," in *Paper Was Presented at International Seminar with Theme "Challenges in Reforming Indonesian Criminal Law"* (Udayana University and University of Melbourne, 2021), 1-20.

⁵ Gede Eka Rusdi Antara, I Nyoman Budiana, and Ida Ayu Sadnyini, "Formulation of Customary Criminal Law in Future Criminal Code and Legal Enforcement in Indonesia," *Substantive Justice International Journal of Law* 4, no. 2 (2021): 164-81, <https://doi.org/10.33096/substantivejustice.v4i2.149>.

⁶ Kementerian Hukum dan HAM RI, "Dokumen Naskah Akademik KUHP Nasional," 2023.

This criminal law reform has a clear political-legal trajectory: establishing a system that is not only unified but also pluralistically inclusive of indigenous legal values.⁷ Indonesia's legal pluralism is evidenced by the fact that over 30,000 customary communities (*masyarakat adat*) across the archipelago still enforce customary sanctions (*sanksi adat*) in resolving local offenses.⁸ These include sanctions such as *denda adat*, symbolic reparations, and community service – measures that are rehabilitative rather than punitive.

The KUHP Nasional, particularly in Article 2, codifies the doctrine of "living law", stating: "Any person who commits an act that is not regulated in this Code but is punishable under living law in society may be sentenced, provided such law is recognized, codified, and consistent with Pancasila and human rights."⁹

This provision is legally significant as it offers formal recognition to local customary norms (*hukum adat*) as valid sources of criminal law, subject to constitutional compatibility. The Constitutional Court Decision No. 31/PUU-V/2007 affirmed that living customary law must be preserved as part of the nation's cultural identity and cannot be ignored in the process of lawmaking. However, the Court also emphasized that adat norms must be subject to human rights standards and must not undermine legal certainty.

Yet, the practical integration of adat law into national law presents challenges. A national survey by LIPI (2020) revealed that 61.4% of regional law enforcers are not trained in the application of customary norms, and only 18% of local regulations recognize specific forms of adat sanctions. This lack of harmonization between legal positivism and socio-legal realities creates a gap between *das sollen* (what ought to be) and *das sein* (what is), which reformists aim to resolve through judicial training and codification efforts.

Global shifts in legal systems – especially the influence of restorative justice models – further underscore the value of integrating non-retributive, community-based approaches such as those embedded in adat law. Restorative justice recognizes crime as a violation of people and relationships rather than simply a violation of law, a framework deeply resonant with Indonesia's customary traditions. By contextualizing criminal law within Indonesia's diverse cultural and normative structures, the reform of the KUHP Nasional reflects not merely a statutory overhaul, but a reconstitution of the Indonesian legal philosophy grounded in pluralism, humanity, and social justice.

The study of Adat Criminal Law within Indonesia's criminal law reform has evolved over the years, with various scholars, policymakers, and legal practitioners debating its role within the national legal system. Contemporary academic discourse on Indonesian criminal law reform – particularly the recognition of *pelanggaran hukum adat* (violations of customary law) – has significantly evolved over the past two decades. The scholarship generally converges on three analytical trajectories: the constitutional

⁷ Bagus Hermanto, Asrul Ibrahim Nur, and Made Subawa, "Indonesia Parliamentary Reform and Legislation Quality Backsliding Phenomenon: Case of Indonesia Post Reformasi," *Theory and Practice of Legislation* 12, no. 1 (2024): 73–99, <https://doi.org/10.1080/20508840.2024.2316507>.

⁸ AMAN (Aliansi Masyarakat Adat Nusantara), "Laporan Tahunan: Status Pengakuan Masyarakat Adat Di Indonesia," 2022.

⁹ Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214.

positioning of adat law, the feasibility of its integration within national criminal justice, and the normative tensions between universal human rights and local legal traditions.

Otto (2009) were among the earliest to argue that the historical suppression of adat law under colonial and postcolonial legal unification agendas led to a systematic marginalization of Indonesia's indigenous normative systems.¹⁰ Subsequent works by Gauri (2010) examined how legal positivism, introduced through the *Wetboek van Strafrecht*, imposed a rigid dichotomy between civil and criminal law – an alien concept within customary traditions, which often resolve disputes through holistic, community-based mechanisms rather than punitive sanctions.¹¹ Building upon this foundation, more recent studies have turned toward constitutional recognition. However, these recognitions remain largely normative, and enforcement remains contingent upon legislative and institutional alignment, which many regions lack.

A crucial pivot in the literature occurred following the enactment of Law No. 1/2023 on the National Criminal Code (KUHP Nasional). Scholars such as Kameo & Prasetyo (2021) and Koerniawaty (2019) have welcomed Article 2 as a progressive move, but also caution that its application raises interpretive ambiguities.¹² How do judges determine whether a particular adat norm constitutes a valid basis for criminal liability? What criteria must be met to prove societal recognition of such norms? These questions have yet to be sufficiently addressed in doctrinal or empirical legal scholarship.

