


# Integration of Customary Criminal Law into the National Legal System: Opportunities and Challenges

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Article Info	ABSTRACT
<b>Keywords:</b> Customary Criminal Law, Legal Integration, National Law, Principle of Legality, Restorative Justice	The purpose of this study is to examine the advantages and disadvantages of incorporating customary criminal law within the national legal framework of Indonesia. The local justice principles of customary criminal law, which is rooted in indigenous communities, frequently diverge from those of the national criminal justice system, which is focused on legal positivism. The incorporation of customary criminal law has emerged as a key concern in legal reform with decentralization and the constitutional recognition of indigenous communities. The research method used is juridical-normative with analysis of laws and regulations and court decisions. According to the study's findings, Indonesia's law enforcement system might benefit greatly from customary criminal law, particularly in achieving restorative and contextual justice that aligns with the local values of indigenous people. The significance of living law in society as a supplement to national law is highlighted by the recognition of customary criminal law by Law Number 1 of 2023 respecting the Criminal Code. Although there are still issues with legal harmonization, the legality principle, and the limitations of customary institutions, this study also discovered that regional regulations governing customary criminal law can improve the legitimacy and efficacy of customary law enforcement.
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## INTRODUCTION

Customary law, which exists and evolves in traditional communities, is one aspect of Indonesia's well-known and intricate legal system and cultural variety (Sulistiani & Sy, 2021). One type of unwritten law that develops from the social values, customs, and beliefs of the local indigenous groups is customary criminal law. Through discussion, mediation, and procedures for restoring collective social bonds, it serves to control abnormal conduct and settle infractions (Mayasari, 2017). The ancient Indonesian law known as customary law is not codified under official legislation but yet incorporates admirable principles and, occasionally, religious components. The role of customary law in maintaining order and harmony in indigenous communities makes it one of the important pillars of legal pluralism in Indonesia (Fadli, 2024).

Law, including customary law, is one of the fundamental problems that has always been faced by humanity from ancient times to the present. Wherever humans live in a civilized

community, the need for law always arises as an effort to regulate order, justice, and life together (Efrianto, 2024). In this context, law does not only function as a means of coercion, but also as a reflection of the culture and collective values of society. As a result, customary law, as a component of the legal system that emerges organically in Indonesian society, plays an essential role in the process of social life, manifesting itself in many kinds of rules that are not necessarily mirrored in state legal standards. The presence of customary law demonstrates that law is plural and contextual, in accordance with the growth of society and its demands (Harmaini et al. 2024).

The presence of Customary Criminal Law has resurfaced as a public concern with the passing of Law Number 1 of 2023 concerning the Criminal Code on January 2, 2023. This law makes significant changes to Indonesia's criminal law system, particularly because it acknowledges the presence of living laws in society, such as customary criminal law, which previously had no position in the positive legal system (Nugraha & Silalahi, 2024). The old Criminal Code, a relic of the Dutch colonial past, did not recognize customary criminal law as a recognized source of law. In fact, indigenous peoples in many parts of Indonesia have long used their own legal systems to settle all types of infractions based on local norms and values (Abdullah, 2015). With this new legislation, the state demonstrates willingness to incorporating customary law into the national legal system as a form of respect for the plurality of laws in Indonesia (Ardi et al., 2023).

Article 2 of Law Number 1 of 2023 provides that the provisions of the principle of legality contained in Article 1 do not diminish the validity of the law that exists in society, as long as it meets specific standards. In other words, a person may face criminal punishment based on common law requirements even if the actions taken are not explicitly controlled by the national Criminal Code (Zain, 2023). This acknowledgment is a step forward in Indonesian legal reform because it allows room for the non-formal legal system that has existed and is respected in the lives of indigenous peoples. However, careful execution of these rules is required to ensure the continued protection of human rights, defend the notion of justice, and avoid legal confusion (Arifin, 2023). As a result, the integration of customary criminal law into the national legal system must be supported by thorough oversight and harmonization processes so that the two legal systems can support each other and operate in harmony.

