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RECOGNITION OF CUSTOMARY LAW IN THE PERSPECTIVE OF INDONESIAN CRIMINAL LAW

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ABSTRACT

This study examines the recognition of customary law in the perspective of Indonesian criminal law as a response to the pluralistic character of society and the dynamics of National Legal Reform. Since colonial times, customary law has been understood as living law, that is, norms that are alive and have social binding power even though they are not codified. In recent developments, the recognition of the law that lives in society gained legitimacy in the new criminal code, but still caused tension with the principle of legality through the principle of nullum crimen sine lege. The research method used is normative legal research with legislation and conceptual approach. As a result of the discussion, the existence of customary law in Indonesian criminal law offers restorative potential and socio-cultural values that enrich the criminal system, especially through the rapprochement of perpetrators, victims, and the community. However, unwritten customary norms pose challenges to legal certainty, principles of legality, and Human Rights. The integration of customary law into the new penal code allowed for a restorative approach that was responsive to local needs, particularly minor crimes. In order to remain in line with the principles of the modern rule of law, integration must be carried out in a measurable manner through clear regulation, institutional supervision, normative harmonization, and multidisciplinary involvement, thus preventing inconsistency, discrimination, or legal irregularities.

Keywords: Customary_law. Principle_of_legality. Restorative_Justice.

1. Introduction

The recognition of customary law in Indonesian criminal law cannot be separated from the sociological character of the plural nation. Since colonial

times, the existence of customary law has been recognized as a "living law" or law that lives in society. Cornelis van Vollenhoven asserts that customary law is a system of norms that grows organically in local communities and has real binding force even though it is not formally codified. This view was later reinforced by Soepomo who saw customary law as a manifestation of the personality of the Indonesian nation with a communal and integralistic pattern.[1] In the context of Criminal Law, recognition of customary law becomes relevant because modern penal systems are often viewed as too formalistic and less responsive to the sense of Justice of local communities[2]. However, the recognition of Unwritten Law also raises fundamental issues related to the principles of legality and legal certainty, which are the main foundations in modern criminal law.

In the development of Indonesian criminal law, the principle of legality is no longer rigidly interpreted as a provision that solely rests on written laws. The new criminal code recognized the existence of a living law in society as a source of law that can be used as a basis for punishment. This recognition shows a more responsive approach to the social reality and cultural diversity of Indonesia. As long as these customary norms do not conflict with Pancasila, human rights, and international law principles, their implementation remains valid and is recognized as part of positive law.[3]

Continental European thought, the principle of nullum crimen sine lege, nulla poena sine lege became the central principle. Anselm von Feuerbach formulated the principle of guaranteeing that a person can only be punished under pre-existing laws. This principle is intended to protect citizens from the arbitrariness of the authorities and the practice of punishment without a

[1] Cornelis van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië*, Leiden: E.J. Brill, 1925, hlm. 12–15; Soepomo, *Pokok-Pokok Filsafat Hukum Indonesia*, Jakarta: Penerbit FH UI, 1960, hlm. 45–47

[2] I Made Widiasa. (2022). Peran Hakim Dalam Penegakan Restoratif Justice Melalui Hukum Pidana Adat. *Jurnal Komunikasi Hukum (JKH)*, *8*(2), 525–537. https://doi.org/10.23887/jkh.v8i2.51602

[3] Tene, D. R., Muliyono, A., & Lahangatubun, N. (2023). Implikasi penerapan hukum pidana adat dalam penyelesaian tindak pidana pasca pembaruan hukum pidana nasional Indonesia. *EKSPOSE: Jurnal Penelitian Hukum dan Pendidikan*, 22(2), 29–41.

written legal basis. In the Indonesian context, the principle of legality is adopted as the heart of National Criminal Law. Therefore, when unwritten customary law-which varies between regions-is recognized as a source of criminal law, tensions arise between the need for legal certainty and the recognition of local value-based substantive justice. As stated by Sudarto, criminal law must ensure certainty while reflecting the values that live in society so as not to be alienated from a sense of social justice.[4]

