



Enforcement of Applicable Laws in Society in The Context of National Criminal Law in Indonesia

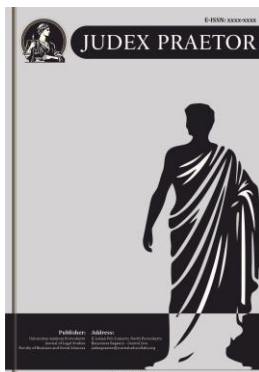
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ABSTRACT



Executive intervention in criminal justice arises as a result of a constitutional design that places the President in a strategic position in the chain of law enforcement, including through prerogative powers such as amnesty, abolition, clemency, and rehabilitation, as well as administrative control over the police and prosecutor's office. This study examines the intervention of executive power in the criminal justice process in Indonesia and its impact on the independence and integrity of judicial institutions. The analysis shows that this authority opens up legal and political space for the executive to influence the process of investigation, prosecution, and correction of court decisions. The cases of Hasto Kristiyanto, Tom Lembong, and Ira Puspawati show how intervention can cause controversy, create inequality in legal treatment, and create precedents that threaten the principle of the rule of law. The impact not only undermines the due process of law, but also lowers public trust, weakens the morality of the judiciary, and strengthens the perception that the law is in favor of power. These findings encourage the need for stricter, more transparent, and accountable normative restrictions on the use of prerogative authority, as well as the strengthening of oversight mechanisms and the integrity of law enforcement agencies so that the judiciary remains a bastion of justice that is free from political influence.

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INTRODUCTION

A major and fundamental change occurred from the colonial Criminal Code to the national Criminal Code because the spirit of the Colonial Criminal Code has been replaced with the spiritual values of the Indonesian Nation in the National Criminal Code. The update contains the mission of "decolonization" of the Criminal Code in the form of "codification", "democratization of criminal law", "consolidation of criminal law", as well as adaptation and harmonization of various legal developments that occur. The enforcement of national criminal law is a state instrument to maintain public order, protect the community, and ensure that actions that are detrimental to legal interests can be subject to appropriate sanctions.¹

Customary Criminal Law is comprehensive and unites provisions that are open to discriminating against judicial problems with requests for reaction or correction actions.² The presence of criminal law in the community reflects the state's efforts to organize social relations, prevent crime, and provide justice for victims, perpetrators, and the wider community. Indonesia's criminal law system is built on national legal frameworks such as the Criminal Code, sectoral laws, and judicial regulations, but practice on the ground shows strong interaction with customary norms and local values

The law is formed by paying attention to the values that live in society.³ The existence of customary law in Indonesian society shows that the conflict resolution mechanism does not only rely on the formal law of the state. Various indigenous communities still maintain case settlement procedures, including cases that intersect with criminal norms, through customary institutions or communal deliberations. The enactment of customary settlements is often considered more effective in reducing social conflicts because it is in accordance with the social structure and local cultural values. This phenomenon raises the need to understand how the concept of national criminal law enforcement works when customary norms remain alive and functioning in society.

¹ Prayitno Iman Santosa, *Implikasi Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP Terhadap Pertanggungjawaban Pidana Dalam Putusan Hakim*, Makalah disampaikan dalam Seminar Hukum Nasional dengan tema Implikasi KUHP Nasional Terhadap Penegakan Hukum Pidana Indonesia, diselenggarakan dalam rangka Peringatan HUT IKAHI ke 72 oleh IKAHI Daerah Riau, di Riau

² Mhd Azhali Siregar, and Rahul Adrian Fikri, *Relevansi Hukum Adat Dalam Menyelesaikan Konflik Masyarakat Berorientasi Kasus Pidana Ditinjau Dari Peraturan Kepolisian Republik Indonesia No 8 Tahun 2021 Tentang Penangan Tindak Pidana Berdasarkan Keadilan Restoratif*, Seminar of Social Sciences Engineering & Humaniora SCENARIO 2021 | Medan -Sabtu, 27 Desember 2022, p. 627

³ Mochtar Kusumaatmadja, *Konsep-konsep Hukum dalam Pembangunan Kumpulan Karya Tulis*, Bandung: Alumni, (2006), p. 88



The integration of customary criminal norms into the positive legal system requires a clear legal basis. The formal mechanism for legalizing customary norms does not yet have uniform standards. Regional regulations, regional head decisions, and administrative policies are often used as a basis, but each region implements them in a different way. This confusion has the potential to cause disharmony between customary criminal norms and the principles of national criminal law, especially the principle of legality which requires that a criminal act must have a valid written legal basis.