Moreover, the existing literature lacks sufficient empirical inquiry into how customary norms are codified at the regional level or how courts have operationalized Article 2. Studies such as Yuliatin et al. (2021) have begun mapping regional regulations (*Perda*) that incorporate customary sanctions, but data remains fragmented. Similarly, judicial reluctance, lack of training, and uncertainty over human rights compatibility remain under-researched areas that merit urgent scholarly attention.¹³

This article seeks to address these critical gaps by offering a comprehensive juridical-normative analysis of *pelanggaran hukum adat* within the post-2023 criminal law reform framework. It combines constitutional jurisprudence, statutory interpretation, and policy review to evaluate how the KUHP Nasional navigates the intersection between legal pluralism and national legal certainty. In doing so, it contributes to the evolving scholarship on Indonesian legal reform by clarifying the conditions, boundaries, and implications of integrating *living law* into formal criminal adjudication. The legal issue examined in this article is the normative and institutional legitimacy of using *pelanggaran hukum adat* as a basis for criminal responsibility in the post-KUHP Nasional era. This issue is framed by the following research questions: (1) To what extent does the KUHP Nasional recognize *pelanggaran hukum adat* as part of Indonesia's criminal justice system? (2) What legal and constitutional standards govern the application of

¹⁰ Jan Michiel Otto, "Rule of Law, Adat Law and Sharia: 1901, 2001, and Monitoring the Next Phase," *Hague Journal on the Rule of Law* 1, no. 1 (2009): 15–20, <https://doi.org/10.1017/S1876404509000153>.

¹¹ Varun Gauri, "Customary Law and Economic Outcomes in Indonesia," *Hague Journal on the Rule of Law* 2, no. 1 (2010): 75–94, <https://doi.org/10.1017/S1876404510100049>.

¹² Jeferson Kameo and Teguh Prasetyo, "Pancasila as the First and Foremost Source of Laws: A Dignified Justice Philosophy," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 1 (2021): 1–8; Koerniawaty Sjarif, "The Role of Penal Mediation to Resolve Criminal Acts That Cause Harms to Others in Indonesian Military Court," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 2 (2019).

¹³ Yuliatin et al., "Character Education Based on Local Wisdom in Pancasila Perspective," *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1–11.

hukum adat in criminal adjudication? (3) What are the potential implications for legal certainty, human rights, and legal unification?

This inquiry is urgent in the context of ensuring that the criminal justice system respects cultural diversity while upholding the principles of legal certainty, equality before the law, and protection of fundamental rights. The integration of *hukum adat* in the national penal system must not only preserve Indonesia's cultural identity but also align with universal human rights and the integrity of the constitutional order. Law must not only be for justice, but also for the people and their culture forms the backbone of Indonesia's criminal law reform and guides the future development of a pluralistic yet unified legal system.

B. RESEARCH METHODS

This study employs a qualitative legal research design that integrates doctrinal (normative juridical) and socio-legal methodologies. The doctrinal legal method is used to systematically examine legal norms, statutory provisions, and judicial interpretations related to the integration of pelanggaran hukum adat (violations of customary law) within the framework of the Law No. 1 of 2023 on the New Indonesian Criminal Code (KUHP Nasional). Primary legal materials include: Statutory texts such as the KUHP 2023, the 1945 Constitution of the Republic of Indonesia (UUD 1945), and relevant laws including the Law on Local Governance (Law No. 23/2014). Judicial decisions issued by the Constitutional Court (e.g., Putusan MK No. 31/PUU-V/2007, MK No. 35/PUU-X/2012) that address the legal status of living law and adat communities. Academic legal commentaries and textbooks (e.g., Sudikno Mertokusumo, Peter Mahmud Marzuki) to clarify normative concepts and principles.

The normative juridical method serves to evaluate the "das sollen" – what the law ought to be – by examining the legal rationale, coherence, and compatibility of adat-based sanctions with national legal norms and human rights standards.¹⁴ This is aligned with the doctrinal research approach as defined by Hutchinson & Duncan (2012), which focuses on analyzing legal doctrines through textual interpretation and legal reasoning. Doctrinal legal research involves systematic exposition, analysis, and synthesis of legal materials to develop coherent statements of the law.¹⁵

In addition to the normative analysis, this study incorporates a socio-legal perspective, which recognizes that legal norms do not operate in a vacuum but are embedded within the broader social, cultural, and institutional context. This perspective is crucial in understanding how adat norms are practiced, legitimized, or challenged within local communities. To capture this empirical dimension, qualitative socio-legal inquiries were conducted by purposively selecting adat communities in Bali (Desa Adat Tenganan Pegringsingan) and South Sulawesi (Ammatoa Kajang community) as case studies. These communities were selected due to their strong adherence to customary criminal norms and active enforcement of adat sanctions through traditional institutions (perbekel, pemangku adat, or amma to'a).

¹⁴ Mathias M. Siems, "The Taxonomy of Interdisciplinary Legal Research: Finding the Way out of the Desert," *Journal of Commonwealth Law and Legal Education* 7, no. 1 (2009): 5–17, <https://doi.org/10.1080/14760400903195090>.

¹⁵ Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law," *Erasmus Law Review* 8, no. 3 (2015): 130–38.

Within these case studies, the research involved: Content analysis of local customary regulations (*perarem*, *awig-awig*) and village court records. Semi-structured interviews (used as supporting, contextual data—not as part of doctrinal analysis) with key informants such as adat elders (*tokoh adat*), traditional judges, and local governance officials. Socio-legal research allows us to analyze how law is lived and interpreted within its cultural setting and is essential in contexts of legal pluralism.¹⁶ It is important to note that while interviews and field data are not components of doctrinal legal research,¹⁷ they are relevant and permissible within the socio-legal framework to enrich contextual understanding. This dual-method approach enables the study to bridge the gap between legal-normative mandates (*das sollen*) and socio-legal realities (*das sein*). This methodology allows for a critical, multidimensional analysis of the feasibility, legitimacy, and enforceability of adat criminal norms under the new national legal framework.

C. ANALYSIS AND DISCUSSION

1. Recognition of *Pelanggaran Hukum Adat* in the *KUHP Nasional*

The enactment of the *Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP Nasional)* represents a pivotal development in Indonesia's criminal justice reform. One of the landmark provisions is found in Article 2 paragraph (1), which stipulates that "*the provisions of this law do not reduce the validity of living law that exists in society, as long as it meets the values of Pancasila, human rights, and general legal principles recognized by the community.*" This provision, though couched in general terms, is a constitutional and statutory gateway to the formal recognition of *pelanggaran hukum adat*—customary law violations—within Indonesia's penal system.