In order for a rule to be categorized as "living law in society", there are two main requirements that must be met. First, the rules must truly apply in the community environment where the law grows and develops consistently, and be recognized as a guideline in resolving social problems, including violations of norms (Putri, 2021). Second, the rules must be consistent with the values found in the Pancasila ideology, the 1945 Constitution of the Republic of Indonesia, the principles of human rights, and the general legal principles recognized by the international community. They must also not be in conflict with or have been regulated in the national Criminal Code. (Tanjung, 2023).

Local governments are urged to create regional rules as an official acknowledgement of customary offenses in their individual regions in order to bolster the legitimacy and validity of the living law in the national legal system (Setyaningsih & Kayuan, 2022). In order to establish equitable and contextual legal certainty, regional governments play a crucial role in bridging

the gap between the national legal system and customary criminal law, as stated in the Explanation of Article 2 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (Ablisar, 2014).

In the new Criminal Code, customary criminal law is designed to be accommodated through legislation at the regional level, namely in the form of regional regulations. In other words, customary criminal law, which was previously unwritten and lived naturally in indigenous communities, will undergo a transformation into a concrete and formal written legal form (Yanto & Hikmah, 2023). This change marks a fundamental metamorphosis in the character of customary criminal law, where local values and customary resolution mechanisms that were previously carried out verbally and based on collective agreements, must now be explicitly stated in legal documents that apply normatively in certain jurisdictions (Arrasuli, 2023).

As stated in Article 1 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code, the ongoing implementation of the legality concept in the Indonesian national legal system is precisely what led to this transformation. According to this idea, an act cannot be criminally punished unless it is first governed by established legal standards (Magala, 2023). Therefore, even though customary criminal law is acknowledged as a living law in society, it still needs to be codified in written laws, like regional regulations, in order to be legally applied and acquire legitimacy in the national legal system. This demonstrates an effort to strike a balance within the framework of a contemporary and organized national legal system between adherence to customary law and the requirement for legal certainty (Gregorio et al., 2024).

As required by Law Number 1 of 2023 concerning the Criminal Code, the aim of this study is to examine the opportunities and difficulties in incorporating customary criminal law into the Indonesian national legal system through regulations that are accommodated in laws and regulations, particularly regional regulations. The advantages of this study include academic contributions to the advancement of legal science, particularly criminal law and customary law, as well as policymakers' input to ensure that the integration of customary criminal law can be carried out in a fair, contextual, and constitutionally sound manners.

## METHOD

The normative legal technique, which is based on the examination of relevant legal norms, was the research methodology employed in this work (Ariawan, 2013). Law Number 1 of 2023 regulating the Criminal Code and other sections pertaining to customary criminal law are among the pertinent laws and regulations that are examined in this study. The way that written law accommodates the existence of living law in society—particularly customary criminal law—is examined using the normative legal approach. The information used in this study was gathered through library research, which included tertiary legal materials like legal dictionaries and encyclopedias; secondary legal materials like legal literature, scientific journals, articles, and the opinions of legal experts; and primary legal materials like laws, government regulations, and regional regulations. By using this method, the study seeks to

methodically comprehend how laws are constructed and assess how well they align with fundamental human rights and national law principles (Saebani, 2021).

## RESULT AND DISCUSSION

### Opportunities for Integrating Customary Criminal Law into the National Legal System Recognition and Respect for Local Wisdom

Customary criminal law, as part of the living law in society (living criminal law), receives indirect recognition in the Indonesian constitution, particularly through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Although not explicitly mentioned, this provision provides a legal basis for the existence of traditional legal systems, including customary-based penal mechanisms implemented by indigenous communities. Customary criminal law coexists with national criminal law, especially in customary areas that still preserve their justice systems collectively and traditionally. In this context, the recognition of customary criminal law reflects the spirit of legal pluralism embraced by the Indonesian legal system.

Customary criminal law is formed and implemented based on the values and social norms that develop within indigenous communities. It regulates actions that are considered to violate social order and cause disharmony within the community, while also determining forms of sanctions or remedies that the offender must undergo. Unlike the state criminal justice system, which emphasizes retribution and punishment, customary criminal law focuses more on restoring social balance and community peace. Therefore, customary criminal law is not merely a legal instrument, but also an expression of the collective values highly upheld by the community.

