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Application of Customary Law in the Indonesian Criminal Law Framework after the Enactment of Law Number 1 of 2023 concerning the Criminal Code

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Abstract

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (New Criminal Code) was finally passed as a substitute for the old Criminal Code or Law Number 1 of 1946 concerning Criminal Law Regulations; in the new Criminal Code, several articles have received pros and cons in the community, one of which is related to the inclusion of articles on laws that live in society (Customary Law). The purpose of this study is to examine and analyze carefully the role of customary Law in the specifics of criminal Law after its inclusion in the new Criminal Code so that we can find out about its position as a law that was once known as unwritten Law into written Law. The legal research method used is normative juridical legal research, which is conducted on library materials using the statute, conceptual, case, and historical approaches. The results of the research that the author has obtained that the Law that lives in the community (Customary Law) in the specific criminal Law in the new Criminal Code will be made a Government Regulation (PP) as the implementation of the regulation so that it can be used as a guideline for the Regional Government in making Regional Regulations (PERDA) on the Law that lives in the community (Customary Law) and researchers also provide the concept of applying the Law that lives in the community (Customary Law) with the approach of the principle of restorative justice for law enforcement officials in carrying out their duties as representatives of the state related to the process of enforcing customary criminal Law.

Keywords: Criminal, Customary, Restorative Justice

Introduction

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHP), hereinafter referred to as the New Criminal Code, was signed on January 2 2023, by the President of the Republic of Indonesia, Joko Widodo. The purpose of drafting this Law is to replace *the Criminal Code*, commonly known as the Criminal Code (KUHP), hereinafter

referred to as the old Criminal Code, as stipulated in Law Number 1 of 1946 concerning Criminal Law Regulations, which has undergone several changes. This replacement is one of the efforts in the context of developing national Law in various fields by considering development demands, legal awareness, and dynamics of development in society. (Asteria et al., 2024)

In its development, the existence of this new Criminal Code contains several missions, including the mission of decolonizing the Criminal Code in the form of recodification, the mission of "*democratization of criminal law*", the mission of "*consolidation of criminal law"*, as well as the mission "*adaptation and harmonization of legal developments*" both in the field of Criminal Law and the values, standards, and norms recognized internationally. (Ismail et al., 2023)

The replacement of the old Criminal Code with the new Criminal Code, which was created with the aim of the 4 missions above, did not immediately go smoothly (Jumantoro & Novemyanto, 2025). In the ratification process, there was a lot of resistance from students and the public regarding articles that were irrelevant if applied in Indonesia (Mutawali, 2021). The opposing polemic included articles that interfered with people's private rights and freedoms in democracy. Still, there was also a very interesting provision in the new Criminal Code: the recognition of the Law that lives in society (Customary Law). (Qerimi et al., 2022)

The existence of customary law communities has been recognized by the state constitution based on Article 18B paragraph (2) of the Second Amendment to the 1945 Constitution of the Republic of Indonesia, which states that "*The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law*". Bearing in mind that as a very diverse society, Indonesia has various kinds of customary rules, which are of course different from each other and national Law. As stated in Article 2 of the new Criminal Code which explains the recognition of Law that lives in society (customary Law) (Hukumonline, 2024).

Article 2 of the New Criminal Code states that:

1. "The provisions as intended in Article 1 paragraph (l) do not reduce the validity of the laws existing in society which determine that a person deserves to be punished even though the act is not regulated in this Law."
2. "The laws that live in society as intended in paragraph (1) apply in the place where the law lives and as long as they are not regulated in this Law and are by the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by the people of nations."
3. "Government Regulations regulate provisions regarding procedures and criteria for determining laws that exist in society."

The introduction of Law that lives in society through the new Criminal Code, which will come into force in 2026, will cause conflict in society because if you look at the characteristics of Law that lives in society (Customary Law) it can be described as follows (Yulia, 2016: 5):

1. Not written and codified in statutory products.
2. Arranged not systematically.
3. Collected not in the form of statutory regulations.
4. The shape is irregular.
5. His decisions do not use consideration or considerations.
6. The form of the regulatory articles is not made systematically and does not have an explanation.

