



Living Law in Indonesia's 2023 Criminal Code: Navigating between Formal Recognition and the Need for Implementing Regulations

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ABSTRACT: The recognition of *living law* as one of the sources of national law has gained strong legitimacy through Law Number 1 of 2023 concerning the new Indonesian Criminal Code (KUHP). Under this provision, customary law is acknowledged as a valid basis for criminalization, provided that it aligns with the principles of national law and human rights. However, this recognition still faces serious challenges, primarily due to the absence of detailed and harmonized implementing regulations. The lack of such regulatory instruments risks creating legal uncertainty, inconsistent application across regions, and tensions between state law and customary law. This study aims to analyze the needs and challenges of harmonizing customary law with the national legal system to support the effective implementation of *living law* following the enactment of the 2023 KUHP. The research adopts a normative legal method, utilizing statutory and conceptual approaches, along with an analysis of the provisions related to *living law* in the KUHP. The findings indicate that without adequate harmonization, the recognition of *living law* risks remaining a normative concept that is difficult to implement effectively. Therefore, it is necessary to formulate implementing regulations that clearly define boundaries, establish mechanisms for verifying the existence of customary law, and integrate local values into the national legal framework to ensure the effective operation of *living law* within Indonesia's rule of law system.

Keywords: Living Law; Indonesian Criminal Code (KUHP); Customary Law; Legal Harmonization; Implementing Regulations.



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INTRODUCTION

The formal recognition of *living law* as a component of Indonesia's national legal system marks a pivotal moment with the enactment of Law No. 1 of 2023 on the Criminal Code

(KUHP). Among the fundamental innovations introduced by the new Criminal Code is the explicit acknowledgment of customary law (*hukum adat*) as a valid basis for criminal responsibility, provided it does not conflict with the principles of national law and human rights (Parindo et al., 2024). This development invites closer scholarly scrutiny, especially considering the historically fraught relationship between state law and customary law, both conceptually and in practice.

The choice of this topic is underpinned by the scientific rationale that reforming Indonesia's criminal law system is not merely a matter of updating normative content, but also a broader effort to reaffirm the nation's commitment to legal pluralism. The integration of *living law* into the 2023 Criminal Code exemplifies the notion of a responsive legal system one capable of accommodating Indonesia's rich socio-cultural diversity (Hamida, 2022). However, such recognition inevitably raises new questions regarding how *living law* can be uniformly implemented while maintaining adherence to the principles of a modern rule-of-law state.

At the theoretical level, this issue highlights the enduring tension between *das Sein* (the empirical reality of customary law's existence within communities) and *das Sollen* (the normative imperative of law as prescribed by the rule of law). Although numerous customary legal norms continue to thrive in local communities, their formal incorporation into the positive legal system demands clear mechanisms for verification, limitation of scope, and consistency with both national and international legal standards.

Complicating this dynamic further is the current absence of implementing regulations that could offer technical guidance for the operationalization of *living law*. Without such regulatory instruments, there is a palpable risk of legal uncertainty and regional disparities in application. For example, diverging interpretations persist regarding the criteria for customary norms to serve as the basis for criminal charges, as well as the mechanisms for their evidentiary validation in court proceedings (Rozah & Yudistira, 2025). On the one hand, the recognition of customary law upholds the principle of respect for local values; on the other, without mechanisms for harmonization, the core tenets of legal certainty and equality before the law risk being undermined.

A growing body of literature has addressed the critical need for systematic recognition of customary law within a constitutional framework Valerina & Rismana (2024), for instance, argue that without firm and detailed implementing regulations, the recognition of *living law* risks degenerating into "empty recognition"—symbolically significant but practically ineffective across Indonesia's diverse regions. Similarly, MULAHELA (2024), highlight the

government's historical approach to customary law as fragmented and sporadic, lacking a coherent and sustainable regulatory framework. These findings collectively underscore the urgent need for a more structured and integrative approach to the operationalization of *living law*.

Theoretically, this study draws upon the framework of legal pluralism, as articulated by Satjipto Rahardjo and later contextualized by Aulia (2018), legal pluralism posits that multiple normative systems coexist within a society and that state law represents only one among many valid forms of law. In the context of the 2023 Criminal Code, this theoretical orientation provides critical insights into why *living law* should be formally recognized within the national legal order, while simultaneously balancing the imperatives of harmony, justice, and legal certainty.

The principal issue identified in this study is the absence of implementing regulations governing the operationalization of *living law* in Indonesia's criminal justice system. This focus arises from the central argument that the successful recognition of *living law* hinges not solely upon normative proclamations within the Criminal Code but also upon the establishment of derivative legal mechanisms to ensure effective, coherent, and consistent application. Moreover, this theme relates to broader concerns regarding how modern constitutional states accommodate legal pluralism while upholding human rights and the rule of law.