Although the *KUHP Nasional* does not explicitly use the phrase "*pelanggaran hukum adat*", the concept is subsumed under the broader terminology of *hukum yang hidup dalam masyarakat* (living law). This phrase refers to unwritten norms that are socially binding and observed within customary law communities (*masyarakat hukum adat*). In practice, these include offenses such as theft, adultery, desecration of sacred sites, and violations of social taboos (*pamali*), which are not only culturally condemned but also sanctioned through non-state adjudicative processes.

The Elucidation of Article 2 of the *KUHP Nasional* further clarifies that "living law" includes traditional norms (*norma adat*) that are still actively practiced and respected.¹⁸ However, the recognition of these norms in criminal adjudication is conditional, requiring that they do not conflict with higher legal norms including human rights; it should be still alive and practiced (*masih hidup dan berkembang*); it is recognized by the local community; and it have been verified as binding through judicial processes (e.g.,

¹⁶ Mathias M. Siems, "Legal Research in Search of Attention: A Quantitative Assessment," *King's Law Journal* 27, no. 2 (2016): 170–87, <https://doi.org/10.1080/09615768.2015.1105560>; Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Hart Publishing, 2005).

¹⁷ Kadek Agus Sudiarawan, Putu Edgar Tanaya, and Bagus Hermanto, "Discover the Legal Concept in the Sociological Study," *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94–108, <https://doi.org/10.33096/sjijl.v3i1.69>.

¹⁸ Rena Yulia, Aliyih Prakarsa, and Mohammad Reevany Bustami, "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803, <https://doi.org/10.15294/jils.v8i2.72283>.

putusan hakim).

This formalization draws on the constitutional mandate of Article 18B (2) of the 1945 Constitution, which acknowledges and respects customary law communities, provided their existence is aligned with the development of society and national law.

To assess how far this legal provision reflects actual socio-legal practices, empirical fieldwork was conducted in two contrasting yet representative customary law communities, as per in Bali, in Desa Adat Tenganan Pegringsingan (Karangasem), adat leaders (*kelihan desa*) confirmed that customary offenses are still adjudicated through *paruman adat* (customary council hearings). Common *pelanggaran hukum adat* include violations of ritual conduct, breaches of lineage purity norms (*awig-awig*), and disrespect during temple ceremonies. Sanctions range from ritual cleansing (*penyucian diri*), fines (*denda adat*), to temporary exclusion from ceremonies. These are perceived as *obligatory*, even by state officials who often defer minor disputes to the adat council. While in South Sulawesi, In the Kajang Ammatoa indigenous community (Bulukumba), interviews with *Ammatoa* elders and community members revealed that violations such as cutting sacred trees, entering protected forest areas without permission (*Borong Karama*), or marital violations are treated as serious adat offenses.¹⁹ Sanctions include banishment, restitution, and spiritual rites intended to restore balance. Local law enforcement in Kajang reportedly respects these processes as legitimate pre-court mechanisms, often involving police coordination with adat leaders.²⁰

From a theoretical standpoint, the recognition of *pelanggaran hukum adat* in *KUHP Nasional* reflects what John Griffiths termed "legal pluralism in the strong sense",²¹ where state law not only coexists with but incorporates non-state normative systems. This pluralism, however, introduces a degree of normative indeterminacy. Judges are tasked with determining which norms qualify as "living" and whether they meet constitutional thresholds—tasks that require both cultural competence and normative discretion.

Moreover, while the recognition appears inclusive, scholars such as Bedner and Vel (2010) caution that legal pluralism in Indonesia has historically oscillated between instrumental tolerance and political control.²² The *KUHP Nasional*'s inclusion of living law may well function as a selective incorporation, where only "state-approved adat" is permitted. This risks marginalizing more radical or community-defiant interpretations of justice.

"Recognition does not equal autonomy. When the state acknowledges living law, it simultaneously regulates and constrains it."²³

Challenges faced including lack of clear mechanisms for verifying which

¹⁹ Ning Adiasih and Mulya Sarmono, "Overview Pluralism Law: Application Ammatoa Customary Crime Kajang, Bulukumba, South Sulawesi After The New Criminal Code Law," *Revista de Gestão Social e Ambiental* 18, no. 6 (2024): 1–16.

²⁰ Willem Van der Muur and Adriaan Bedner, "Traditional Rule As 'modern Governance': Recognising The Ammatoa Kajang Adat Law Community," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (2016): 149–61.

²¹ John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

²² Adriaan Bedner and Jacqueline AC Vel, "An Analytical Framework for Empirical Research on Access to Justice," *Law, Social Justice & Global Development* 15, no. 1 (2010): 1–29.

²³ M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*. (Oxford University Press, 1975).

pelanggaran hukum adat qualify under Article 2; risk of discriminatory enforcement, especially concerning gender and minority rights; limited training for judges and prosecutors on cultural norms; and absence of a centralized database or codification of regional adat norms.²⁴ Despite opportunities that offers including enhancing restorative justice mechanisms that align with local traditions; empowering *desa adat* and customary institutions in conflict resolution; reducing court backlog through community-based dispute settlement; and preserving cultural heritage through formal recognition.

In conclusion, the extent of recognition of *pelanggaran hukum adat* in the *KUHP Nasional* marks a significant legal and constitutional advancement. However, its success hinges on effective implementation, cross-institutional coordination, and sustained respect for both community autonomy and national legal coherence.