Regarding the procedures and criteria for determining laws that live in a society (Customary Law) following Article 2 paragraph (3) of the New Criminal Code, it is regulated by Government Regulations, which will later be formulated into Regional Regulations where there are still laws that live in a society (Customary Law) (Rautenbach, 2019). One example of the application of Law that lives in society (Customary Law) and has been included in Regional Regulations is Aceh Qanun Number 6 of 2014 concerning Jinayat Law; in its application, this Aceh Province Regional Regulation is one of the best examples of the application of customary criminal Law. (Osman, 2019)

Regional Regulations regarding laws that live in a society (Customary Law) will later become *A special law that overrides a general law*. This means that specific laws exclude general laws, which will later take precedence over the National Criminal Law, in this case, the provisions contained in the new Criminal Code (Mutawali, 2022). One example regarding the article on adultery, which should be in the Old Criminal Code and the New Criminal Code, is that the offence of complaint is a general offence in Regional Regulations based on Aceh Qanun Number 6 of 2014 concerning Jinayat Law (Sembiring, Tambunan, Hutabarat, & Afandi, 2024).

Regarding the enforcement of Regional Regulations regarding laws that exist in society (Customary Law), of course, the Law Enforcement Officials who have the right to handle them should be the Civil Service Police Unit because based on Article 1 Number 9 of the Government Regulation of the Republic of Indonesia Number 6 of 2010 concerning the Civil Service Police Unit, it is stated that "*The Civil Service Police are members of the Satpol PP as regional government officials in enforcing regional regulations and maintaining public order and public peace.*".

The police institution also cannot be separated from the responsibility of law enforcement because it is the initial process of a series of law enforcement processes by implementing discretionary policies in the form of screening cases and if possible, implementing Restorative Justice at both the inquiry and investigation stages (Riyanto, 2022: 36).

In Law of the Republic of Indonesia Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, one of the tasks and authorities of the prosecutor's office is to carry out penal mediation; where this process is known and practised by the community

in resolving crimes through the role of traditional figures or institutions, outside the state judiciary (BRIN, 2024).

As for the judge's authority in deciding a sentence, apart from focusing on the main crime, there are also additional crimes, one of which is contained in Article 66 letter (f) of the new Criminal Code which states that additional punishment can be in the form of "*fulfilment of local customary obligations*". To accommodate the interests of local indigenous communities while still respecting values such as Pancasila, the 1945 Constitution, Human Rights, and general legal principles recognized by the international community. (Ilyas et al., 2023)

It is hoped that this research will provide provisions for law enforcement officials to be able to implement the laws that exist in society (Customary Law) in 2026, which have been ratified through Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHP). Therefore, the author conducted a study with the title "*Application of Customary Law in the Indonesian Criminal Law Framework After the Enactment of Law Number 1 of 2023 concerning the Criminal Code*" to provide an overview of the position of Law that lives in society (Customary Law) in Indonesian positive Law as well as providing a conceptual overview of the application of Law that lives in society (Customary Law) which will come into effect in 2026.

Literature Review

The recognition of customary Law in the Indonesian criminal law system has been the subject of intensive academic study, especially in the context of the transformation from the colonial legacy of Wetboek van Strafrecht to a new Criminal Code (KUHP) that is more responsive to local values. This research is in dialogue with three main theoretical frameworks: reconstruction of national criminal Law based on local wisdom, integration of material legality principles in the justice system, and the restorative justice paradigm as an alternative to punishment.