Empirical evidence further underscores these concerns. Data from Difa Ayu Oktarina (2023) reveal that, as of early 2024, no government regulation or ministerial decree has been issued specifically to regulate the verification of customary norms for criminal prosecution purposes. This regulatory vacuum generates apprehension that local law enforcement agencies may face significant challenges in determining the legitimacy of customary norms as a basis for legal action.

In addition, findings from the Public Relations Office of FHUI (2022) demonstrate considerable disparities in the understanding of *living law* among law enforcement personnel. In some regions, customary law is perceived as relevant only to civil matters or traditional practices, but not to criminal law. These inconsistencies further highlight the critical need for uniform and operational implementing regulations to guide the application of *living law*.

Against this backdrop, the present article seeks to make both academic and practical contributions by systematically analyzing the urgency of drafting implementing regulations for *living law* within the framework of the 2023 Criminal Code. By integrating a theoretical approach rooted in legal pluralism with a normative analysis of the relevant statutory

provisions, this article aims to offer concrete recommendations for designing effective legal instruments to support the operationalization of *living law* within Indonesia's constitutional and rule-of-law framework.

Literature Review

The recognition of *living law* within the Indonesian legal system has evolved significantly in recent years. The term *living law* refers to those legal practices that are deeply embedded in the social fabric, often represented by customary law, traditions, and unwritten norms accepted by specific communities. In the case of Indonesia, the formal recognition of *living law* has gained considerable attention, especially following its integration into the 2023 Criminal Code (KUHP). However, while the formal acknowledgment of *living law* has been set in motion, the actual implementation remains a matter of substantial concern. This is primarily due to the lack of comprehensive and coherent implementing regulations that would facilitate its practical application.

Flambonita (2021) underscore the significance of legal pluralism within Indonesia's legal system, asserting that it creates an environment where *living law*, such as customary law, can be recognized. However, their analysis does not go far enough to critique the systemic challenges that arise when attempting to balance plural legal systems within a centralized national legal framework. Nurjaya adds depth to this discussion by framing *living law* as a reflection of the social and cultural dynamics of local communities. Yet, Flambonita's work falls short of addressing the crux of the issue: the absence of precise, enforceable regulations for the integration of customary law within the state legal system. This gap leaves a space for legal ambiguity that is difficult to overcome in practice, a point that Valerina & Rismiana (2024) emphasize. They argue that without clear guidelines or mechanisms to assess the validity of customary law within the framework of state law, the application of *living law* is subject to inconsistent interpretation by law enforcement officials, leading to a situation where legal uncertainty prevails.

Rozah & Yudistira (2025) shift the conversation to a more pressing issue the conflict between customary law and human rights principles. They argue that although *living law* enjoys a strong foothold in many indigenous communities, its application is fraught with challenges when it contradicts universal human rights standards. This tension suggests a need for more robust and systemic frameworks to ensure that *living law* aligns with fundamental human rights, particularly when it comes into conflict with state-imposed norms. While their insights are essential for understanding the ethical and human rights implications of *living law*,

they fail to address the systemic need for implementing regulations that could harmonize customary law with the broader national legal system in a practical and functional manner.

The work by Febrianty (2023) provides an empirical study of *living law* in regions with a strong tradition of customary law, such as Papua and Bali. Their research uncovers the practical difficulties in implementing *living law*, particularly the discrepancies in its interpretation between indigenous communities and state law enforcement authorities. However, their research does not fully grapple with the institutional barriers that exist when attempting to integrate customary law into the formal legal system. They advocate for the creation of specialized institutions to verify the legitimacy of customary law, but their study lacks a detailed examination of the procedural frameworks required to operationalize this suggestion. As such, the paper leaves critical gaps in the discussion regarding how such verification mechanisms would operate and the role of state institutions in ensuring uniformity across regions.

In sum, while existing literature emphasizes the formal recognition of *living law* within Indonesia's legal system, it overlooks a critical aspect: the absence of implementing regulations. Without such regulations, the recognition of *living law* remains largely symbolic and cannot be effectively applied in practice. This research gap is particularly concerning because it raises significant questions about the future viability of *living law* within the modern legal framework. The current situation suggests that the formal recognition of *living law* in the 2023 Criminal Code could devolve into a "paper tiger" unless concrete, enforceable mechanisms are developed to operationalize it. This article seeks to address these deficiencies by proposing a more systematic and practical model for implementing regulations that will bridge the gap between legal recognition and effective application. By addressing these gaps, the article hopes to provide a comprehensive framework for integrating *living law* into Indonesia's national legal system in a way that ensures both legal certainty and the protection of local traditions within the context of modern legal standards.