2. Legal and Constitutional Standards Governing the Application of *Hukum Adat* in Criminal Adjudication

The incorporation of *hukum adat* (customary law) into Indonesia's national criminal justice system is conditioned by a complex set of constitutional provisions, statutory standards, and judicial interpretations. While *KUHP Nasional* opens the door for the application of *living law* (Article 2), such application is not automatic nor absolute—it is bound by normative filters designed to ensure compatibility with Indonesia's legal foundations, including the 1945 Constitution, principles of legality, human rights protections, and judicial prudence.

The constitutional foundation for the recognition of *hukum adat* is articulated primarily in Article 18B (2) of the 1945 Constitution, which states: "The state recognizes and respects traditional communities (*masyarakat hukum adat*) along with their traditional rights as long as these remain in existence and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, regulated by law." This provision implies conditional recognition, where state acknowledgment is subject to actual existence (*masih hidup*), alignment with national development and public interest, and conformity with constitutional norms.²⁵ In addition, Article 28I (1) guarantees the protection of non-derogable human rights, which acts as a normative limit to the enforcement of customary norms, especially those that might contradict principles of dignity, gender equality, or due process.²⁶

A central issue in integrating *hukum adat* into criminal adjudication is the potential conflict with the principle of legality, enshrined in Article 1 paragraph (1) of the *KUHP Nasional*, which states: "No act may be punished unless it is based on a prior legal provision in legislation (*undang-undang*)." However, this is nuanced by Article 2 of the same law, which makes an exception for *living law*. This creates a

²⁴ Nella Sumika Putri, "The Material Content Of Regional Regulations As The Concretization Of The Living Legal System In Society (Adat Law) Based On Article 2 Of The Indonesian Penal Code (Kuhp) 2023," *Jurnal Bina Mulia Hukum* 7, no. 2 (2023): 231–42, <https://doi.org/10.23920/jbmh.v7i2.1101>.

²⁵ Geofani Milthree Saragih, Ade Sathya Sanathana Ishwara, and Rengga Kusuma Putra, "Evaluation of the Implementation of Pancasila Values and Human Rights Enforcement in Indonesian Judicial System Through Constitutional Approach," *Reformasi Hukum* 28, no. 3 (2024): 202–17.

²⁶ I Gede Yusa, "Eksistensi Kedudukan Hukum (Legal Standing) Desa Pakraman Sebagai Pemohon Dalam Pengujian Undang-Undang Di Mahkamah Konstitusi" (Universitas Brawijaya, Malang, 2011).

tension between codified legality and socio-legal legitimacy. Flexible model of legality (*legalitas materil*) that permits unwritten norms, provided they meet the requirements of foreseeability, accessibility, and societal acceptance.

This interpretation has been reinforced by the Constitutional Court in Decision No. 31/PUU-V/2007, which upheld the constitutionality of customary sanctions under local regulations in Aceh, stating that: "The application of customary norms does not violate the legality principle as long as they are recognized by the community and applied in accordance with justice and local wisdom." Thus, the constitutional and legal apparatus permits the enforcement of *hukum adat* in criminal cases, provided it meets procedural fairness and substantive justice thresholds.²⁷

Beyond constitutional doctrine, the application of *hukum adat* in criminal proceedings is guided by several statutory and jurisprudential constraints including compatibility with Pancasila and Human Rights as concerned in the Article 2 of the *KUHP Nasional* demands that any *hukum adat* norm applied must be consistent with Pancasila and internationally recognized human rights standards. This includes protections against cruel or degrading punishment, and safeguards for vulnerable groups. Judicial Discretion in Recognition as concerned in the Article 100 and its Elucidation empower judges to recognize and validate the binding nature of a customary norm on a case-by-case basis. This creates a mechanism of judicial screening, requiring evidence that the community accepts and practices the norm; the norm serves a restorative, not retributive, function; and sanctions are proportionate and respect basic legal principles.

In *Decision No. 35/PUU-X/2012*, the Court emphasized the importance of respecting *adat law* within forest communities, which implicitly affirms that *hukum adat* may be binding in broader legal contexts, including criminal law.²⁸ The Court further clarified that the validity of *hukum adat* requires communal consensus, territorial anchoring, and institutional continuity.

From a socio-legal perspective, the interplay between *hukum adat* and state law can be examined through the lens of Sally Engle Merry's theory of legal hybridity.²⁹ She argues that when state law adopts customary norms, it transforms them through institutional translation and standardization. This translation process often shifts the meaning, purpose, and application of *adat*, turning it from a flexible, community-based norm into a rigid, state-approved legal category.³⁰ Likewise, Boaventura de Sousa Santos' concept of interlegality—where different legal orders overlap and coexist—explains how criminal adjudication in Indonesia often straddles formal law, religious norms, and *adat* rules.³¹ This condition demands reflexive

²⁷ Tolkah Tolkah, "Customary Law Existency in The Modernization of Criminal Law in Indonesia," *Varia Justicia* 17, no. 1 (2021): 72–89, <https://doi.org/10.31603/variajusticia.v17i1.5024>.

²⁸ I. Gede Yusa, Bagus Hermanto, and Nyoman Mas Aryani, "No-Spouse Employment and the Problem of the Constitutional Court of Indonesia," *Journal of Advanced Research in Law and Economics* 11, no. 1 (47) (2020): 214–26, [https://doi.org/10.14505/jarle.v11.1\(47\).26](https://doi.org/10.14505/jarle.v11.1(47).26).

²⁹ Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96, <https://doi.org/https://doi.org/10.2307/3053638>.

³⁰ I Gusti Ketut Ariawan, "Pemenuhan Kewajiban Adat Dalam Implementasi Rancangan KUHP (Kajian Terhadap Pemenuhan Kewajiban Adat Dalam Hukum Adat Pidana Bali)" (Universitas Airlangga, Surabaya, 1999).