Constitutionally, Article 18B Paragraph (2) of the 1945 Constitution is the normative basis for the recognition of customary law communities, which is strengthened by the UN Declaration on the Rights of Indigenous Peoples which emphasizes the right to self-determination (*self-determination*) and protection of traditional legal systems. However, its implementation in criminal justice practice has so far been fragmented, as seen in Aceh Qanun Number 6/2014 concerning Jinayat Law, which criminalizes adultery as a general offence. This approach is in contrast to the old Criminal Code, which categorized it as a complaint offence. Moeljatno (1982) in his analysis of Principles *No Offense*, emphasized that the expansion of the scope of customary criminal Law in the new Criminal Code represents a paradigmatic shift from formal legality to material legality, where judges are given broader authority to explore the legal values of life in society.

A comparative study by Soepomo (1936) in *Pledges of Adat law* identifies variations in customary sanctions in various regions of Indonesia, ranging from symbolic fines in the form of sacred objects to mechanisms of social exclusion. This finding is in line with Article 66 letter

(f) of the new Criminal Code, which accommodates "fulfilment of customary obligations" as an additional crime. However, its implementation has the potential to cause non-uniformity between regions. BPHN research (2022) criticizes the ambiguity of the "law that lives in society" criteria in Article 2 of the new Criminal Code, which risks creating multi-criminality (*legal pluralism*) without a clear harmonization mechanism.

The concept of restorative justice adopted in the new Criminal Code, as reflected in Article 54 concerning consideration of community legal values and Article 96 concerning diversion for children, finds its precedent in the practice of customary dispute resolution in Papua and Kalimantan. The Supreme Court Field Report (2023) noted that 67% of minor criminal cases in customary areas were resolved through *customary mediation* by involving traditional elders, even though there has been no formal recognition in previous laws and regulations.

These findings strengthen the argument that the integration of customary criminal Law into the new Criminal Code is not simply a legislative change but rather part of a broader project of legal decolonization. However, an in-depth study is needed regarding synchronization mechanisms with the hierarchy of regional regulations, considering that Article 2 Paragraph (3) of the Criminal Code has only mandated Government Regulations as a technical legal umbrella, which, as of April 2025, have not been issued.

Research Method

This type of research is included in the normative or juridical normative research category, which utilizes library sources as fundamental material or secondary data through literature searches to analyze the problems raised (Ronny, 1985). All data obtained, as well as secondary data sources that are relevant to the problem, will be analyzed to answer the formulation of the problem to be researched and then draw conclusions or temporary hypotheses to be used as research results.

This research uses several approaches, namely the Legislative Approach (*Statute Approach*) which is carried out by analyzing statutory regulations relevant to the problems studied; the conceptual Approach (*Conceptual Approach*) to identify and integrate legal concepts that can be applied practically, Case Approach (*Case Approach*) through a study of legal cases that are related to the issue under study to obtain a deeper understanding, as well as a Historical Approach (*Historical Approach*) which is carried out by tracing historical sources to understand the background of legal development to formulate solutions to research problems.

Result and Discussion

1. The Position of Customary Criminal Law After Being Incorporated into Law Number 1 of 2023 concerning the Criminal Code

Whereas based on Article 18B paragraph (2) of the 1945 Constitution which states that: "*The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, regulated in law*".

The Constitution recognizes and protects the existence of indigenous peoples, including the right to cultural identity, progress, and enforcement of their rights, which are the state's responsibility. This recognition aligns with the UN Declaration on the Rights of Indigenous Peoples, which affirms their right to self-determination, autonomy, and economic, social, and cultural development. BPHN groups legal regulations related to indigenous communities into three categories, namely natural resources and the environment, dispute resolution, and governance, as reflected in various sectoral laws that recognize and guarantee the rights of indigenous communities.

According to statutory regulations and the opinions of legal experts, BPHN formulates several criteria for customary law communities, namely:

a. The existence of an organized society.
b. Inhabit a certain area.
c. Has an institutional structure.
d. Have wealth together.
e. Arranged based on blood ties or relationships with the local environment.
f. Live in a communal and mutual cooperation system.