METHODOLOGY

This study adopts a normative legal research methodology, focusing on the analysis and interpretation of legal norms, regulations, and their practical implementation (Khoirunnisa & Jubaidi, 2023). Normative legal research is well-suited for this study because it aims to explore the theoretical foundations and practical implications of recognizing *living law* in the 2023 Criminal Code (KUHP). The primary focus of this research is to examine the existing legal

framework and analyze the gap between legal norms and the application of *living law* in the Indonesian legal system.

Normative legal research employs two main approaches: the statutory approach and the conceptual approach. The statutory approach will be used to examine the legal provisions in the 2023 Criminal Code, particularly those related to *living law* and the recognition of customary law as a basis for criminal punishment, provided it aligns with national legal principles and human rights. This approach involves an in-depth study of the relevant legal texts to understand how the concept of *living law* is regulated and how it is integrated into the broader legal system.

In addition to the statutory approach, this research also adopts a conceptual approach to explore the theoretical framework underlying the recognition of *living law* in the national legal system (Jubaidi & Sirait, 2024). This approach will reference legal pluralism theory, responsive law theory, and legal integration theory as conceptual lenses to analyze the intersection between state law and customary law. The conceptual approach will help to clarify the challenges and opportunities arising from the recognition of *living law* and provide insights on how these theories can inform the development of operational regulations and harmonization mechanisms.

To gather relevant data, this research will utilize legal documents such as statutes, regulations, and academic literature related to the 2023 Criminal Code and the application of *living law*. In addition to legal documents, the study will also review court decisions, scholarly articles, and reports from legal institutions and advocacy groups discussing the implementation and challenges of *living law* in Indonesia. This multi-source approach will ensure a comprehensive understanding of the legal and practical implications of recognizing *living law* in the Indonesian legal system.

The data collected through this methodology will be analyzed using a qualitative interpretative approach, where the study will assess the consistency and coherence of *living law* with fundamental national legal principles, such as legal certainty, justice, and human rights. This qualitative analysis will also highlight legal gaps that need to be addressed through regulatory implementation and provide recommendations for ensuring the effective application of *living law*.

In conclusion, this research adopts a normative legal approach, focusing on the statutory and conceptual approaches, supplemented with comparative analysis and qualitative interpretative methods, to critically examine the legal framework governing *living law* and its application in the 2023 Criminal Code.

RESULTS AND DISCUSSION

The discussion on *living law* within the context of the 2023 Criminal Code (KUHP) is highly relevant, given the significant changes occurring in Indonesia's criminal justice system. Law No. 1 of 2023 concerning the Criminal Code introduces an important innovation by recognizing customary law as one of the bases for criminal punishment, as long as it does not contradict national legal principles and human rights. The concept of *living law*, which refers to the acceptance and recognition of the law that exists in society, becomes a key foundation in the transformation of criminal law in Indonesia, reflecting the legal pluralism that characterizes this country (Rozah & Yudistira, 2025).

The urgency of this discussion lies in the fact that, despite the formal recognition of customary law in the 2023 Criminal Code, significant challenges remain in its implementation (Ramadhani, 2024). Customary law, which lives and evolves in Indonesian society, varies widely, and its regulation within the positive legal system requires a clear mechanism to ensure that its application is consistent, just, and in line with national legal principles. In this regard, it is crucial to understand how the application of *living law* will be confronted with the dynamics of both national and international law, and how the clarity of implementing regulations can address legal uncertainty.

The main issue addressed in this discussion is the absence of implementing regulations that could provide technical guidelines for the recognition and application of customary law within Indonesia's criminal justice system. Without clear regulations, the potential for legal uncertainty becomes significant. This is due to the lack of an adequate mechanism to verify legitimate customary laws and define the limits of their application in criminal contexts. As a result, the application of *living law* could become inconsistent across regions, leading to disparities in law enforcement and even exacerbating tensions between state law and customary law (Kusworo & Fauzi, 2024).

This legal uncertainty not only threatens justice and human rights but also undermines the principle of equality before the law. One example of a potential issue is how law enforcement officers determine whether a customary norm is appropriate as a basis for criminal punishment, given that each region has variations in the understanding and application of customary law. If these differences are not well-regulated, they could lead to injustice, where individuals involved in the legal system may be treated unequally due to differing perspectives on the legitimacy of the customary norms being applied.

Overall, this discussion aims to critically analyze how the absence of implementing regulations affects the effectiveness of the recognition of *living law* in the 2023 Criminal Code. This research is essential to understand how the design and existence of implementing regulations can reduce the potential for legal uncertainty and ensure that the application of *living law* is fair and consistent across Indonesia. Therefore, this discussion will explore the urgency of developing implementing regulations that can bridge the gap between state law and customary law, as well as provide practical recommendations to improve the effectiveness of *living law* implementation in Indonesia.