On the other hand, the development of restorative justice approach in criminal law reform provides space for the revitalization of customary law. The concept of restorative justice emphasizes rapprochement between perpetrator, victim, and community, rather than solely retribution. Howard Zehr said that crime is not only an offense against the state, but also against social relations that must be restored. In many Indigenous communities in Indonesia, traditional criminal dispute resolution mechanisms-such as customary deliberations, social sanctions, or redress—have long applied these restorative principles. Thus, the recognition of customary law in criminal law can be viewed as an effort to integrate the values of restorative justice that have lived for a long time in Indonesian society.[5] Nevertheless, not all customary law practices are in harmony with the principles of human rights and the modern rule of law. Satjipto Rahardjo through the idea of progressive law emphasizes that the law must be in favor of substantive justice, but he also reminds that the law must not lose its human orientation[6]. In practice, there are cases in which customary sanctions lead to acts of extreme exclusion, persecution or physical violence against perpetrators who are considered to violate community norms. This phenomenon opened up space for the emergence of vigilantism, that is, vigilante actions in the name of collective values. When the legitimacy of customary law is not clearly regulated and

[4] Anselm von Feuerbach, *Lehrbuch des gemeinen in Deutschland geltenden peinlichen Rechts*, 1801, hlm. 32–35; Sudarto, *Hukum Pidana Indonesia*, Jakarta: Alumni, 1990, hlm. 78–81.

[5] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 1990, hlm. 101–105.

[6] Satjipto Rahardjo, *Hukum Progresif*, Bandung: Alumni, 1985, hlm. 55–60.

measurable, there is a risk that people feel they have full authority to enforce norms without a control mechanism from the state.

Concerns about vigilantism are increasingly relevant in the context of regional autonomy and the strengthening of local identity. Some local governments seek to accommodate customary values in public policy, including in the handling of minor criminal cases. However, without firm parameters, such recognition has the potential to give birth to fragmentation of law enforcement standards between regions. Moeljatno emphasized that the criminal law has the function of protecting the interests of the law in general and must apply nationally in order to ensure equality of treatment before the law. If customary law is used as the basis for punishment without harmonization with national law, then the principle of equality before the law can be threatened.[7]

Theoretically, this debate is also related to the opposition between legal positivism, namely the existence of criminal law as an instrument to protect legal interests is a reasonable consequence. Conceptually, criminal law is designed to regulate certain prohibitions and obligations, while providing a mechanism for punishment for any violation of these norms[8].. Roscoe Pound views law as a tool of social engineering, which means the law must be responsive to the dynamics of society. Meanwhile, legal positivism emphasizes the supremacy of written norms as the only source of legitimacy. In the Indonesian context, the recognition of customary law in criminal law reflects an attempt to balance the two approaches. The state cannot turn a blind eye to the laws that live in society, but it also should not neglect the principle of legality as a guarantee of the protection of individual rights.[9]

[7] Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta: Bina Aksara, 1983, hlm. 12–14.

[8] Suhariyono AR. "Penentuan Sanksi Pidana Dalam Suatu Undang-Undang." Jurnal Legislasi Indonesia. Vol. 6 No. 4 2009,hlm 618.

[9] Roscoe Pound, *An Introduction to the Philosophy of Law*, New Haven: Yale University Press, 1922, hlm. 22–25.