Rapid social changes also affect the effectiveness of the implementation of national criminal law in society. Modernization, penetration of digital technology, economic dynamics, and shifts in cultural values create new forms of behavior that are not always in harmony with existing legal provisions. The gap between written legal norms and social realities makes law enforcement face various obstacles. This requires the criminal law system to adapt to the needs of a dynamic and developed society.⁴

Understanding the implementation of national criminal law requires a thorough study that connects normative, juridical, and sociological aspects. Proper analysis allows for an assessment of how criminal law works in society, how customary norms have the potential to be accommodated in the national legal system, and how barriers to law enforcement can be overcome through regulatory reform and capacity building of law enforcement officials. This research is directed to provide a complete picture of the relationship between national criminal law and the social structure of Indonesian society, including the need for harmonization between state norms and local norms.

METHODS

This research uses normative legal research, as emphasized by Peter Mahmud Marzuki that normative legal research focuses on legal materials as the main object of study, with the aim of understanding the norms, principles, and principles that govern a legal issue.⁵ This research is based on a search of laws and regulations, legal doctrines, and court decisions that are relevant to the issue of executive power intervention in criminal justice. The statute approach is used to systematically examine constitutional provisions and laws and regulations.⁶ The statute approach is carried out through the study of various laws and regulations related to the enforcement of national criminal law as well as regional legal instruments that allow the integration of customary criminal norms into the positive legal system. The conceptual

⁴ S. Aminah, "Evolusi Pidana Dalam Sistem Hukum Pidana Indonesia," *Jurnal Ilmu Hukum*, Vol. 10, No. 2 (2021), p. 102.

⁵ Peter Marzuki Mahmud, 2014, *Penelitian Hukum*, Prenada Media Grub, Jakarta, p. 126.

⁶ *Ibid.*, p. 133.



approach is used to explore the concepts of criminal law, the principle of legality, and the thoughts of experts on the relationship between state law and customary law, so as to obtain a comprehensive theoretical understanding of the problems being studied. The combination of these two approaches allows research to produce a systematic, in-depth, and relevant analysis of the dynamics of criminal law enforcement in Indonesian society.⁷

RESULTS AND DISCUSSION

A. The Concept and Basis of the Implementation of National Criminal Law in the Life of the Indonesian People, Including the Legal Basis for the Implementation of Customary Criminal Provisions in the Regions

The concept of enforcing national criminal law places the principle of legality as the main foundation in determining punishable acts. This principle is reflected in Article 1 paragraph (1) of the Criminal Code which emphasizes that there is no crime without a law. The interpretation of this principle develops along with the dynamics of pluralistic Indonesian society. This development can be seen in the recognition of customary criminal law as explained through Law Number 1/Drt/1951.⁸

The enforcement of customary criminal law is limitative and still refers to the limits of sanctions determined by national law. This arrangement shows that there is room for customary norms to function within the formal legal system. The Supreme Court's jurisprudence also strengthens the applicability of customary settlements as part of the criminal law system. This strengthening is reflected in the view that jurisprudence has the power to bind the law equally, as described in the document.

The recognition of customary criminal law in the new Criminal Code began with a long discussion in a Hearing Meeting with the Deputy Minister of Law and Human Rights. In the forum, it was emphasized that the law that lives in society is customary criminal law. This affirmation clarifies the position of customary law as a source of law that can complement written law. This recognition shows the direction of criminal law reform that is more responsive to social realities.

The conditions for the enactment of customary law in the criminal context are explained in detail through the government's formulation. Customary law can apply if you live and are accepted in the community's area. In addition, the law must not contradict Pancasila, the 1945

⁷ *Ibid.*, p. 136.

⁸ Kurniawan Triwibowo, Fitrah Akbar, and Sunarko, *Asas-Asas Hukum Pidana Nasional*, Jakarta: Papas Sinar Sinanti, (2024), p. 27.



Constitution, human rights, and general law principles. This explanation shows that there is a systematic effort to maintain harmony between customary law and the national legal structure.

Purwoto S. Gandasubrata's views⁹ provide an important foundation for the obligation of judges to explore the law that lives in society. According to him, judges must find legal values that are in accordance with Pancasila and the dignity of the nation. This affirmation places the role of judges as the guardian of national law unity and certainty. This view emphasizes the importance of the role of judicial institutions in bridging customary law and national law.