Based on a study of Law Number 1 of 2023 concerning the Criminal Code (KUHP), several articles were found that regulate the application of laws that exist in society (customary Law). These articles include:

a. Article 2 Recognizes the application of customary Law, which can punish acts even though they are not regulated in the Criminal Code, as long as they do not conflict with Pancasila, the 1945 Constitution, Human Rights, and general legal principles.
b. Article 54 Sentencing can take into account the values of Law and justice that exist in society.
c. Articles 66, 96, and 97 regulate additional penalties in the form of fulfilling local customary obligations, which are comparable to category II fines (Rp. 10,000,000) and can be replaced with other forms of punishment if they are not fulfilled.
d. Articles 116 and 120 regulate additional penalties in the form of customary obligations for children and corporations. In juvenile criminal cases, case resolution is attempted through communication between related parties without formal justice, by the principles of penal mediation and the concept of diversion (Harefa, 2018).

e. Article 597 states that actions prohibited according to customary Law can be subject to criminal sanctions by fulfilling customary obligations.

Based on the articles in Law Number 1 of 2023 concerning the Criminal Code, it can be concluded that the state recognizes the existence of customary criminal Law through the terms "law that lives in society", "law values and justice that live in a society", and "fulfilment of customary obligations". This recognition reflects the three positions of Customary Law in the new Criminal Code, namely (Komnas Perempuan, 2024: 54):

a. As a basis for punishment, as regulated in Article 2 and Article 597, which marks a shift from the principle of formal legality to the principle of material legality.

b. As an additional or main punishment, in the form of fulfilling customary obligations, depending on the characteristics of the criminal act and the need for punishment.

c. As a basis for consideration of punishment, the phrase "the values of law and justice that exist in society" is used as a reference in imposing a crime.

There have been many changes regarding the main types of crimes, from the old Criminal Code to the new Criminal Code, including cover-up, supervision, and social work crimes. For the death penalty, it is declared a special punishment. Additional criminal material includes additional penalties, namely:

a. Seizure of bills;

b. Payment of compensation; And

c. Fulfilment of traditional obligations (Waluyo, 2023: 29).

The explanation of the new Criminal Code states that "law that lives in society" refers to customary criminal Law, which aims to protect local values and norms in order to achieve justice in local communities. Even though it recognizes unwritten Law, the Criminal Code still guarantees the application of the principle of legality and the prohibition of analogies.

This development reflects a shift from the principle of formal legality (based on written Law) to the principle of material legality, which recognizes the validity of unwritten Law, such as customary Law (Prakarsa, 2023: 141). This gives the impression that it is contrary to the principle of lex scripta but is recognized as part of efforts to fulfill the community's sense of justice (Prakarsa, 2023: 141). According to Moeljatno, the expansion of the nulla poena principle to include unwritten Law gives judges a greater role in exploring the legal value of life in society (Saleh, 1980: 23). Customary law, in this case, is seen as equivalent to written Law as long as it does not hinder the progress of society and remains in line with the ideals of national Law (Saleh, 1980: 26).

By accommodating customary criminal Law in the new Criminal Code, the state is committed to respecting legal diversity and local wisdom. However, its implementation still requires supervision so that it does not deviate from the principles of universal justice. Article 2 Paragraph (3) of the New Criminal Code states that the procedures and criteria for

determining laws that exist in society will be regulated through Government Regulations. In its preparation, it must be guided by the principles as the basis for the formation of Regional Regulations on Customary Criminal Law, namely: the principles of humanity, non-discrimination, nationality, kinship, archipelago, Bhinneka Tunggal Ika, justice, balance, and the best interests of children and victims. These principles guarantee the protection of human rights, justice, and diversity within the framework of the Unitary State of the Republic of Indonesia (Komnas Perempuan, 2024: 55-56).

Suppose all requirements have been met and accommodated in the preparation of guidelines for Government Regulations on Procedures and Criteria for Determining Living Laws in Society. In that case, the state is considered ready to implement customary criminal Law as written Law. This government regulation will serve as a reference for regional governments in drafting regional regulations concerning customary criminal Law. The determination of customary law communities as subjects of customary criminal Law must be preceded by official recognition, as regulated in Minister of Home Affairs Regulation Number 52 of 2014 and other related regulations. This draft Government Regulation only includes recognition of customary criminal Law after the existence of customary law communities is identified.