1. Formal Recognition of Living Law in the 2023 Criminal Code

The recognition of *living law* in the 2023 Criminal Code represents an important step in the reform of Indonesia's criminal justice system, reflecting the acknowledgment of customary law as a valid source of law in Indonesia. In the new Criminal Code, customary law is recognized as a basis for criminal punishment, provided it does not contradict national legal principles and human rights. This provision allows customary law to play a role in criminal punishment in Indonesia, although with certain limitations requiring alignment with broader legal norms.

1.1 Analysis of the 2023 Criminal Code Text Regarding the Recognition of Customary Law as a Basis for Criminal Punishment

The provision in the 2023 Criminal Code (KUHP) that regulates the recognition of customary law as a basis for criminal punishment marks an important step in accommodating legal pluralism within Indonesia's legal system. Article 2, Paragraph (2) of the 2023 KUHP states that customary law may be applied in the context of criminal punishment, provided that the norms of customary law do not contradict the applicable national legal principles, including justice, legal certainty, and respect for human rights. This provision reflects a paradigm shift in Indonesia's legal system, which no longer views state law as the sole legitimate source of law but instead provides space for the existence and application of customary law that evolves within society.

The recognition of customary law in the 2023 KUHP demonstrates a legislative effort to balance the modernity of state law with the social realities that live within indigenous communities (Handayani & Prabowo, 2024). Customary law plays a crucial role in regulating social relations, providing dispute resolution mechanisms, and preserving local cultural values that are inherent in Indonesia's pluralistic society. In this context, customary law is not only

seen as part of cultural identity but also as a relevant legal instrument that can be integrated into the national legal system.

However, the recognition of customary law as a basis for criminal punishment in the 2023 KUHP presents its own challenges. One of the primary challenges is ensuring the compatibility between the diverse norms of customary law and the principles of national law (Kurdi & Mazjah, 2024). Indonesia, with its many ethnic groups, cultures, and different customary systems, must find common ground between the laws in indigenous communities and the nationally accepted legal values. Article 2, Paragraph (2) of the 2023 KUHP stipulates that the application of customary law must meet certain criteria, such as being consistent with human rights and not violating the principles of justice and legal certainty. This presents a significant challenge in terms of how courts and law enforcement interpret and implement customary law, which varies from one region to another (Handayani & Prabowo, 2024).

Furthermore, the recognition of customary law as a basis for criminal punishment creates the potential for tension between formal, structured state law and the more flexible, often unwritten nature of customary law. State law in Indonesia prioritizes a codified legal system that is accessible to all, while customary law often operates within a more limited scope, based on consensus and local practices. Therefore, there is a need to develop legal mechanisms that can facilitate the application of customary law in a fair manner and in alignment with the core principles of national law. This will help avoid legal uncertainty and ensure that decisions made by courts or law enforcement are both just and consistent with universally recognized human values (Junaidi & Susanto, 2025).

In order for the recognition of customary law in criminal punishment to be effective, clear and detailed implementing regulations are necessary. These regulations should provide clear guidelines on how customary law can be applied in criminal cases without causing legal uncertainty. In this regard, it is crucial to verify the customary norms in practice to ensure they meet the criteria outlined in the 2023 KUHP and establish mechanisms that guarantee the application of customary law does not contradict human rights principles or lead to injustice. Thus, the application of customary law as a basis for criminal punishment in the 2023 KUHP must be seen as part of a broader effort to create a more inclusive and responsive legal system that recognizes Indonesia's social and cultural diversity.

The importance of recognizing customary law in the context of criminal punishment is a step forward in building a legal state that is not only based on formal state law but also values and integrates local wisdom that has long been a part of the lives of Indonesian society. The

acceptance of customary law in the 2023 KUHP indicates that Indonesia is increasingly aware of the need to accommodate legal pluralism within the national legal framework, which in turn is expected to strengthen social cohesion and justice at the local level, as well as enhance the sense of ownership and fairness within the broader society.

1.2 Principles of National Law and Human Rights as Conditions for the Recognition of Living Law

The recognition of living law in the 2023 Criminal Code (KUHP) is not absolute and is applied with caution to ensure that it does not conflict with national legal principles and human rights (Ramadhani, 2024). As outlined in Article 2, Paragraph (2) of the 2023 KUHP, the application of customary law as a basis for criminal punishment can only be carried out if it meets the criteria that align with universal principles within Indonesia's legal system, including respect for human rights. This reflects a careful approach in integrating customary law into the broader national legal system, which not only emphasizes cultural diversity but also guarantees the protection of the fundamental rights of every individual.