The integration of customary criminal law into the national legal system is relevant not only in a legal context but also in strengthening local cultural identity. Customary criminal law is a part of the identity of indigenous peoples, as it preserves penal traditions, conflict resolution mechanisms, and social sanctions passed down through generations. By accommodating customary criminal law within the national legal system, the state also acknowledges the existence and dignity of indigenous peoples as autonomous legal entities in the local context. This is important to strengthen the sense of justice in society, which has long been more closely tied to and trusting of customary mechanisms than formal state processes.

Acceptance of customary criminal law also signifies recognition of local wisdom in addressing social violations at the community level. In many cases, customary criminal law mechanisms have proven more effective in resolving conflicts, especially due to their participatory approach, restorative orientation, and emphasis on consensus. As highlighted in a study from the Law Journal of Galuh University, customary penal practices reflect local understandings of justice that are often more adaptive to the community's social context. Therefore, the preservation of customary criminal law is essential in building an inclusive and contextual national legal system.

Customary criminal law also plays an important role as an alternative in resolving criminal disputes, particularly those involving violations that are not always effectively addressed through the formal state legal system. In many indigenous communities, settlement mechanisms based on customary criminal law can resolve cases more quickly and efficiently, while also preventing the escalation of conflict. Settlement through customary processes often emphasizes restoring relationships between conflicting parties and openly acknowledging wrongdoing before the community. This approach aligns with the spirit of restorative justice, which is now beginning to be adopted by the national criminal justice system. Thus, the integration of customary criminal law can enrich legal enforcement practices in Indonesia.

### **Restorative Justice**

The restorative justice approach is an alternative paradigm within the criminal justice system that emphasizes the restoration of social relationships and moral balance disrupted by a criminal act. Unlike conventional criminal justice systems that focus on punishment and retribution, restorative justice positions the victim, the perpetrator, and the community as active participants in the resolution of legal conflicts. Its primary goal is to restore the victim's condition, cultivate a sense of responsibility in the perpetrator, and strengthen the social cohesion disrupted by criminal acts.

One of the main aspects of restorative justice is victim restoration. In this context, the victim is not merely seen as an object of the judicial process, but as a subject entitled to full justice, including compensation for material and non-material losses. Restoration can take the form of direct compensation, sincere apologies, or other symbolic and psychological forms of restitution that align with the needs of the victim and the norms of the local community.

Furthermore, the offender's responsibility becomes a crucial aspect of this approach. The perpetrator is not merely punished passively by the state but is encouraged to acknowledge their wrongdoing, understand its impact on the victim and the community, and actively participate in the recovery process. Through dialogue and consensus, the offender may realize the consequences of their actions and be given the opportunity to make amends in a constructive and meaningful manner.

Restorative justice also seeks reconciliation between the perpetrator and the victim, as well as the restoration of damaged social relationships. This reconciliation process is particularly relevant in indigenous communities that have tight-knit social structures, where harmony and social balance are key values. With the involvement of community leaders and customary institutions, case resolution can be carried out through deliberation and consensus, which reflects the fundamental principles of restorative justice.

In terms of crime prevention, the restorative approach allows for community involvement in the resolution of criminal cases. By enabling the community to resolve issues internally through restorative customary mechanisms, the community becomes an active actor in maintaining social order and preventing future legal violations. Various forms of customary sanctions in Indonesian indigenous communities demonstrate a natural alignment with the principles of restorative justice. For example, customary fines or compensation are often imposed on the offender to directly redress the victim, while apologies and community

service are practiced as forms of moral responsibility that reinforce social values. The resolution process through customary deliberation, involving traditional leaders, the offender's and victim's families, and community witnesses, also reflects a collective effort to achieve justice oriented toward healing rather than punishment. Therefore, customary criminal law containing restorative sanctions has the potential to become a vital foundation for integrating restorative justice principles into the national criminal justice system. These practices not only promote substantive justice but also strengthen public trust in more humane and contextual legal resolution mechanisms.