In addition, the perspective of victimology also enriches this debate. In conventional criminal justice systems, victims are often marginalized because the primary focus is on convicting the perpetrator. Customary mechanisms that are dialogical often provide greater space for victims to express their aspirations and obtain recovery. However, without adequate supervision, the mechanism also has the potential to pressure victims to accept settlements that are not entirely voluntary in order to maintain social harmony. In such a situation, the principle of victim protection can be reduced to communal pressure.[10]

The problem becomes more complex when customary law intersects with local religious or moral norms that are not necessarily in line with universal human rights principles. Social sanctions in the form of exclusion, expulsion, or even symbolic violence can lead to human rights violations if they are not restricted. Therefore, the recognition of customary law in criminal law must be placed within the framework of a legal state that upholds the Constitution and human rights as the highest norms. Harmonization is the key word: customary law cannot stand as a fully autonomous system in the criminal sphere, but must be integrated in the national system with clear boundaries.[11]

the issue of recognition of customary law in criminal law reflects the dilemma between the need for contextual justice and the demand for universal legal certainty. On the one hand, one of the main functions of criminal law is to maintain the stability of public life. It cannot be separated from its basic purpose, which is to protect the interests of the law (rechtsbelang) owned by everyone.[12] and customary law offers a restorative approach that is more humanistic and in accordance with the character of Indonesian society. On the other hand, without strict regulation and supervision, the confession has the

[10] Christie, Nils, *Conflict as Property*, *British Journal of Criminology*, 1977, hlm. 5–10.

[11] United Nations, *Universal Declaration of Human Rights*, 1948, hlm. 3–5; Indonesia, *Undang-Undang Dasar 1945*, hlm. 1–2.

[12] Farahwati. "Hakekat Hukum Pidana Terhadap Perbuatan Melawan Hukum di Masyarakat." Dedikasi. Vol. 30 No. 1 2014, hlm. 90.

potential to open up space for arbitrariness and vigilante practices. Therefore, the formulation of criminal policies that accommodate customary law must be accompanied by clear normative parameters, institutional control mechanisms, and guarantees of human rights protection. Only then, the integration of customary law in criminal law can become an instrument of restorative justice that enriches the national system, not on the contrary a source of uncertainty and social conflict.[13]

2. Reseach Method

This study is legal research that focuses on the assessment of legal norms, principles, and doctrines related to the recognition of customary law in criminal law in the perspective of restorative justice and the threat of vigilantism. The approach used includes statute approach, conceptual approach, to examine the development of customary law recognition in the national legal system.[14]

As stated by Philipus M. Hadjon, normative legal research relies on the analysis of positive legal norms, legal principles, and vertical and horizontal synchronization between legislation.[15] Therefore, this study examines the principle of legality, the position of customary law in the National Criminal Law, as well as its compliance with the principles of the rule of law and the protection of human rights.

In addition, referring to the views of Peter Mahmud Marzuki, legal research is carried out through the search for primary, secondary and tertiary legal materials that are analyzed prescriptively and argumentatively to find solutions to the legal issues studied.[16] Primary legal materials include legislation and official documents, while secondary legal materials include

[13] Kombinasi analisis berbagai pakar hukum dan literatur hukum pidana Indonesia, hlm. 1–3

[14] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: RajaGrafindo Persada, 2001), hlm. 14–16.

[15] Philipus M. Hadjon dan Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2005), hlm. 3–5.

[16] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016), hlm. 35–38, 133–136.

literature, scientific journals, and expert opinions. The analysis was carried out by systematic and teleological interpretation methods to assess the rationality of the arrangement and its implications for legal certainty and potential vigilantism.

3. Results and Discussion

3.1. The existence of customary law in Criminal Law Enforcement between local value protection or deviation gap

The existence of customary law in the Indonesian national legal order has become a complex and multidimensional issue, especially when associated with criminal law. Historically, customary law is a collection of norms that lived and developed in local communities long before the arrival of Western legal systems. Cornelis van Vollenhoven even identified customary law as living law, that is, law that grows organically from real social practices and is recognized by the people themselves. This reality has placed customary law in a very important position in understanding legal life in Indonesia. Although formally customary law has not been fully codified, its existence affects patterns of social interaction, dispute resolution, and in many cases, especially cases involving minor crimes, people trust customary settlement rather than through formal judicial mechanisms.[17]