National legal principles, such as justice, legal certainty, and non-contradiction with human rights, must be the guiding framework for the application of customary law within Indonesia's criminal justice system. One example of applying this principle is the importance of ensuring that customary law does not violate individual rights, such as the right to equality before the law, the right to be free from discrimination, and the right to fair treatment. Therefore, while customary law plays a vital role in society, the application of customary law that involves discrimination, for example, that harms specific groups based on gender, religion, or race, must be avoided. In this context, customary law that contains elements of gender discrimination or that has the potential to violate basic individual rights cannot be accepted in Indonesia's legal system, as it contradicts human rights principles guaranteed by the 1945 Constitution and international treaties ratified by Indonesia (Putra, 2016).

Human rights principles serve as the fundamental basis for ensuring that the application of living law is not only formally recognized but also implemented fairly and in accordance with international standards. Indonesia, as a country that has ratified several international instruments regulating human rights protection, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), must ensure that customary law recognized and applied in the criminal justice system does not conflict with these provisions. In other words, even though customary law is recognized in the context of criminal punishment, its application must meet specific conditions that do not

conflict with the human rights principles acknowledged by Indonesia both domestically and internationally.

For example, when applying customary law related to criminal sanctions, it must be ensured that no punishment violates fundamental human rights principles, such as the prohibition of torture, inhuman or degrading punishment, or discrimination against certain groups. Additionally, courts or law enforcement officers who apply customary law need to consider the principle of equality before the law, where every individual, regardless of social or cultural status, has the right to fair and non-discriminatory treatment. In this regard, the application of living law must undergo careful verification and evaluation to ensure that the customary law being applied remains consistent with universally accepted human rights standards (Sulastriyono & Intaning Pradhani, 2018).

Thus, human rights principles are an inseparable condition for the application of living law in Indonesia's criminal justice system. The application of customary law must always be grounded in the basic principles of human rights, and therefore, any customary rules or norms that contradict these principles must be amended or adjusted to remain acceptable within the national legal framework. In this process, the role of the courts and law enforcement agencies becomes crucial to ensuring that the integration of customary law into Indonesia's criminal justice system continues to prioritize the fundamental rights of every individual and does not violate the universal principles of justice that form the foundation of Indonesia's rule of law.

2. Challenges in Implementing Living Law Without Implementing Regulations

The recognition of living law in the 2023 Criminal Code (KUHP) presents an opportunity for customary law to be applied in criminal sentencing in Indonesia. However, a major challenge in its implementation lies in the absence of clear implementing regulations. Without more detailed regulations, the application of living law can lead to legal uncertainty, which may undermine the effectiveness and consistency of the criminal justice system across Indonesia.

2.1 Discourse on the Differences in the Interpretation of Customary Law within the Context of Indonesia's Positive Legal System

One of the significant challenges in implementing living law in Indonesia is the variation in interpretations of customary law within the positive legal system. Customary law, which develops locally and is passed down through generations, often lacks clear documentation or codification (Harniwati, 2024). Most customary law norms are accepted and applied based on the customs and traditions of local communities, without written guidelines that can serve as a

shared reference. This condition becomes a source of legal uncertainty, as customary law tends to be dynamic and adapts to local social and cultural developments, which results in varying interpretations across regions.

The absence of clear codification or documentation of customary law exacerbates the situation because the customary law applied in one region may differ from that in another (Darman, 2021). This causes the application of customary law in practice to often rely on the subjective judgment of those involved in the judicial process, such as judges, prosecutors, and other law enforcement officers. For instance, a judge in one region may have a different understanding of the applicable customary norms compared to a judge in another region. This creates uncertainty in the judicial process, especially when the customary law being applied is not clearly documented or when there is a difference in understanding regarding the values embodied in the customary legal norms.

Furthermore, the main issue arises when the applied customary law contradicts fundamental principles of the national legal system, such as human rights, equality before the law, and justice (Djaga Mesa & Putra Frans, 2024). For example, in some regions, customary law may include norms that carry discriminatory elements against women or minority groups, such as in matters of inheritance or the position of women in society. In some cases, these discriminatory customary norms are accepted and applied in the judicial process without sufficient consideration for the basic individual rights protected by the constitution and applicable laws. For instance, the application of customary law that does not grant equal rights to women in inheritance or marriage cases can pose a significant legal issue, as it contradicts the principle of equality enshrined in the 1945 Constitution and various other regulations that recognize the rights of women and vulnerable groups.

Without clear guidelines, such discriminatory customary laws may be accepted as a basis for criminal punishment by local law enforcement, disregarding the basic rights of individuals guaranteed by national law. This poses a significant risk of creating social injustice, which ultimately undermines public trust in the judicial and legal systems as a whole. In this case, customary law, which should serve as an instrument to strengthen justice, may instead become a tool that generates injustice and harms certain groups.