### **Increasing Community Participation**

Enhancing community participation in resolving disputes through customary criminal law mechanisms is a fundamental aspect of building an inclusive justice system rooted in local values. Customary criminal law, which lives and evolves in traditional societies, essentially functions not only as a tool for controlling deviant behavior but also as a participatory forum in which all elements of society are actively involved in maintaining social order and resolving conflicts through deliberation.

Community involvement in the resolution of criminal acts through customary forums—such as customary deliberations, village courts, or meetings of traditional elders—reflects a distribution of social responsibility in law enforcement. In this context, the community is not merely a passive observer of judicial processes carried out by the state, but becomes the main subject actively contributing to shaping justice that best suits the local social and cultural context. This involvement can enhance a sense of ownership of the law being applied, thereby increasing public confidence in legal justice.

Moreover, by promoting community participation in the resolution of criminal disputes, the values of solidarity and collective responsibility inherent in the social systems of indigenous communities can be preserved. The customary criminal law process typically involves the offender's family, the victim's family, community leaders, and witnesses from the community who together seek the best solution not only to resolve legal issues but also to restore the social relationships damaged by the crime. Thus, the resolution achieved is not one that severs relationships, as often occurs in the state criminal system, but rather one that strengthens social cohesion.

Furthermore, community participation in customary criminal law can also serve as an educational space for community members—particularly the younger generation—to understand local justice values and the wisdom of resolving problems peacefully and ethically. This holds strategic value in building a strong and contextual legal culture, as well as reinforcing the social integration between state regulations and legal practices that have developed culturally within society. Therefore, the recognition and empowerment of the community's role in customary criminal law must be part of a national legal reform agenda aimed at civilized justice.

### **The Role of Traditional Institutions in Law Enforcement**

The role of traditional institutions in law enforcement holds a very strategic position, particularly in the context of indigenous communities located in areas that are geographically difficult to access by the state's legal infrastructure. In such situations, traditional institutions

serve as entities that possess social and cultural legitimacy to carry out law enforcement functions, including in customary criminal cases. Traditional institutions are usually composed of respected and trusted community figures due to their knowledge of local values, customary norms, and conflict resolution mechanisms passed down through generations.

As mediators in criminal disputes, traditional institutions not only emphasize formal justice aspects but also take into account the social and spiritual values that live within the community. They play a role in maintaining a balance between the interests of the victim, the offender, and the society as a whole. The dispute resolution processes facilitated by traditional institutions usually take place in a deliberative, participatory atmosphere, and aim to restore social relationships. Forms of resolution such as compensation, public apologies, or community service are often considered more meaningful than prison sentences handed down by the state judiciary.

The efficiency and effectiveness of traditional institutions in handling customary criminal violations also lie in their ability to resolve cases within a relatively short time and at lower costs compared to the bureaucratic procedures in the national judicial system. This is particularly important in remote areas, where access to the police, prosecutors, and courts is often limited. Traditional institutions also play a preventive role by instilling moral values through various customary ceremonies and rituals that are rich in legal and social ethical messages, thereby helping to prevent criminal acts within the community.

However, for traditional institutions to fully optimize their role in law enforcement, a national legal framework is needed that recognizes and provides space for their existence and authority in a proportional manner. Integrating the role of traditional institutions into the national legal system not only enriches the landscape of law enforcement in Indonesia but also strengthens the principle of legal pluralism that aligns with the nation's socio-cultural character. In this way, traditional institutions can become strategic partners of the state in realizing substantive justice rooted in local values.

## **Challenges in Integrating Customary Criminal Law into the National Legal System**

### **Lack of Official Recognition**

One of the main challenges in integrating customary criminal law into the national legal system is the lack of official recognition by the state regarding the existence and applicability of customary criminal law across various regions of Indonesia. Although Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia explicitly acknowledges and respects traditional law communities along with their traditional rights, in practice this recognition has not been fully implemented in the form of operational legislation.