However, the recognition of customary law in the realm of criminal law raises fundamental questions about the position of customary law in the national legal system based on the principle of legality (nullum crimen, nulla poena sine lege). This principle states that an act can only be punished when it has been stipulated in the prevailing laws and regulations. Not a few criminal acts that occur in Indigenous communities are handled based on local customary law provisions. This approach is directed to restore the balance of nature and the cosmos,

[17] Cornelis van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië* (Leiden: E.J. Brill, 1925), hlm. 12–15

which is believed to have been disturbed as a result of the act, so that harmony of a religious-magical nature can be restored. [18] Anselm von Feuerbach asserted that the principle of legality was born as a protection against arbitrary power and as a guarantee of legal certainty. In this context, if unwritten customary norms are used as the basis for punishment, serious problems arise regarding legal certainty.[19]

In addition to the issue of legality, there is also an equally important sociological and juridical dimension: law is not only a matter of written norms, but also a matter of social legitimacy. Soepomo saw law as an expression of the nation's personality. In the plural Indonesian tradition, many Indigenous peoples still uphold the norms and ways of criminal settlement according to custom. Customary law approaches that are often restorative prioritizing reconciliation, compensation, and social rapprochement are seen as able to resolve disputes in a more socially powerful way than formal court decisions that are only oriented to punishment. In many communities, criminal settlement by customary means shows effectiveness in restoring the order of social norms after a conflict has occurred.[20]

Thus, it cannot be denied that customary law has useful values in the context of solving certain criminal cases. The restorative justice approach, which is now widely discussed in modern criminal law, has a strong connection with customary mechanisms that are oriented to rapprochement between perpetrators, victims, and communities, which means that the sanction system in customary law is considered harmonious with the concept of restorative justice, because it equally emphasizes solutions that benefit all parties and become solutions to the

[18] Lilik Mulyadi. (2013). "Eksistensi Hukum Pidana Adat di Indonesia: Pengkajian Asas, Norma, Teori dan Prosedurnya". Jurnal Hukum dan Peradilan. 2 (2), hlm. 233.

[19] Anselm von Feuerbach, *Lehrbuch des gemeinen in Deutschland geltenden peinlichen Rechts* (1801), hlm. 32–35

[20]Soepomo, *Pokok-Pokok Filsafat Hukum Indonesia* (Jakarta: Penerbit FH UI, 1960), hlm. 45–47.

weaknesses of the.[21]. Howard Zehr even asserts that sentencing systems that focus solely on punishment often fail to meet the need for recovery for victims and their communities. In this context, the integration of restorative justice principles through customary law can be an alternative that helps national criminal law be more responsive to local needs.[22]

Even so, it is important to understand that not all customary law practices conform to the values of human rights values and principles of the modern rule of law. Satjipto Rahardjo stated that the law must maintain a balance between substantive justice and the protection of individual rights. In reality, there are a number of cases where customary sanctions are discriminatory or overbroad, such as extreme exclusion, corporal punishment, or sanctions that degrade the dignity of the perpetrator. When this kind of practice is formally recognized without clear regulation, it potentially opens up space for abuse of authority, even vigilante actions by the community. This is what is often referred to as vigilantism, where the public takes over the role of law enforcement without legitimate procedures and restrictions.[23]

This problem is increasingly evident when regional autonomy provides space for local governments to interpret and incorporate elements of customary law into public policy including in the handling of minor criminal cases. On the one hand, such initiatives could strengthen the legitimacy of local rules and answer the demands of grassroots communities. But on the other hand, without strong normative parameters and control mechanisms of the national legal system, the integration of customary law into criminal proceedings can become a loophole for deviations. For example, if customary norms establish sanctions that conflict with human rights or national criminal standards,

[21] Ulang Mangun Sosiawan. (2016). "Perspektif Restorative Justice sebagai Wujud Perlindungan Anak yang Berhadapan dengan Hukum" Jurnal Penelitian Hukum DE JURE. 16 (4), hlm. 426

[22] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (1990), hlm. 101–105.