The differences in the interpretation of customary law across various regions further exacerbate the legal uncertainty that exists. In a pluralistic legal system like Indonesia, where various customary legal systems are recognized, inconsistencies in the application of customary law can lead to injustice for those involved in legal proceedings. Without clear

regulations on how customary law should be applied and a consistent verification mechanism, the application of living law could create disparities in judicial decisions across Indonesia. This will create greater legal uncertainty, as people will feel that justice and equality are not being applied evenly.

To address this issue, regulations are needed to bridge this uncertainty and ensure that accepted customary law does not conflict with the basic principles of national law, including human rights. Such regulations would provide clear guidelines on how customary law should be accepted and applied within the national legal context, while still respecting the cultural diversity and traditions of indigenous communities, but within limits that do not violate basic human rights. Additionally, a systematic and transparent verification process for customary law is crucial to ensure that the norms accepted by the community are legally recognized within the framework of Indonesia's positive legal system and do not deviate from the principles of justice and equality that underpin Indonesia's rule of law (Rusdi Antara et al., 2021).

3. The Urgency of Drafting Implementing Regulations for Living Law

Drafting implementing regulations for living law is crucial to ensure that customary law recognized within Indonesia's legal system is not only symbolically acknowledged but also applied effectively and justly. Without clear implementing regulations, the recognition of customary law within the 2023 Penal Code could become a mere formality, lacking clear guidelines. By establishing such regulations, customary law norms can be more systematically integrated into the national legal system, ensuring that cultural values do not contradict fundamental state law principles.

3.1 Implementing Regulations as a Pillar of Effectiveness and Legal Certainty in the Application of Living Law

Implementing regulations play a vital role in ensuring that living law recognized within Indonesia's legal system is applied effectively and consistently in practice (Helandri et al., 2024). Without clear and comprehensive regulations, the recognition of customary law in the 2023 Penal Code risks becoming a mere formality that does not have a significant impact on criminal justice practices. This could lead to legal uncertainty that harms all parties involved in the justice system, including law enforcement officers, defendants, and the public. The absence of such regulations results in the lack of clear guidance on how customary law should be accepted or applied in various criminal cases, which ultimately creates room for inconsistency in its implementation.

For example, the customary law accepted in one region may not have the same recognition in another. Each region in Indonesia has its own locally developed customary legal norms, which are often not systematically documented. This causes differences in the interpretation of customary law norms across regions, which in turn leads to uncertainty in law enforcement. This uncertainty not only harms defendants and victims but also reduces public trust in the legal system as a whole (Valerina & Rismana, 2024). A low level of trust in the legal system can undermine the legitimacy of the state in carrying out its judicial functions.

Furthermore, without clear implementing regulations, the application of living law will heavily depend on the individual decisions of law enforcement officers in various regions (Khoirunnisa & Jubaidi, 2023). This opens the door to disparities in the application of customary law, which may lead to inequality before the law. For instance, a customary law practice that includes discriminatory elements against women or minority groups might be accepted in one region, while another region might pay more attention to principles of equality and human rights. Therefore, it is important for the state to provide legal instruments that offer clear operational guidelines for law enforcement officers in using customary law as a basis for criminal punishment.

Clear and detailed implementing regulations will not only ensure consistency in applying customary law across regions but will also provide greater justice to the public. With clear guidelines, law enforcement officers will be better prepared to apply customary law in a fair manner that aligns with the fundamental principles of the state legal system, such as justice, equality, and respect for human rights. This, in turn, will enhance the effectiveness of implementing living law and strengthen the integrity of Indonesia's judicial system.

Overall, implementing regulations are not just technical guidelines but also tools to ensure that living law functions well within a broader legal context, providing more equitable justice for all layers of Indonesian society. Without clear regulations, the application of living law risks becoming directionless and failing to bring maximum benefits to Indonesia's legal system.

To achieve the effectiveness of these regulations, a comprehensive drafting strategy is required. This strategy aims not only to regulate the technical application of living law but also to ensure that the values of customary law integrated into the system remain consistent with the principles of justice and human rights.

3.2 Strategy for Drafting Implementing Regulations: Verification of Customary Law, Implementation Mechanism, and Establishing Normative Limits

An effective design for implementing regulations to support the application of living law within Indonesia's criminal justice system must be drafted comprehensively, covering several fundamental interrelated elements. These three elements are the mechanism for verifying customary law, the regulation of the implementation mechanism, and the establishment of clear normative limits (Jubaidi & Sirait, 2024).

First, the verification mechanism for customary law serves as the initial foundation to determine the validity of customary norms before they can be applied in criminal legal processes. Given the nature of customary law, which is not always documented and heavily relies on social practices within local communities, a structured verification procedure is required. This process may involve collaboration with customary law institutions, experts in customary law, academics, and local community leaders who possess authority and deep understanding of the norms within their communities. The verification process aims to ensure that the recognized customary law genuinely reflects the prevailing social values, is consistent with contemporary developments, and does not contain discriminatory norms or conflict with the principles of the rule of law. Additionally, the verification process needs to be transparent, accountable, and conducted according to agreed-upon standards to prevent manipulation or politicization of customary law.