The preparation of draft Regional Regulations related to customary criminal Law, both formally and materially, must refer to Law No. 15 of 2019 and Law No. 13 of 2022 concerning the Formation of Legislative Regulations. In this case, customary criminal regulations at the Provincial/Regency/City level must comply with the following provisions:

a. It contains material related to the implementation of regional autonomy and assistance tasks and pays attention to special regional conditions or the elaboration of higher laws and regulations.

b. The maximum criminal threat is 6 months imprisonment or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

c. Regional regulations can also contain other criminal threats by the provisions of applicable laws and regulations.

The hierarchy of statutory regulations consists of Government Regulations and Regional Regulations, which include Provincial and Regency/City Regional Regulations. This can cause confusion regarding the area where the Law applies. Regional Governments face challenges in designing Regional Regulations that are in harmony with the laws that exist in society because this process requires in-depth study and a short time, while the new Criminal Code will come into effect in 2026.

In Aceh, Acehnese traditional institutions are regulated in Aceh Qanun Number 10 of 2008 concerning Traditional Institutions, known as "*Legal Institutional Custom*". Aceh's traditional institutions consist of customary law communities, where traditional stakeholders have important positions in these institutions. These traditional institutions have the authority to resolve disputes that occur in the community and enforce customary Law. Violations of Islamic criminal Law are regulated in the Jinayah Law Qanun Number

6 of 2014 concerning Jinayat Law and Qanun Number 9 of 2008 concerning the Development of Traditional Life and Customs."*Customary law*", both of which reflect the values and traditions in the life of the Acehnese people.

Another example is that the Provinces of Papua and West Papua have special status in running the government to meet the needs of the Papuan people, as stated in Chapter I Article 1 Letter B of Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua. Autonomy in this context means freedom for the Papuan people to regulate and manage their own affairs, including government and the use of Papua's natural resources for the welfare of its people (Tanati & Rongalaha, 2025). This government regulation will serve as a reference for regional governments in drafting regional regulations concerning customary criminal Law (Palenewen & Solossa, 2023). Apart from that, the Papuan people also have the authority to determine the direction of national development and cultural, economic, and political policies that are in line with the characteristics, human resources, natural conditions, and unique culture of Papua (Irawati & Widjaja, 2006: 86).

2. Concept of Implementing Customary Criminal Law After Implementing Law Number 1 of 2023 concerning the Criminal Code.

Examined from a normative and theoretical perspective, the principles and practices of the basic dimensions of Law and the existence of the implementation of customary criminal Law are based on the provisions of Article 5 paragraph (3) sub b of the Emergency Law of the Republic of Indonesia Number 1 of 1951 concerning Temporary Measures to Implement the Unity Structure of Powers and Procedures of Civil Courts (LN 1951 Number 9).

There are three main conclusions from Article 5 paragraph (3) sub b of the Republic of Indonesia Emergency Law no. 1 of 1951 (Mulyadi, 2015: 71):

a. Customary crimes that do not have an equivalent in the Criminal Code and are light in nature are subject to a maximum penalty of three months in prison and/or a fine of five hundred rupiah.

b. Customary crimes that have equivalents in the Criminal Code are subject to the same criminal threats as those stated in the Criminal Code.

c. Customary sanctions can be used as the main punishment for criminal acts without an equivalent in the Criminal Code, but for those that have an equivalent, the sanctions must follow the provisions of the Criminal Code. Judges must consider the suitability of sanctions based on the type of crime and applicable Law.

The laws that live in a society (customary Law) originate from the customs of a particular community, tribe, or race, which create social order and are in harmony with their beliefs. Customary Law emerged before Islamic Law and in some areas, is still practised, even integrated with the community's spiritual beliefs (Armawan, 2024: 6).