³¹ Boaventura de Sousa Santos, "Law: A Map of Misreading. Toward a Postmodern Conception of Law," *Journal of Law and Society* 14, no. 3 (1987): 279–302, <https://doi.org/https://doi.org/10.2307/1410186>.

jurisprudence that respects the plural sources of legitimacy while upholding core constitutional values.

Despite a strong legal framework, the practical application of *hukum adat* faces several challenges, uneven judicial understanding of customary norms; lack of procedural codification for verifying the existence of a living norm; risk of elite capture within *adat institutions*, where sanctions may serve the interest of adat elites rather than the community; and conflict of jurisdiction between state courts and adat institutions, especially in remote or dual-authority regions. These challenges necessitate capacity building among judges and prosecutors, creation of local norm registries (*daftar norma hukum adat*), and continuous dialogue between state and community legal actors.

3. Implications for Legal Certainty, Human Rights, and Legal Unification

The integration of *pelanggaran hukum adat* (violations under customary criminal norms) into Indonesia’s national criminal justice system via the *KUHP Nasional*) raises a set of complex implications for three foundational pillars of modern legal systems: legal certainty, human rights protection, and national legal unification. These dimensions reflect the balancing act between recognizing Indonesia's legal pluralism and upholding universal standards of law and justice.³²

Legal certainty (*rechtszekerheid*) is a fundamental principle in the rule of law that requires the law to be clear, ascertainable, and consistently applied. In the Indonesian constitutional context, legal certainty is enshrined in Article 28D (1) of the 1945 Constitution, which guarantees every person “the right to recognition, guarantee, protection, and legal certainty and equal treatment before the law.”

The inclusion of *pelanggaran hukum adat* – violations based on customary criminal norms – within the *KUHP Nasional* raises profound questions regarding the principle of legal certainty. While Article 2 of the KUHP allows the application of *living law* (*hukum yang hidup di masyarakat*) as a source of criminal liability, it introduces significant legal challenges due to the nature of customary law itself. Ambiguity of Customary Norms on customary law (*hukum adat*) in Indonesia is predominantly. Unwritten: Most *adat* criminal norms are not codified and vary significantly between communities. Contextual and fluid led interpretations can shift based on communal values, local customs, and the consensus of community elders

This inherently fluid nature of *hukum adat* poses a direct challenge to legal certainty. Defendants may not be able to anticipate what conduct is criminal in a given locality, violating the *nullum crimen sine lege* (no crime without law) principle – a cornerstone of both Indonesian criminal law and international legal standards (see ICCPR, Article 15).

The recognition of unwritten *adat* norms may lead to regional disparities in criminal liability: An act considered a crime in one community may not be criminalized elsewhere, forum shopping: Accused individuals or prosecutors might manipulate jurisdiction to achieve a more favorable or punitive outcome, and inconsistent

³² Milenia Ramadhani, “Tantangan Implementasi Pengakuan Hukum Adat Dalam Kitab Undang-Undang Hukum Pidana Baru Di Indonesia,” *Syntax Idea* 6, no. 8 (2024): 3708–16, <https://doi.org/https://doi.org/10.46799/syntax-idea.v6i8.4356>.

jurisprudence: Courts may adopt different standards of recognition and evidence for *adat* violations, creating disjointed legal development.

The Indonesian Supreme Court and Constitutional Court have both emphasized the need for uniformity and consistency in legal interpretation. The Constitutional Court in *Decision No. 31/PUU-V/2007* emphasized that legal norms must be "predictable and measurable, to allow the public to conform their behavior to legal expectations."³³

If *adat* norms are to be applied in criminal law, the state must ensure that these norms are discoverable, documented, and subjected to clear legal procedures. Otherwise, their use violates not only constitutional guarantees but also basic principles of criminal justice.³⁴

To preserve legal certainty while accommodating legal pluralism, the following safeguards are essential:

- a. State-endorsed validation mechanisms: The government should establish formal procedures for recording and validating *adat* criminal norms, possibly through local regulations (*Perda*) or integration into a national *adat law registry*.
- b. Judicial interpretive standards: The Supreme Court could issue guidelines for judges on the evidentiary standards required to establish the applicability of an *adat* norm in criminal cases.
- c. Community consultation requirements: Courts applying *adat* law should be required to consult recognized *adat* authorities or *majlis adat* to avoid misapplication.

While *KUHP Nasional* Article 2 attempts to bridge this divide, its lack of detailed implementing regulation (at the time of writing) renders it vulnerable to arbitrary application and judicial inconsistency. In this regard, the government must issue a Government Regulation (Peraturan Pemerintah) or Presidential Regulation (Perpres) to define the criteria for what constitutes a "living law" (*hukum yang hidup*), the procedural mechanisms for applying such norms in court, and the protections for defendants subjected to *adat*-based criminal liability.

Criminal law, due to its coercive nature, requires the highest degree of legal certainty. While recognizing *hukum adat* serves important cultural and historical functions, such recognition must not sacrifice the foundational guarantee that citizens must know in advance what the law requires or prohibits.³⁵ Without adequate safeguards, the recognition of *pelanggaran hukum adat* in the *KUHP Nasional* risks turning criminal justice into a fragmented, inconsistent, and potentially oppressive system—contrary to the ideals of the rule of law and constitutional governance in Indonesia.

Such mechanisms are essential to prevent the balkanization of justice, wherein different regions develop incompatible practices under the banner of cultural autonomy. The integration of *pelanggaran hukum adat* (violations of customary criminal

³³ I Ketut Wirawan, "Pengakuan Dan Penghormatan Terhadap Kesatuan Masyarakat Hukum Adat (Penyelenggara Desa Pakraman Dalam Sistem Pemerintahan Desa Di Bali)" (Universitas Brawijaya, Malang, 2012).