Second, the mechanism for implementing customary law in judicial processes should be regulated in detail in the implementing regulations. This includes operational guidelines on the types of criminal cases that are relevant for the application of customary law, procedural stages to be followed, and objective criteria for judges to consider when applying customary norms. The mechanism should also outline the roles of various parties, such as the duties of prosecutors and legal advisors to identify and verify the applicability of customary law, as well as mechanisms for objections or appeals if deviations are suspected. With standardized mechanisms, the application of customary law will be more consistent, reducing the potential for arbitrariness and enhancing the protection of individual rights during the legal process.

Third, establishing normative limits is a key element to ensure that the application of customary law remains aligned with the fundamental principles of national law and human rights. These limits are necessary to anticipate potential deviations, such as customary practices that discriminate against women, children, or minority groups. The implementing regulations must explicitly state that customary norms that contradict principles of equality, non-

discrimination, protection of human rights, and due process of law cannot be used as a basis for criminal punishment. These normative limits also serve to clarify the scope of the application of living law within the national legal system, preventing legal fragmentation and ensuring that all citizens continue to receive equal legal protection across Indonesia.

Overall, a strategy for drafting implementing regulations that includes the verification of customary law, a structured implementation mechanism, and clear normative limits is an essential prerequisite for building an inclusive, fair, and responsive criminal justice system that respects Indonesia's cultural diversity while safeguarding universal human rights and the rule of law.

However, a drafting strategy alone is insufficient. A strong legal instrument is also required to guarantee certainty and legal equality in practice. Without adequate legal instruments, the application of living law risks causing disparities and uncertainty within the national judicial system.

3.3 Developing Legal Instruments to Ensure Certainty and Equality in the Application of Living Law

The recognition of living law under Indonesia's 2023 Criminal Code (KUHP) necessitates the establishment of detailed and operational legal instruments as an urgent and indispensable measure (Ramadhani, 2024). These instruments are not mere complements; rather, they constitute a fundamental pillar for ensuring legal certainty and equality before the law in the application of customary legal norms.

First, legal certainty is a fundamental principle in a constitutional state (*rechtsstaat*), requiring that every legal norm be comprehensible, accessible, and reliable for the public (Helandri et al., 2024). In the absence of clear implementing regulations, the recognition of customary law under the 2023 KUHP risks becoming mere symbolic recognition—providing normative acknowledgment without substantive legal effect. In such a scenario, society, law enforcement authorities, and judicial bodies would encounter considerable ambiguity regarding how customary law should be identified, verified, and applied in legal proceedings. Accordingly, legal instruments must define precise criteria for the recognition of customary law, establish standardized procedures for its application, and set clear boundaries to ensure that its implementation remains consistent with the principles of a modern legal system.

Second, equality before the law is a critical concern that must be addressed in the formulation of these legal instruments (Ihsan Amri & Dwi Anggono, 2024). Without uniform standards for application, the use of customary law may exacerbate disparities between regions

and among individuals. A defendant in one region may be subjected to substantially different customary norms compared to a defendant in another region facing a similar charge. Such inconsistencies would not only generate injustice but also undermine public trust in the national legal system. Therefore, the legal framework must guarantee that the application of living law does not serve as a justification for discriminatory, exclusionary, or unjust legal practices, but rather adheres to the principles of equality, non-discrimination, and substantive justice.

Moreover, the design of legal instruments must embrace the principles of integration and harmonization between customary law and national law. This includes the development of clear implementation guidelines, the establishment of institutions responsible for verifying customary norms, and the creation of mechanisms for monitoring and evaluating the application of customary law in criminal proceedings. The legal framework should also accommodate limited adaptability to the dynamic nature of customary law, without compromising constitutional principles and the protection of fundamental human rights.

In conclusion, the establishment of comprehensive, detailed, and principled legal instruments is essential not only to ensure the effective implementation of living law but also to contribute to the formation of a more just, democratic, and culturally respectful legal system in Indonesia.

4. Projected Long-Term Impact Analysis of Living Law Implementation on Indonesia's Legal Development

The implementation of living law within Indonesia's criminal justice system is projected to generate significant long-term impacts on the development and advancement of the country's legal framework (Setya & Hartanto, 2024). Living law, which involves the acceptance and recognition of customary law within the structure of positive law, holds considerable potential to enrich and strengthen Indonesia's legal system, particularly in terms of promoting social justice and embracing cultural diversity. However, the integration of this concept must be managed carefully to ensure that its effects are positive and do not create tensions between customary law and state law.