Customary criminal law is often positioned as complementary law, applicable only as long as it is not regulated by national law or does not contradict the fundamental principles of the state such as Pancasila, human rights, and general legal principles. However, without explicit and detailed regulations from both the central and regional governments, customary criminal law is vulnerable to being overlooked in formal judicial processes. Many regions still lack regional regulations that concretely govern the application of customary criminal law, despite its importance in providing legal legitimacy and certainty.

Furthermore, the weakness in official recognition reflects a structural imbalance between the state legal system (positivist) and the customary legal system (living law). When customary criminal law is only regarded as supplementary, it risks being excluded from formal law enforcement mechanisms and potentially marginalized. This makes achieving substantive justice—especially for indigenous communities who better understand and trust customary legal mechanisms—more difficult.

Therefore, to realize fair and sustainable integration, it is necessary to strengthen the recognition of customary criminal law through the formation of policies that support and guarantee its concrete existence. The state must actively identify, document, and formulate the customary criminal law system into written norms legally recognized at the national level, without eliminating the cultural characteristics and local values that are the spirit of customary criminal law itself. In this way, the integration is not merely symbolic, but truly implemented in the practice of Indonesia's national legal system.

### **Unclear Regulations**

Another major obstacle in integrating customary criminal law into the national legal system is the lack of clarity in norms and legal boundaries. This ambiguity includes overlapping authority between traditional institutions and state law enforcement agencies, as well as the absence of standardized criteria to determine when and under what conditions customary criminal law can be applied. This leads to legal uncertainty, which can ultimately harm both indigenous communities as legal subjects and law enforcement officials in carrying out their duties.

Theoretically, the state legal system upholds the principle of legality, which requires every criminal legal norm to be written, certain, and predictable. In contrast, customary criminal law is often unwritten, flexible, and contextual, in accordance with local values and social structures. When these two legal approaches lack a clear line of demarcation, ambiguity arises in their application. For example, a person sanctioned under customary law might file a complaint because they cannot find a written positive legal basis for the imposed sanction, even though the act is considered a crime under customary norms.

Therefore, identifying and codifying customary criminal law becomes essential as an initial step to bridge the two legal systems. Codification does not mean standardizing all customary laws from various regions but rather structuring a legal framework that accommodates this diversity in written form while respecting local values. Regional governments have a strategic role in this process through issuing regional regulations that legally and formally recognize and regulate customary criminal mechanisms, thereby providing legal certainty and protection for all parties involved.

### **Potential Conflicts with National Law**

The integration of customary criminal law into the national legal system also faces serious challenges in the form of potential normative and philosophical conflicts between the two legal systems. National criminal law is based on the principle of legality, retributive justice, and the protection of universal human rights. On the other hand, customary criminal law often emphasizes restorative justice, deliberation, and social sanctions, which do not always align with the principles of state law. These conflicts become more complex when customary law

contains sanctions that are considered discriminatory or violate human rights in the context of national and international law.

For instance, in some indigenous communities, forms of punishment such as social exclusion or customary fines that are disproportionate to the committed offense might be seen as conflicting with justice and human rights principles. Moreover, the lack of standardized procedural norms in customary law can raise questions of legal legitimacy when customary decisions are brought into the formal legal arena. This becomes problematic when state law enforcement officials do not have clear guidelines on how to respect customary decisions while still upholding the principles of the rule of law.

Therefore, efforts to harmonize customary criminal law with national law must be prioritized. Harmonization does not mean making the two systems identical but rather building a point of convergence that enables both legal systems to function synergistically and complementarily. Harmonization can be achieved through dialogue among stakeholders, cross-system legal training (between state officials and traditional leaders), and the formation of regulations that govern coordination mechanisms between customary courts and the formal judiciary. Furthermore, this integrative approach must also consider the socio-cultural dynamics of indigenous communities to prevent the marginalization of their legal identity. In this way, conflicts between customary criminal law and national law can be minimized, and Indonesia's national legal system becomes more inclusive and rooted in the local values that live within society.