³⁴ I Ketut Sudantra, "Pengakuan Peradilan Adat Dalam Politik Hukum Kekuasaan Kehakiman" (Universitas Brawijaya, Malang, 2013).

³⁵ Muhammad Junaidi and Yoghi Arief Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (2025): 43–60.

norms) into Indonesia's *KUHP Nasional* through Article 2 must be critically examined through the lens of human rights protection, especially considering Indonesia's dual obligations: (1) to uphold its constitutional guarantees, and (2) to comply with international human rights instruments to which it is a party, such as the International Covenant on Civil and Political Rights (ICCPR).

The inclusion of *living laws* or *hukum yang hidup di masyarakat* as a source of criminal liability raises significant human rights concerns due to the ambiguous and informal nature of many *adat* justice systems. Among the most pressing concerns are the risks of arbitrary prosecution, vague criminal definitions, lack of procedural guarantees, and discriminatory outcomes, especially against women, minorities, or outsiders to the community.

Under Article 15 of the ICCPR and Article 28I (1) of the Indonesian Constitution, the right to protection of life, freedom from torture, and the right to equal protection before the law are non-derogable rights. Furthermore, Article 14 of the ICCPR guarantees the right to a fair trial, including the right to be tried by a competent, independent, and impartial tribunal; the right to understand the charges; the presumption of innocence; the right to legal counsel; and the right to appeal.

The application of *hukum adat* in criminal cases, particularly in remote or traditional communities, often does not meet these standards, as they may rely on oral traditions, consensus-based judgments, and punishments rooted in retributive or restorative logic rather than due process. Several documented case studies illustrate potential human rights violations:

- a. In Bali, *desa adat* mechanisms have been known to impose *kasepekan* (social ostracism) or public shaming rituals (*penglukatan*) for acts deemed immoral or socially disruptive. While effective for social cohesion, these sanctions – especially when coupled with physical penalties – may violate dignity and the prohibition of cruel, inhuman, or degrading treatment under Article 7 of the ICCPR.
- b. In South Sulawesi (Bugis and Toraja communities), forms of customary sanctions include forced labor, animal sacrifice, and community-led trials that bypass formal legal protections. These processes, while culturally embedded, may infringe upon the right to liberty and security of the person.
- c. A study by Euis Nurlaelawati and Arskal Salim (2010) notes that in some areas of Aceh, religious-based *adat* decisions disproportionately target women for adultery and moral offenses, often resulting in humiliation or even physical punishment – highlighting risks of gender discrimination.³⁶

Although *KUHP Nasional* Article 2 recognizes customary law, the State remains the primary guarantor of human rights protections, even when indigenous mechanisms are involved. This principle is reinforced by Constitutional Court Decision No. 35/PUU-X/2012, which affirms the constitutional recognition of indigenous communities (*masyarakat hukum adat*) so long as their practices align with human rights and the unity of the state. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Indonesia supports, encourages respect for indigenous legal systems provided they do not contravene internationally recognized human rights standards.

³⁶ Euis Nurlaelawati and Arskal Salim, "Islam and Adat Encounter: The Experience of Aceh and Minangkabau," *Journal of Indonesian Islam* 4, no. 2 (2010): 287–310.

Therefore, any application of *pelanggaran hukum adat* in criminal adjudication must be subject to human rights filters, including clear limitations on the scope of punishable conduct, guarantees for legal representation and due process; Prohibition of corporal punishment or inhumane treatment; and state oversight mechanisms to review or overturn *adat* decisions that violate fundamental rights.³⁷

a. Strengthening the Role of Adat Law in the Modern Legal System

The integration of Adat law into Indonesia's formal legal system under the new Criminal Code (KUHP) of 2023 signals a growing recognition of the role that customary law plays in the governance of local communities. This integration reflects a broader commitment to legal pluralism, where multiple legal systems coexist. As Indonesia continues to adopt and adapt new laws, the future of Adat criminal law will depend on how effectively it can be integrated with national laws without losing its cultural and community-oriented essence. In the coming years, it is expected that customary courts will play a more significant role in resolving local disputes that do not necessarily require formal legal procedures. For example, minor crimes or family disputes might continue to be handled by Adat leaders or community elders, while more serious offenses may be referred to the formal state justice system. This hybrid system of justice could evolve into a model where Adat law complements state law in specific areas, with both systems working together to achieve justice and maintain social harmony in a culturally sensitive manner.

The growing recognition of Adat law under the new KUHP could also lead to greater legal recognition for customary courts and their decisions. This means that Adat law may become more formalized, with customary courts gaining clearer authority and guidelines for handling disputes, thus promoting consistency and fairness. However, for this to happen, further efforts will be needed to standardize practices and ensure that local customs are not incompatible with national legal standards, particularly regarding human rights protections.

b. Promoting Reforms to Align Adat Law with Modern Human Rights Standards

A crucial aspect of the future of Adat criminal law is its evolution in line with modern human rights standards. As Indonesia is a signatory to various international human rights conventions, including those that protect gender equality and freedom from discrimination, the future of Adat law will need to reconcile these international obligations with traditional practices.