4.1 Short-Term Impact: Strengthening Public Trust and Legal Pluralism

In the short term, the recognition of living law is predicted to enhance public trust in Indonesia's legal system. Indigenous communities, who have historically felt marginalized by the formal legal framework, will experience greater appreciation and acknowledgment within the national legal order (Myaskur & Wahyudiono, 2024). This development may foster improved relations between indigenous communities and the state, creating an atmosphere of

mutual understanding and reinforcing a sense of social justice. Recognition of customary law signals that Indonesia's legal system is not solely based on a singular national norm but also accommodates the rich diversity of traditions and cultures across the archipelago.

Furthermore, the application of customary law based on the living law concept can strengthen legal pluralism in Indonesia an important principle reflecting the coexistence of multiple legal systems within society. By acknowledging customary law, the state demonstrates its commitment to respecting and protecting the rights of indigenous communities, whose legal traditions may have been previously overlooked within the formal legal system. In this regard, the implementation of living law contributes to fostering cultural diversity and enriching Indonesia's legal system with more contextualized and locally relevant perspectives.

4.2 Long-Term Impact: Challenges in Managing Tensions and Legal Uncertainty

Nevertheless, over the long term, the recognition of living law must be carefully managed to prevent tensions between customary law and state law. One of the principal challenges lies in ensuring that the application of customary law does not conflict with the fundamental principles of a constitutional state, such as human rights and equality before the law (Ramadhani et al., 2025). Poorly regulated application of customary law poses risks of perpetuating injustices, particularly if clear guidelines are not established to govern its practical implementation.

For instance, if the customary law applied contains elements of discrimination against women or marginalized groups, it could lead to social injustices and contradict the core values enshrined in Indonesia's constitutional framework. Therefore, it is crucial to develop implementing regulations that clearly define the parameters for the application of customary law. Such regulations are vital to maintaining harmony between customary norms, national law, and the constitutional protection of fundamental human rights.

4.3 Strengthening Indonesia's Legal System through the Integration of Living Law

With the establishment of clear and appropriate implementing regulations, the application of living law has the potential to significantly strengthen Indonesia's legal system (Irawan & Pura, 2023). The integration of customary law within the positive law framework can render the legal system more inclusive, equitable, and responsive to the country's rich cultural diversity. This integration allows customary law to function as an instrument that brings the law closer to the people, enhances its relevance, and improves the effectiveness of law enforcement, particularly at the local level.

Another long-term impact is the enhancement of public trust in Indonesia's legal system. If the application of customary law is conducted with transparency, fairness, and respect for human rights, it will cultivate greater confidence among citizens in a legal system perceived as understanding and accommodating their diverse needs. This trust is crucial for promoting more equitable social justice across the nation and supporting the creation of a peaceful and harmonious society.

CONCLUSION

The introduction of living law into Indonesia's legal system, particularly following the enactment of the 2023 Criminal Code (KUHP 2023), presents a significant opportunity for the integration of customary law within the national legal framework. As a component of legal pluralism, the recognition of customary law introduces a new dimension to the application of criminal law, which has traditionally been dominated by state law. The KUHP 2023 affirms the acknowledgment of customary law as a legitimate basis for criminal prosecution, provided it does not conflict with national legal principles or fundamental human rights. Nevertheless, substantial challenges remain in the implementation of this recognition, primarily due to the absence of implementing regulations that systematically and consistently govern the application of customary law. Without clear guidelines, the application of living law risks creating legal uncertainty, inconsistent interpretations, and disparities across different regions, which could ultimately undermine the successful integration of living law into Indonesia's legal system.

The lack of detailed and precise implementing regulations stands as a major obstacle to optimizing the recognition of customary law within the criminal justice system. In the absence of mechanisms governing verification processes, the scope of application, and procedural standards, the recognition of customary law may become inconsistent and potentially conflict with the principles of justice that underpin Indonesia's constitutional framework. Divergent interpretations between law enforcement authorities and indigenous communities regarding the applicability of customary law further exacerbate legal uncertainty. In several regions, for instance, customary law is acknowledged only within civil and traditional contexts, rather than within criminal law. This highlights the urgent need for regulations that not only accommodate the diversity of customary laws but also ensure their consistent and principled application in line with the rule of law.

The recognition of living law in the KUHP 2023 should be regarded as a critical step toward strengthening Indonesia's commitment to legal pluralism. However, to ensure its

success, it is imperative to design legal instruments that can harmonize customary law with state law. Therefore, the establishment of clear and detailed implementing regulations is essential. Such regulations would provide much-needed guidance for law enforcement authorities, reduce legal uncertainty, and ensure the equitable application of law across the nation. Moreover, by offering a transparent framework for the application of customary law, indigenous communities would feel respected and assured that their traditions are acknowledged and fairly administered.

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