Satjipto Rahardjo¹⁰ added that judges should ideally dare to make decisions that reflect the politics of statesmanship. According to him, judges are not only law enforcement but also constitutional guardians. This thinking strengthens the role of the judiciary in ensuring that living legal values are accommodated in the formal legal system. This perception is the foundation for a more contextual renewal of the concept of legality.

Moeljatno¹¹ emphasized the importance of progressively drafting the principles of legality according to Indonesia's personality. He reminded that the national law seminar in 1963 had called for the excavation of customary law. His thinking emphasized that the formation of criminal law must be based on the character of the nation. The formulation provides a philosophical basis for integrating customary criminal norms into the national legal system.

In the 1964 Draft Law on the Principles of Criminal Law, the unwritten law was given a position as a source of the formation of criminal acts. The formulation states that the court can determine criminal acts based on laws and customary laws. This provision complements the principle of formal legality which previously stricter rejected unwritten legal sources. This arrangement is in line with the need for flexibility in responding to community dynamics.

The explanation of the bill underlines that unwritten law must live in Indonesian society. This thinking suggests that the law of the dead cannot be re-enforced. Only norms that are actually carried out by

⁹ Purwoto S. Gandasubrata, *Tugas Hakim Indonesia - dalam Sumbangsih Untuk Prof. Djokosoetono, S.H.*, Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, (1984), p. 516.

¹⁰ Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum di Indonesia*, Jakarta: Penerbit Buku Kompas, (2003), p. 228-229.

¹¹ Moeljatno, *Fungsi dan Tujuan Hukum Pidana Indonesia dan Rencana Undang-undang Tentang Asas-asas dan Dasar-dasar Pokok Tata Hukum Indonesia*, Jakarta: Bina Aksara, (1985), p.11-13.



society can be legally recognized. This principle ensures that the applicability of customary law has strong sociological legitimacy.

Barda Nawawi Arief¹² emphasized the relevance of studying the law that lives in society as part of the reform of criminal law. According to him, the law faculty should not only study law but also unwritten law. His thinking emphasized the need for understanding across legal traditions to build a more rooted national criminal law. This view enriches the academic basis for customary law integration.

Barda also stated that it is necessary to prepare a new generation who understand the value system and customary law norms. According to him, the development of the new Criminal Code requires a deep understanding of living law. This goal leads to the establishment of a criminal law system that is more representative of the character of the nation. This thinking is also an important argument for the need for an inventory of customary law.¹³

The global view cited by Barda Nawawi Arief also shows that development without paying attention to cultural values has the potential to increase crime. This awareness places customary law as an important instrument in maintaining social balance. Customary law is seen as able to maintain the moral stability of the community. This thinking strengthens the reason why customary law needs to be formalized proportionately.

The resolution of the 1963 National Law Seminar reaffirmed that prohibitions in customary law must still be recognized as long as they do not degrade the dignity of the nation. The resolution places customary law as an integral part of the national criminal law codification. This position describes an inclusive approach to traditional legal sources. This principle is an important reference in the development of the new Criminal Code.

The drafters of the 2008 Criminal Code included norms about the law that live in society in book I of the Criminal Code. This placement represents a major change in the concept of national legality. Customary law is no longer just seen as a custom, but a recognized source of punishment. This change illustrates the reform of criminal law towards material legality.

Article 2 of the National Criminal Code then stipulates that a person can be convicted based on the laws that live in society. However, this provision is limited by the requirements of Pancasila values, the 1945

¹² Barda Nawawi Arief, *Beberapa Aspek Pengembangan Ilmu Hukum Pidana (Menyongsong Generasi Baru Hukum Pidana Indonesia)*, Semarang: Badan Penerbit Undip, (2007), p.39-42.

¹³ *Ibid.*, p. 44.



Constitution, human rights, and general principles of law. The restriction aims to prevent the abuse of customary norms that are not in accordance with the principles of the state of law. This arrangement maintains a balance between flexibility and legal certainty.

The explanation of the article emphasizes that the Regional Regulation is needed to strengthen the formal applicability of customary law. This mechanism makes customary law have a definite legal basis. However, each region applies a different way in determining its customary law. These differences create confusion and potential legal disharmony.

Article 2 paragraph (1) of Law No. 1 of 2023 concerning the Criminal Code states that:

The provisions as referred to in Article 1 paragraph (1) do not reduce the validity of the law that lives in society which determines that a person deserves to be punished even though the act is not regulated in this Law.