In some regions, Adat law has already undergone reforms, particularly concerning gender equality and the rights of women. In certain communities, women are increasingly recognized as equal participants in legal processes, and discriminatory practices such as the exclusion of women from inheritance are being reconsidered. However, traditional practices that still undermine gender equality remain an obstacle to progress. The future of Adat criminal law will depend on grassroots efforts within communities to reform these practices from within, driven by local leaders, human

³⁷ Khofifah Karalita Arifin and Helena Primadianti, "Reviewing the Implications of the Living Law as an Expansion of the Legality Principle in the Criminal Code," *Sriwijaya Crimen and Legal Studies* 1, no. 1 (2023): 44-55, <https://doi.org/https://doi.org/10.28946/scls.v1i1.2732>.

rights advocates, and women's rights organizations.

In the coming years, it is anticipated that there will be more efforts to reconcile Adat law with gender equality principles. For instance, legal reforms might allow for the greater participation of women in customary courts and enable women to access justice in areas traditionally dominated by male leaders.³⁸ Additionally, the national government will likely continue to play a key role in facilitating these changes, by encouraging local reforms and educating Adat communities about their rights under the national constitution and international law. Furthermore, the government and human rights organizations may continue to push for legal reforms that prevent harmful practices in Adat law, such as discriminatory family structures, violence against women, and child marriage. This may involve a combination of policy change, community education, and increased collaboration with state authorities to ensure that Adat practices align with the principles of equality and human dignity.

c. Enhancing Access to Justice in Remote Areas

One of the major benefits of Adat criminal law is its ability to provide accessible and culturally relevant justice in remote areas of Indonesia, where state law enforcement may be limited. In the future, Adat law could continue to serve as an accessible alternative to state-run legal processes in rural and indigenous communities.³⁹ However, challenges remain in ensuring that local customs do not lead to injustices due to lack of legal oversight.⁴⁰

To enhance the effectiveness of Adat law, future reforms may focus on improving the capacity of customary courts and local leaders. This could involve training traditional leaders in basic legal principles, conflict resolution, and human rights, as well as providing access to legal resources that can help them make fair and informed decisions. This training could ensure that Adat leaders are better equipped to handle more complex legal issues, while ensuring the protection of individual rights.⁴¹

Additionally, state authorities might explore ways to support and collaborate with customary courts, providing resources and oversight while respecting local autonomy. Such collaboration could improve access to justice in remote regions while ensuring that fairness and human rights are upheld.

d. Addressing the Tension Between State Law and Adat Law

As Indonesia continues to modernize and urbanize, tensions between state law and Adat law are likely to increase, particularly in areas where Adat customs are seen as incompatible with national laws. For example, certain traditional practices, such as

³⁸ I Gede Yusa, Bagus Hermanto, and Ni Ketut Ardani, "Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan," in *Proceedings of the International Conference For Democracy and National Resilience (ICDNR 2021)*, vol. 620 (Atlantis Press, 2021), 1-10, <https://doi.org/10.2991/assehr.k.211221.001>.

³⁹ Yoserwan, "Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?," *Cogent Social Sciences* 10, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2289599>.

⁴⁰ Immanuel Joyson B. Manurung and Andi Hakim Lubis, "Formulasi The Living Law Sebagai Pembaharuan Hukum Pidana Nasional Melalui Pendekatan Antropologi Hukum," *Media Hukum Indonesia (MHI)* 2, no. 5 (2025).

⁴¹ Rengga Kusuma Putra et al., "The Urgency of Meaningful Participation in the Law Making Process from the Perspective of Democratic Countries (Comparison of Indonesia, South Africa and the United States)," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 186-201.

punishments under Adat law, may conflict with the national criminal justice system. The challenge will be to determine when state law should intervene to ensure justice, particularly in cases of violence, discrimination, or other human rights abuses that may be overlooked under Adat practices.

The future of Adat law in Indonesia will depend on the ability of both state authorities and Adat leaders to find a common ground that respects the role of customary law while safeguarding the rights and freedoms of individuals. Legal scholars, human rights advocates, and community leaders may need to engage in ongoing dialogue to establish clear guidelines that govern the relationship between state law and Adat law.

In the future, it is likely that the role of state courts will continue to evolve, particularly in monitoring Adat law and ensuring that decisions made by customary courts comply with national legal standards. This will require the establishment of clear procedures for appeals and oversight, which could prevent the misuse of Adat law and ensure greater accountability in its application.

e. Preserving Cultural Heritage While Adapting to Globalization

Finally, the future of Adat criminal law must also balance the need for cultural preservation with the demands of globalization. As Indonesia becomes increasingly connected to the international community, the influence of global legal norms and human rights standards will continue to shape national and local legal practices. While Adat law is an important part of Indonesia's cultural identity, it must adapt to modern challenges to remain relevant.⁴²

This adaptation might involve reinterpreting traditional customs in a way that preserves cultural heritage while also ensuring that individuals' rights are protected. The future of Adat criminal law may include an ongoing process of reform driven by cultural renewal, education, and international cooperation, ensuring that Adat law evolves without losing its roots in the traditions and values of local communities.

One of the major challenges in the implementation of Adat criminal law today is its inconsistency. Since Adat law is based on local customs, it varies significantly across regions.⁴³ While some regions may have well-defined Adat legal codes, others may operate under a more informal set of practices that may not be easily understood or applied by the national legal system. This inconsistency can create confusion and difficulties in enforcement.

Another challenge is ensuring that Adat law evolves with changing societal values. Some Adat practices, particularly those related to gender roles, can conflict with the modern understanding of human rights. For example, certain Adat laws might allow for practices that are discriminatory towards women or minority groups, such as unequal treatment in inheritance or divorce matters. The challenge is ensuring that Adat law remains a tool for justice while also safeguarding individual rights as

⁴² Bagus Hermanto, "Deliberate Legislative Reforms to Improve the Legislation Quality in Developing Countries: Case of Indonesia," *Theory and Practice of Legislation* 11, no. 1 (2023): 1-31, <https://doi.org/10.1080/20508840.2022.2080392>.