[23] Satjipto Rahardjo, *Hukum Progresif* (Bandung: Alumni, 1985), hlm. 55–60

how will the justice system handle them? This kind of question reflects the unrest about the fragmentation of legal norms that can harm the principle of equality before the law.[24]

In the realm of legal theory, this contention can also be analyzed through the lens of legal positivism and sociological jurisprudence. Roscoe Pound sees law as a tool of social engineering, which means it must be able to adapt to the dynamics of society. On the other hand, positivism emphasizes the importance of written law as the only source of legitimacy of criminal norms. In the Indonesian context, the biggest challenge is how to accommodate the diversity of social norms without compromising the principle of legal certainty and protection of individual rights. This is where the main dilemma lies: customary law offers a strong cultural approach, but without a formal structure and clear controls, it has the potential to become a gateway for deviations from the principles of National Criminal Law.[25]

In the perspective of victimology, which emphasizes the position of victims in criminal proceedings, customary law is often viewed as more inclusive because it provides space for dialogue and direct compensation to victims. However, this approach also risks putting communal pressure on the will of individual victims. When victims are forced to accept customary mechanisms to maintain social solidarity, their rights can be neglected. This shows that although Indigenous approaches can enrich the national penal system, close scrutiny is needed to ensure that such integration does not harm the rights of individuals, especially those who are more vulnerable.[26]

[24] Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Bina Aksara, 1983), hlm. 12–14; konsep *equality before the law* diambil dari prinsip umum hukum pidana nasional.

[25] Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1922), hlm. 22–25.

[26] Teori viktimologi klasik: Christie, Nils, "Conflict as Property," *British Journal of Criminology*, 1977, hlm. 5–10.

In addition, conflicts between customary norms and universal human rights norms often arise when customary law intersects with moral or cultural values that are not necessarily in line with human rights principles. Examples of cases often arise in areas that still apply social sanctions in the form of exclusion, expulsion, or symbolic punishment that can cause prolonged stigma against the perpetrator. If such practices are recognized without restriction, not only the honor of the individual is threatened, but also the spirit of the rule of law that upholds the Constitution and human rights. Therefore, harmonization between customary law and national law is important so that integration does not turn into a gap of deviation.[27]

Proceeding from all of the above, it can be concluded that the existence of customary law in the realm of Indonesian criminal law is a potentially dual phenomenon: on the one hand, customary law can enrich the national criminal system through a more restorative approach., responsive to local social needs, and reflect the cultural values that live in the community. But on the other hand, if such recognition is not based on strong normative control and clear integration within the national legal framework, then there is a great risk to legal certainty, individual rights and equality in the enforcement of criminal law. The integration of customary law should not be allowed to proceed without strong parameters, since it can turn into a loophole of deviation to the detriment of the main principle of the rule of law.[28]

3.2. Integration of customary law in the national penal system in Indonesia.

The integration of customary law into the Indonesian national penal system is a complex and strategic issue, because adat law lived

[27] United Nations, *Universal Declaration of Human Rights* (1948), hlm. 3–5; Undang-Undang Dasar 1945 (sebagai norma tertinggi), hlm. 1–2.

[28] Kombinasi analisis teoritis berbagai pakar hukum pidana dan antropologi hukum Indonesia, hlm. 1–3.

organically in society before the presence of formal national law. Cornelis van Vollenhoven states that customary law is a living law, a social norm that is recognized and obeyed by society by consensus, although not formally written. This customary legal life emphasizes local values, traditions, and social norms that guide community behavior in resolving conflicts, including minor crimes, which are often more effectively resolved through customary mechanisms than formal justice.[29] The recognition of living law in Article 2 of the new Criminal Code reflects the transition from the rigid principles of formal legality to the concept of measurable material legality. Law enforcement no longer solely depends on the text of the law, but also on the value of justice that develops in society as part of Indonesia's pluralistic character. On the other hand, the recognition of unwritten customary law raises tensions with the principle of legal certainty (lex certa and lex stricta). The potential subjectivity of judges is a major challenge that can have an impact on the protection of citizens ' constitutional rights. For this reason, the new criminal code confirms that legal certainty is understood as a criterion of certainty, Namely by limiting the application of living law so that it does not conflict with Pancasila, the 1945 Constitution, human rights, and universally recognized general legal principles[30].