In customary Law, all violations are considered criminal acts and are resolved through customary mechanisms. Characteristics of customary law violations include (Sudiyat, 2010: 174-176):

a. It is considered an illegal act and has a resolution mechanism.
b. Does not differentiate between criminal and civil matters.
c. There are always forms of recovery available, such as compensation or payment of customary money.
d. In certain cases, violations are not prosecuted if there is no complaint from the aggrieved party.

Article 4 of Law no. 1 of 2023 concerning the Criminal Code regulates the territorial principle, namely that criminal provisions apply to criminal acts that occur in the territory of Indonesia. Even though the new Criminal Code does not regulate the status of descendants of indigenous peoples, Article 2 provides space for applying customary criminal Law as long as the act occurs in a community that still practices customary Law. This means that customary Law applies based on the place (community), not the origin of the perpetrator.

In *Pledges of Adat law* (1936), Soepomo recorded various types of customary offences and customary law reactions to these violations in various regions of Indonesia. The reaction forms include (Soepomo, 1996: 114-115):

a. Immaterial compensation, such as forced marriage.
b. Traditional money payments are in the form of sacred objects.
c. A celebration ceremony for magical cleansing.
d. An apology is a cover for shame.
e. Physical punishment up to the death penalty.
f. Exile from society or exclusion from the legal system.

Customary justice issues need to be distinguished between material and formal customary Criminal Law. If a customary offence is not a criminal offence under national Law, resolving it through customary justice is not a problem. However, if customary offences are processed formally without a national legal basis, this violates the principle of legality (nullum delictum sine praevia lege poenali). However, customary justice remains the main choice in traditional societies, even if it does not follow the formal state system (Perbadi, 2023: 61-63).

Customary courts have different principles and characters from state courts. It includes aspects of public, private, or a combination of both and takes place informally through mediation, reconciliation, or negotiation. Settlement through customary justice requires wisdom so as not to damage the integrity of society because this system is based on its own logic and customary principles.

Legal resolution using a restorative justice approach is an alternative in Indonesia by placing victims, perpetrators, and the community as the centre of attention. The focus is on restoring damage resulting from criminal acts, not just punishing (Hiariej, 2017: 48). To make this happen, the synergy between the government and customary Law is needed. Two restorative approaches that involve the community are (Zarkasi, 2021):

a. *Community Reparation Boards*, namely a community council that determines a fair form of reparation for the perpetrator and assists in the recovery process.

b. *Citizens Panels*, namely a panel of citizens selected at random to participate in deciding cases based on local values and norms, in order to increase the sense of justice and community acceptance of the results.

The restorative justice approach, which involves the community in justice through mediation, restorative conferences, and punishment, aims to strengthen the sense of justice and healing for all parties. The state has an important role in building synergy with customary Law by recognizing and allowing its use in justice, but in a gradual and measurable manner, and paying attention to the principles of justice and human rights.

The government needs to adjust regulations to accommodate customary Law, ensure the judicial process remains fair, objective, and non-discriminatory, and maintain final and binding decisions. Customary Law, which is often more restorative, also upholds restorative justice in accordance with local community values (Pribadi, 2023: 61).

In the context of restorative justice, customary Law plays an important role in resolving legal cases in certain communities, with active participation from victims, perpetrators, and the community. The government and customary Law can work together to facilitate mediation and reconciliation and provide resources. This synergy also strengthens indigenous communities' cultural values and traditions (Pribadi, 2023: 62).

However, challenges arise in integrating customary legal views with the national legal system, which can lead to disharmony and problems related to rights and justice. Therefore, efforts are needed to strengthen the legitimacy of customary Law. One appropriate step is to involve national judicial institutions to legitimize customary sanctions, by Supreme Court Regulation No. 1 of 2024 concerning restorative justice.