The explanation of Article 2 paragraph (1) states that:

What is meant by "the law that lives in society is customary law that determines that a person who commits a certain act deserves punishment. The laws that live in society in this article are related to unwritten laws that are still valid and developing in the lives of people in Indonesia. To strengthen the applicability of the law that lives in the community, Regional Regulations regulate the customary crimes.

The scope of the enactment of customary criminal acts in this case applies in a place where the law is lived". For example, if you hit a pig in Papua, if hitting a pig becomes a criminal act there, then this crime only applies there, it cannot happen in East Java or West Java. Thus, in fact, Article 2 paragraph (2) of the National Criminal Code also imposes a special territorial principle.

Article 2 paragraph (2) of the National Criminal Code applies with certain criteria, namely:

- a. Valid where the law is alive and as long as it is not regulated in the Law
- b. It must be in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general law principles recognized by the people of nations.

Article 2 paragraph (2) of the National Criminal Code is specifically enforced, namely with the provisions of Article 2 paragraph (3), where the provisions regarding the procedures and criteria for determining the law that live in society are regulated by Government Regulations. Thus, the enactment



of the Article, especially customary criminal law, cannot be applied carelessly, first, it must first be regulated by a Government Regulation. Government Regulations in this provision are guidelines for the regions in establishing laws that live in the community in the Regional Regulations. Then, because the enactment is territorial, the scope of the enactment of the Customary Crime in this case applies in the place of customary law.

Several things need to be prepared before the enactment of the New Criminal Code Law, one of which is the establishment of government regulations related to the procedures and criteria for determining laws that live in society as mandated by Article 2 paragraph (3) of the Law. In this regard, Prim Haryadi (Supreme Judge of the Criminal Chamber) in the National Seminar "Welcoming the Enactment of the Law Living in the Community Based on Law No. 1 of 2023 concerning the Criminal Code" organized by the Ministry of Law and Human Rights (24/7/2023) said that in terms of the preparation of the government regulation, it is necessary to formulate a delinquency and determine the sanctions of all laws that live in the community from all regions or the PP instructs that each local government prepare a Regional Regulation related to the law who live in the community.¹⁴

According to him, the settlement of legal cases that live in the community but is regulated in the Criminal Code, 1) is examined based on the provisions of the applicable Criminal Code (ordinary examination events), 2) is resolved through a restorative justice approach, 3) imposes an alternative to punishment other than imprisonment (a substitute penalty for customary sanctions) supervision / fines / social work as per Article 65 paragraph (1) letters (c), (d), and (e) of Law No. 1 of 2023), 4) impose a conditional penalty (general conditions/special conditions) against the perpetrator (Ranperma RJ MA RI).

Prim Haryadi emphasized the need for Government Regulations as a guideline for the determination of customary law. According to him, local governments must identify customary laws before stipulating them in local regulations. This process ensures that formalized customary law is truly alive in society. This approach also prevents distortions in the implementation of customary criminal law.

Yasonna H. Laoly¹⁵ emphasized that customary law is often more effective in solving social problems. However, its integration into the national criminal law system must be done carefully. A clear mechanism is needed so that customary law can coexist with written law. This principle is important to maintain the integration of the national legal system.

Edward O.S. Hiariej explained that customary law only has elements, not *bestaandeel*, so it is difficult to process in the formal legal system. He emphasized that Article 2 of the Criminal Code must be read together with

¹⁴ Kurniawan Triwibowo, Fitrah Akbar, and Sunarko, *Op.Ciit.*, p. 38.

¹⁵ *Ibid.*, p. 39



Article 12 and Article 51. All three show the function of customary law both to punish and free someone. This explanation shows the dynamics of the enforcement of material legality.¹⁶

The concept of the enactment of customary criminal law is concluded as a limited but significant recognition in the national criminal law system. Formal mechanisms such as regional regulations, regional head decisions, and PP are important instruments in legalizing customary norms. The irregularity of this mechanism is a major challenge to the harmonization of national law. A deep understanding of the principles of legality and *living law* is the key to improving the Indonesian criminal law system.

B. The Main Challenges Faced in the Implementation of National Criminal Law in the Midst of the Dynamics of Social Change in Indonesian Society

The application of national criminal law faces major challenges when dealing with rapid social changes in Indonesia. Cultural, economic, and technological transformations have made crime patterns increasingly diverse and difficult to predict. This condition requires criminal law to be adaptive without sacrificing legal certainty. An overly rigid legal system risks falling behind on evolving social realities.¹⁷

Modernization and the development of digital technology have created new forms of crime that have not been adequately accommodated in laws and regulations. Cybercrime, data manipulation, and fraud through digital platforms are growing much faster than regulation. Law enforcement officials often find it difficult to ensnare perpetrators with the right articles due to the limitations of the legal basis. This shows that there is a gap between legal norms and the dynamics of technological developments.