### **Principle of Legality**

One of the fundamental challenges in integrating customary criminal law into the national legal system is the existence of the principle of legality (*nullum delictum nulla poena sine praevia lege poenali*), which is explicitly stated in Article 1 paragraph (1) of the Indonesian Criminal Code. This principle emphasizes that no act can be punished without a prior written legal provision that regulates it. This becomes problematic when customary criminal law, which is generally unwritten and based on traditions or agreements within indigenous communities, is applied to an individual. This mismatch can create a conflict between the principles of state justice and local values.

If customary criminal law is enforced without a written legal basis and without procedures aligned with national legal principles, it has the potential to cause injustice for both the perpetrator and the victim. The perpetrator may question the legitimacy of the customary sanction imposed, while the victim may feel that their rights are not optimally protected due to the absence of standardized legal procedures. This is where the tension arises between formal (positivistic) justice and substantive justice based on customary law. Without written legal recognition, customary criminal law remains vulnerable from a juridical standpoint.

To bridge this gap, strategic steps are needed in the form of codifying elements of customary criminal law within the framework of national law, for example through Regional Regulations or through provisions in the Criminal Code that create space for the recognition of living laws within society. In this way, the application of customary criminal law will not

conflict with the principle of legality and can still provide a sense of justice that is relevant to the social and cultural conditions of indigenous communities.

### **Limitations of Customary Institutions**

The limited capacity and infrastructure of customary institutions also present a serious challenge in the process of integrating customary criminal law into the national legal system. Customary institutions, as the authorities responsible for enforcing and resolving customary criminal cases, often lack adequate institutional support—whether in terms of human resources, administration, or formal legal legitimacy. In many regions, the role of customary institutions has been eroded by the centralization of state law and the lack of policy support from both central and regional governments.

To ensure the strategic role of customary institutions in enforcing customary criminal law, institutional strengthening is necessary through formal legal recognition, legal training, and capacity building. This strengthening must also be accompanied by a clear coordination mechanism between customary institutions and state law enforcement agencies, so that there is no overlap of authority or resolution of cases that contradicts the principles of a rule-of-law state.

On the other hand, Indonesia as a multicultural country has diverse indigenous communities with different legal systems and social values. Therefore, it is also important to regulate mechanisms for resolving disputes between customary groups, especially when an incident involves two indigenous communities with different perspectives on a particular criminal norm. Without such regulation, the potential for horizontal conflict and legal uncertainty will continue to loom over efforts to integrate customary criminal law into the national legal system. Thus, the success of integrating customary criminal law greatly depends on the active role and empowerment of customary institutions, as well as the state's commitment to building legal synergy that is inclusive and responsive to the diversity of living legal cultures in Indonesia.

## **CONCLUSION**

Integration of customary criminal law into the national legal system is an urgent and strategic need in efforts to build a legal system that is inclusive, responsive, and in accordance with the socio-cultural realities of Indonesian society. Customary criminal law as part of living law reflects local values, social norms, and dispute resolution mechanisms that have been passed down from generation to generation. Therefore, the recognition and empowerment of customary criminal law is a form of respect for the cultural identity and local wisdom of customary law communities. However, these integration efforts face a number of structural and normative challenges. Challenges such as minimal official recognition, unclear rules, potential conflicts with national law, and limited customary institutions are the main obstacles in this process. In addition, the existence of the principle of legality in national criminal law requires that customary criminal law be formalized into written law so that it can be legally enforced. This creates a dilemma between maintaining the authenticity of customary law and adjusting it to the principles of national law. On the other hand, the practice of restorative justice in customary criminal law has great potential in supporting the resolution of cases in

a peaceful, humane, and participatory manner. This approach prioritizes the restoration of social relations between perpetrators, victims, and the community, and can be an effective alternative to the formal justice system which tends to be repressive. Active community participation and the role of customary institutions as mediators and dispute resolvers are the keys to the success of this model. Thus, a strong commitment is needed from the government, policy makers, and customary law communities to create a harmonious legal framework between national law and customary criminal law. This step includes formal recognition through legislation, strengthening the capacity of customary institutions, and selective and participatory codification of customary law. Integration carried out wisely and proportionally will not only strengthen the national legal system, but also maintain the sustainability of local wisdom values as part of Indonesia's legal identity.

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