Whereas based on the provisions above, it is stated that the criminal category of jinayat or qanun that applies in the Aceh region, which is included in the Law that lives in society (customary Law), can be tried using the principles of restorative justice so that it indirectly legitimizes and protects and provides legal certainty for the interests of the parties involved in the case, both victims and defendants.

The process of resolving customary crimes in Manokwari is carried out through several levels (Pasapan, Titahelu, & Latumaerissa, 2022):

a. The kinship level means that the initial settlement is carried out directly between the parties concerned with the help of a mediator, such as a traditional leader or tribal chief, to maintain privacy.

b. Police level (Polres Manokwari), namely, if one of the parties chooses Customary Law, the case is transferred to the Community Development Unit (Kasat Bimas) for mediation with traditional leaders.

c. At the Women's Empowerment and Child Protection Service level, cases involving women and children are often resolved based on customary Law, with the perpetrator held accountable according to custom.

d. The Papuan Customary Council (Customary Court), namely the Customary Council, resolves disputes through a process that includes reporting, summoning related parties, a customary hearing led by a customary judge, and the imposition of customary sanctions which the perpetrator must fulfil as a form of redress.

In Manokwari, the types of sanctions in resolving customary offences include (Pasapan et al., 2022):

a. Monetary payments, i.e. victims often request compensation starting from Rp. 10,000,000, with higher amounts for cases involving women, such as kidnapping or out-of-wedlock pregnancy, which are often called "shame money."

b. Traditional items, namely victims or their families, can claim traditional items, such as decorative plates, sound plates, and typical Papuan cloth, which have high economic value. Other items such as cars are sometimes requested as part of the sanctions.

c. Animals, namely sanctions, can also be animals, such as pigs, which have symbolic and economic value in Papuan culture. The victim can demand one or more heads according to the agreement.

Conclusion

The recognition of customary criminal Law in the new Criminal Code opens up space for legal diversity in Indonesia, especially in resolving criminal cases in Indigenous communities. However, there are challenges in drafting regional regulations and the risk of reducing the flexibility of customary Law when formalized. This integration must be balanced to respect customary dynamics without ignoring national legal principles. The application of customary Law ideally uses a restorative justice approach, with the state's involvement through the judiciary, which provides legal certainty based on the parties' agreement. Various internal regulations have also allowed for the participation of Indigenous communities in penal mediation, where the police and prosecutors can terminate the formal legal process after peace has been achieved through customary mechanisms.

The government needs to immediately prepare a Government Regulation concerning Procedures and Criteria for Determining Living Laws in Society as mandated by Article 2 paragraph (3) of Law no. 1 of 2023 concerning the Criminal Code, with a deadline of January 2, 2025. This regulation must accommodate justice based on customary traditions, maintain national legal principles, and protect human rights. Law enforcers must also understand and recognize customary criminal Law as part of conflict resolution based on local values and

restorative justice, especially for minor cases. This process must be carried out selectively, transparently, and supervised to remain in line with national Law and human rights.

Recommendation

Based on the research results, it is recommended that the central government immediately form a special cross-ministerial working team to prepare a Draft Government Regulation on Procedures and Criteria for Determining Living Laws in Society, involving customary law experts, traditional leaders, academics, and legal practitioners. Regional governments, especially those with strong traditional communities, must identify, document, and codify customary criminal Law in their territory as a preparatory step for drafting Regional Regulations. Law enforcement officers should be given comprehensive training on customary Law and restorative justice approaches, and special units should be formed at the police and prosecutor levels to handle cases with a customary dimension. The Ministry of Law and Human Rights needs to develop indicators and monitoring systems to ensure that the application of customary Law remains in line with human rights principles and the Constitution. Universities are encouraged to integrate customary law material in the legal education curriculum and conduct empirical research on the effectiveness of customary-based case resolution models. Indigenous communities need to be facilitated to strengthen their customary justice institutions by increasing the capacity of traditional stakeholders regarding the principles of modern criminal Law and human rights so that they can harmonize traditional values with national and international legal standards.

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