Changes in social values and norms also cause society's assessment of a criminal act to shift. Some actions that were previously considered taboo began to be considered looser, while others were considered more serious. Relatively static criminal laws are often unable to keep up with these changes in social perception. This inconsistency raises tensions between positive law and a sense of justice in society.

The application of national criminal law in Indonesia has always been in a vortex of rapid and complex social change. The law never stands alone, but is influenced by the culture, traditions, and customs that live in society. The view that law is a product of culture shows that

¹⁶ *Ibid.*, p. 40.

¹⁷ Sahat Maruli Tua Situmeang and Krusitha Meilan, *Evolusi Kejahatan Dan Pemidanaan: Tantangan Dalam Penegakan Hukum Dan Penologi Modern*, *Jurnal Res Nulius*, Vol. 7, No. 2 (2025), p. 91.



the legal system must continue to adapt to the dynamics of changing social realities. When the social structure changes, the legal orientation is required to change in order to remain relevant.

In the period before the enactment of the *Wetboek van Strafrecht* by the Dutch colonials, customary law became the main norm that governed people's lives. The existence of this customary law shows that Indonesian society has an organic legal system that grows from local needs and values. Even after the colonial Criminal Code was implemented, the existence of a village justice of the peace in 1935 reaffirmed that the settlement of customary disputes remained an important part of law enforcement. This illustrates the strong role of unwritten law in regulating people's lives.

After Indonesia's independence, the state again recognized the existence of customary law through various regulations. One of them is Article 5 paragraph (3) b of the Emergency Law No. 1 of 1951 which still provides space for the law that lives in society. In fact, this provision regulates the form of substitute sanctions, both in the form of imprisonment and fines. This recognition shows that the state recognizes that national criminal law cannot be separated from the still strong local legal tradition.

In the latest development, the recognition of the applicable law in society is increasingly emphasized in Article 2 of Law No. 1 of 2023 concerning the Criminal Code. This article is an important milestone because it provides a clear legal basis for how customary law can be enforced as part of the national criminal law system. The regulation is further mandated through a Government Regulation that will determine the limits, criteria, and procedures for its determination. This is an important step to ensure that the laws that apply in society are not implemented freely, but remain in accordance with the values of Pancasila and the 1945 Constitution.

Although it is not a new thing, the legal concept that applies in society poses a great challenge in its application. The Judicial Power Law since 1970 has instructed judges to explore the legal values that live in society. But the implementation is not always easy. Judges often have difficulties when determining standards, because customary law is unwritten and varies from one region to another. This is where the main complexity lies in the integration of the applicable law in society into the national criminal law.

One of the main challenges is formulating crimes and sanctions based on the laws that live in communities from all regions in Indonesia. Government regulations that are being prepared must be able to formulate guidelines that are not only normative, but also operational.



Otherwise, the implementation of the applicable law in society has the potential to become non-uniform, even contrary to the principle of legal certainty. Another alternative is to encourage each local government to make a Regional Regulation that regulates their own customary laws.

In addition, the restorative justice mechanism is the next challenge, because the nature of customary law prioritizes the restoration of social relations over punishment, the settlement of law-based cases that apply in society is ideally carried out through restorative justice. However, this requires a mature legal apparatus and the readiness of law enforcement officials to apply a restorative approach consistently. For this reason, the Supreme Court is preparing a Perma on restorative justice.

Another challenge arises from the need to identify customary law in each region. Indonesia has hundreds of indigenous groups with different value systems. Local governments need to conduct comprehensive mapping that not only prioritizes historical aspects, but also the relevance of customary law to the development of today's society. This mapping is the basis for the application of applicable laws in society to run in a measurable manner, not just determined based on untested cultural claims.

From an institutional aspect, the handling of law-based cases that apply in the community is projected to be carried out by PPNS or the Pamong Praja Police because the regulations are prepared in the form of regional regulations. This poses new challenges related to the capacity of local law enforcement. They must understand the concepts of customary law, culture-based investigation techniques, and the ability to communicate with indigenous peoples. Without adequate competence, the enactment of the applicable law in society has the potential to be purely symbolic.

The next challenge is the collection of customary law data that applies throughout Indonesia. The central government needs to have a national database that contains the characteristics of each law that applies in society. Without this data, the government cannot formulate comprehensive policies. In addition, inaccurate data collection can cause conflicts between local values and national policies, especially when there is an overlap between customary laws and laws and regulations.