Anselm von Feuerbach ensured legal certainty and protected citizens from the arbitrary actions of the authorities. Tensions arise when unwritten customary norms are used as the basis for punishment, because each region has different norms, which can cause uncertainty and inconsistency in law enforcement. Sudarto emphasized that customary law-based punishment must remain in harmony with legal certainty and

[29] Cornelis van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië* (Leiden: E.J. Brill, 1925), hlm. 12–15.

[30] Andri, Edi Saputra Hasibuan, dan Marlina Samosir, "Rekonstruksi Pengakuan *Living Law* dalam KUHP Baru dalam Perspektif Kepastian Hukum Pidana di Indonesia," *Jurnal Ilmiah Multidisiplin Ilmu*, Vol. 3, No. 1, Februari 2026, hlm. 21–26

the principle of equality before the law so as not to violate the principle of legality.[31]

Customary law is known to emphasize the principle of restorative, i.e. rapprochement between perpetrator, victim, and community, rather than merely retributive punishment. This approach is in line with the concept of restorative justice, which, according to Howard Zehr, sees crime as not only a violation of the state, but also a violation of social relations that must be restored. The practice of customary law in Indonesia, such as customary deliberations, redress, and social sanctions, shows that a restorative approach can resolve minor criminal disputes more effectively socially than formal court decisions that are only punishment-oriented.[32] The integration of these principles into national criminal law opens up opportunities for legal systems that are more responsive to local values, while enriching approaches to substantial justice in society.

However, not all customary law practices conform to the principles of human rights and the principles of the modern rule of law. Satjipto Rahardjo asserted that the law must be in favor of substantive justice but still put forward a humanitarian orientation. In practice, some customary sanctions can be discriminatory or detrimental to the dignity of the individual, such as extreme exclusion, corporal punishment, or symbolic sanctions, which when formally recognized without clear regulation have the potential to open space for vigilantism, i.e. vigilantism by the community.[33]

The recognition of customary law has implications in the form of a challenge to the principle of legal certainty which is the main element of the principle of legality. The character of customary law, which has many

[31] Anselm von Feuerbach, *Lehrbuch des gemeinen in Deutschland geltenden peinlichen Rechts* (1801), hlm. 32–35; di kutib dalam buku Sudarto, *Hukum Pidana Indonesia* (Jakarta: Alumni, 1990), hlm. 78–81

[32] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (1990), hlm. 101–105.

[33] Satjipto Rahardjo, *Hukum Progresif* (Bandung: Alumni, 1985), hlm. 55–60

sources from unwritten norms, is inherited from generation to generation, and develops following social dynamics and collective decisions of the community, raises its own problems. The integration of such flexible and contextual norms into the formal criminal law system raises the question of how to ensure legal certainty while limiting the possibility of subjective interpretations that have the potential to cause uncertainty.[34]

The integration of customary law into the national penal code requires a clear regulatory framework. Moeljatno stressed that the criminal law must protect the interests of the law in general and apply nationally. Therefore, the recognition of customary law must be harmonized with institutional control mechanisms, protection of individual rights and firm normative parameters. Without this mechanism, the application of customary law can lead to legal fragmentation, inconsistency in criminal enforcement, and inequality of treatment in various regions.[35]

In the perspective of Roscoe Pound, law is understood as a means of social engineering that must be able to adapt to the development and needs of society. This view supports the recognition of living customary norms as part of social dynamics. However, the school of legal positivism emphasizes the supremacy of written norms as the only source of legal legitimacy. In Indonesia, the tension between the two approaches poses a challenge to formulate a balance between the recognition of customary norms and the demand for national legal certainty. Therefore, living customary law needs to be reconstructed to be compatible with the formal penal system without opening up spaces for deviation or uncertainty.[36]

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[34] Yanuardi Yogaswara, Tata Surwita, & Dewi Asri Yustia. (2024). Implikasi Penerapan Hukum Pidana Adat dalam Pasal 2 KUHP terhadap Asas Legalitas dalam Sistem Hukum Pidana Indonesia. *El-Mujtama: Jurnal Pengabdian Masyarakat* , *4*(3), 1736–1744 . https://doi.org/10.47467/elmujtama.v4i3.2191

[35] Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Bina Aksara, 1983), hlm. 12–14.