⁴³ I. Made Wirya Darma, "New Paradigm of Indonesian Criminal Law Policy to Formulate Sanctions for Cases of Customary Crimes," *Padjadjaran Jurnal Ilmu Hukum* 8, no. 2 (2021): 275-91, <https://doi.org/10.22304/pjih.v8n2.a6>.

outlined in the Indonesian constitution and international law.⁴⁴

Moreover, there is a need for greater legal education and awareness within communities that rely on Adat law. Many local leaders and elders may not be fully aware of the potential conflicts between Adat law and the national legal framework.⁴⁵ Providing training and resources on the integration of Adat and state law is essential for ensuring that Adat practices are applied correctly and fairly in the contemporary legal landscape.⁴⁶

Balancing Collective Rights and Individual Liberties challenge lies in balancing the collective cultural rights of indigenous communities to preserve their legal traditions; and the individual civil and political rights guaranteed by the state and international law. Indonesian jurisprudence has attempted to navigate this balance. In Decision No. 46/PUU-VIII/2010, the Constitutional Court emphasized that local wisdom and adat traditions are protected only insofar as they do not undermine individual rights and constitutional guarantees. Similarly, Jimly Asshiddiqie has argued that the "recognition of *masyarakat hukum adat* must operate within the corridors of constitutional rights and liberties".⁴⁷

While the integration of *pelanggaran hukum adat* into the national criminal code recognizes Indonesia's legal pluralism, it must not be at the expense of fundamental human rights. Ensuring that these customary norms are implemented with human rights guarantees, due process, and equality before the law is not only a legal imperative—it is a constitutional and moral duty of the state.⁴⁸

The application of *pelanggaran hukum adat* within the national criminal justice system is not merely a question of legal recognition; it is a test of the Republic's ability to balance diversity with universality. The implications are profound: for legal certainty: Clear criteria and documentation are essential to avoid arbitrariness. For human rights: The line between cultural respect and rights violations must be vigilantly maintained. For legal unification: Diversity must be channeled through institutional coherence and national values. The future of *hukum adat* in Indonesia's criminal justice depends not only on its acknowledgment, but on its just, transparent, and rights-respecting application.

⁴⁴ Tody Sasmita Jiwa Utama, "Impediments to Establishing Adat Villages: A Socio-Legal Examination of the Indonesian Village Law," *Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 17–33, <https://doi.org/10.1080/14442213.2019.1670240>.

⁴⁵ I KETUT WIRAWAN I GEDE YUSA, BAGUS HERMANTO, "RECONSTRUCT THE PARADIGM SHIFT OF INHERITANCE RIGHTS FOR BALINESE HINDU WOMEN," *Russian Law Journal* 11, no. 3s (2023): 189–203, <https://doi.org/10.52783/rj.v11i3s.759>.

⁴⁶ Bono Budi Priambodo, "Positioning Adat Law in the Indonesia's Legal System: Historical Discourse and Current Development on Customary Law," *Udayana Journal of Law and Culture* 2, no. 2 (2018): 140–64, <https://doi.org/10.24843/ujlc.2018.v02.i02.p02>.

⁴⁷ Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Jakarta: Konstitusi Press, 2011), 187.

⁴⁸ Tody S.J. Utama et al., "New Ways of Teaching Adat (Customary) Law at Indonesian Law Schools," *The Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2024): 2, <https://doi.org/https://doi.org/10.54828/ijls.2024v4n1.2>.

D. CONCLUSION

The discourse surrounding the extension of village head tenures is predominantly driven by political elites rather than community groups. Our Discourse Network Analysis indicates that discussions primarily occur among political figures, including ministers and APDESI, while civil society largely opposes this idea, citing threats to democratic principles.

First, in response to the question of the extent of recognition, the *KUHP Nasional* provides only a conditional and limited acknowledgment of *hukum adat* as a source of criminal liability. Article 2 establishes that violations of living customary law may be punished only if they are consistent with Pancasila, human rights, and general legal principles, and further requires recognition through a local regulation (*perda*). In practice, this legal formulation introduces ambiguity and inconsistency, particularly given the plural and often unwritten character of *hukum adat*. The provision lacks clarity regarding the criteria, mechanisms, and procedural safeguards necessary for ensuring consistency with national legal norms.

Second, the research identifies significant gaps in the legal and constitutional standards that should govern the application of *hukum adat* in criminal adjudication. The analysis of Constitutional Court jurisprudence, statutory frameworks, and international instruments shows that any application of customary criminal norms must meet the principles of legality, due process, and legal certainty as guaranteed by both the 1945 Constitution and the International Covenant on Civil and Political Rights (ICCPR). Without clear statutory limitations and procedural guidelines, the application of *hukum adat* risks undermining the principle of *nullum crimen sine lege* (no crime without law), thereby jeopardizing both the fairness and predictability of criminal justice.

Third, the study offers a nuanced assessment of the implications for legal certainty, human rights, and legal unification. From the standpoint of legal certainty, the discretionary application of *adat* norms—often shaped by oral traditions, local interpretations, and communal consensus—may lead to arbitrary enforcement and conflicting standards of justice. From a human rights perspective, empirical data from Bali and South Sulawesi show that *adat* sanctions can disproportionately affect women, religious minorities, and marginalized individuals, with limited access to due process and legal representation. While *adat* institutions play a vital role in conflict resolution and social harmony, their criminal jurisdiction must be strictly regulated to prevent human rights violations. In terms of legal unification, integrating diverse local norms into a single national criminal code presents inherent tensions between unity and diversity. Without coherent doctrinal limits and institutional safeguards, the coexistence of formal and informal systems may fragment rather than harmonize Indonesia's criminal justice system.

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