Socialization of the applicable laws in society is also a big challenge. The community, law enforcement officials, academics, and other stakeholders need to understand the limitations and procedures for the implementation of customary law. Without adequate socialization, there will be multiple interpretations that can result in legal uncertainty. Socialization is also important so that the public does not consider the



applicable laws in society as legitimacy of actions that are contrary to human rights or constitutional values.

Professor Pujiyono emphasized that the existence of Article 2 of Law 1/2023 is an integration of legal sources. Here, criminal acts are not only determined by written laws, but also by the legal values that live in society. This concept requires caution because it expands the previously legalistic sources of criminal law to be more sociological. This is both an opportunity and a challenge for national criminal law reform.¹⁸

In a more material view, Article 12 paragraph (2) of Law 1/2023 stipulates that an act is called criminal not only if it violates the written law, but also contradicts the legal awareness of the community. This shows that social morality has a role in the formation of criminal acts. However, the legal awareness of the community is dynamic so that the state needs to determine clear boundaries so that there is no immeasurable social criminalization.

In the midst of the dynamics of social change, the main challenge in the implementation of national criminal law is to balance legal certainty with the flexibility of customary law. Modernization, globalization, and changes in people's lifestyles require an adaptive legal system but still uphold the principle of legality. If the integration of the applicable law in society is carried out without restrictions, then the potential for violation of the principle of equality before the law can occur, because customary law differs from one region to another.

Challenges also arise from the need to align the laws that apply in society with human rights standards. Not all customary law practices are in line with modern human rights principles. Therefore, the government must ensure that the laws that apply in the society that are enforced are customary values that have been selected based on their conformity with Pancasila and the 1945 Constitution. Without strict screening, the application of customary law can conflict with the state's commitment to protecting the human rights of its citizens.

Thus, the application of national criminal law in the midst of social change requires a great effort to harmonize written law with the applicable law in society. The challenges are not only administrative and technical, but also conceptual and philosophical. The successful implementation of applicable laws in society will depend heavily on the state's ability to manage the diversity of local laws without sacrificing legal certainty, equality, and respect for constitutional values.

¹⁸ Ady Thea, 2025, 5 Tantangan dalam Pelaksanaan Living Law, <https://www.hukumonline.com/berita/a/5-tantangan-dalam-pelaksanaan-living-law-lt64bf2f8d2d4a5/?page=2>, accessed on November 11, 2025.



CONCLUSIONS

The concept and basis for the implementation of national criminal law is based on the principle of legality, but the development of national law shows recognition of the laws that live in society, including customary criminal law. This recognition has a juridical basis through Law No. 1/Drt/1951, Supreme Court jurisprudence, and Article 2 of the new Criminal Code which opens up space for customary norms as long as they are in accordance with Pancasila, the 1945 Constitution, human rights, and general law principles. Its implementation in the regions requires formal instruments such as regional regulations and central government guidelines, although the determination mechanism is not yet uniform, causing potential disharmony with the principle of legality. This framework shows that national criminal law is moving from formal legality to material legality that is more adaptive to the plurality of Indonesian society.

The challenges of applying national criminal law mainly arise due to rapid social changes, technological developments, and cultural diversity that create a gap between written legal norms and the reality of society. This dynamic gives rise to new forms of crime that are often not in line with the readiness of regulations and the capacity of law enforcement officials. Variations in the mechanism for legalizing customary norms in the regions also cause inconsistencies and have the potential to contradict legal certainty. In addition, the factors of public legal literacy and political dynamics also affect the effectiveness of law enforcement. All of these challenges underscore the need for regulatory harmonization, strengthening legal institutions, and criminal law reform that is more responsive to the needs of Indonesian society.

The Central Government (Ministry of Law and Human Rights and the President) needs to immediately establish a Government Regulation (PP) as a national guideline regarding inventory procedures, determination criteria, and mechanism for formalizing customary criminal law. This PP is important to prevent procedural differences between regions, ensure legal certainty, and avoid clashes between customary law and the principle of legality in the application of national criminal law. Regional Governments (Governors, Regents/Mayors, and DPRD) need to collect official and systematic data on customary laws that are still alive in their territory, then stipulate them in Regional Regulations (Perda) in accordance with Pancasila, the 1945 Constitution, and human rights principles. This step must be carried out through academic studies, public consultation, and social verification so that only customary norms that are truly practiced by the community are formalized as part of the regional criminal law.



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