[36] Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1922), hlm. 22–25.

Reconstruction of the integration of customary law into the national penal system can be achieved through several strategies. First, national law can provide recognition of customary law as a source of law that supports the application of restorative justice, especially in minor criminal cases. Second, the implementation of customary law needs to be under the supervision of formal judicial institutions to ensure that there are no violations of human rights or deviations from the principle of legal certainty. Third, the customary norms to be applied must be instituted in the form of technical regulations or implementing rules that set limits on the types of sanctions as well as dispute resolution procedures.

An integrative approach in accommodating customary law requires the involvement of various disciplines, such as criminal law, legal anthropology, and the role of Indigenous leaders. According to Satjipto Rahardjo, multidisciplinary participation is needed so that the law remains oriented to human values and substantive justice. Thus, the integration of customary law does not stop at normative recognition alone, but is capable of presenting concrete benefits to society, especially for victims of criminal acts..[37]

Critical analysis shows that potential deviations remain open, such as the emergence of vigilantism practices and differences in interpretation between regions that lead to inconsistencies in the application of the law. Therefore, a structured supervision system, capacity building through training for official customary judges, and clear procedural guidelines in the settlement of customary-based criminal cases are needed so that individual rights are protected. In addition, harmonization between customary norms and National Criminal Law needs to be done through written regulations and strict procedural standards. Customary sanctions can be integrated with restorative justice

[37] Satjipto Rahardjo, *Hukum Progresif: Ruang Lingkup, Metode, dan Cetusan Pemikiran*, ed. revisi (Bandung: Alumni, 1985), hlm. 60–65.

approaches, while forms of sanctions that are discriminatory or violate individual rights should be prohibited.[38]

Thus, the integration of customary law in national punishment requires a careful and parameter-based approach that is measurable. The restorative values as well as the socio-cultural strength that customary law possesses can contribute significantly to the renewal of the penal system. However, without clear regulation and adequate institutional control, such recognition risks legal uncertainty, violation of individual rights, as well as inequality before the law. Ideal integration can only be achieved through strict regulation, consistent monitoring systems, and the involvement of various disciplines to ensure customary law serves as a means of fair and relevant punishment.

4. Conclusion

The existence of customary law in criminal law enforcement in Indonesia presents both potential and challenges. On the one hand, customary law as living law has restorative, cultural, and social values that can enrich the national criminal system, especially through an approach that emphasizes social recovery and balance. However, the recognition of unwritten customary norms has the potential to raise questions of legal certainty, human rights violations, as well as inequality before the law when it is not clearly regulated. Therefore, the integration of customary law into the national penal system must be carried out in a measured manner, with normative harmonization and strict supervision so that it does not become a loophole for irregularities in the rule of law.

The integration of customary law in Indonesia's national penal system reflects efforts to balance local values with the principles of a modern rule of law. The recognition of living law in the new criminal code opens up space for a restorative approach that is more responsive to the needs of the community,

[38] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 3rd ed. (Scottsdale, PA: Herald Press, 2005), hlm. 110–115

especially in the resolution of minor crimes. However, the unwritten and dynamic character of customary law poses challenges to the principles of legality, legal certainty, and the protection of human rights. Therefore, integration must be carried out through clear regulations, institutional supervision, and multidisciplinary involvement so that customary law can enrich the national criminal system without causing inconsistency, discrimination, or deviation from the principle of equality before the law.

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