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# The Position of Living Law as a Legal Institution in Law No. 1 of 2023 on the Criminal Code

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**Abstract:** This study aims to determine and analyze the basis for consideration of living law as part of Law No. 1 of 2023 concerning the Criminal Code. To know and analyze the forms of living law that will be applied in Law no.1 of 2023 concerning the Criminal Code. To know and analyze the implementation of living law rules in Law No. 1 of 2023. This research uses normative legal research with a statutory approach in conducting dissection as the object of research. The results show that Law No. 1 of 2023 on the Criminal Code (KUHP) confirms the recognition of customary law or living law as an integral part of the national legal system, as mandated by the 1945 Constitution. This recognition aims to provide protection to the community, including indigenous peoples, by strengthening the laws that live in the community through updates and adjustments to the new Criminal Code. Previously, the colonial influence on the old Criminal Code did not adequately accommodate customary law. In its implementation, living law is reflected in Article 2 paragraph (2), which regulates forms of customary punishment such as non-material compensation, performance of customary rituals, apology as a cover of shame, and exile of the perpetrator from the community. These forms are local in nature and adapt to the local culture. The implementation of the new Criminal Code is based on three main foundations, namely philosophical, sociological, and juridical, which ensure the application of customary law in accordance with the social context and national legal norms.

**Keyword:** Living Law, Criminal Code, Law No. 1 of 2023, Customary Law, Legal Institutions.

## INTRODUCTION

Indonesia is a legal state where one of the legal systems is the national legal system which is the embodiment of the legal system in the world, namely the Continental European legal system or Civil Law. The consequence of adopting this legal system, especially in the concept of criminal law in Indonesia, is that Indonesia adheres to a principle that is clearly stated in the Criminal Code, namely the principle of legality. The principle of legality contained in the Criminal Code is actually derived from the teachings of Montesquieu in his book *L'esprit des Lois* in 1748 who put forward the Trias Politica teaching, the sentence reads "Nullum Delictum Nulla Poena, Sine Praevia Legi Poenalle". The meaning of the sentence is that no one can be prosecuted or sentenced, except for a rule of law that already exists and applies to him

(Apriyani & others, 2018). In addition to the development of forms of criminal offenses, the Criminal Code in force until now is not the only criminal law that reflects the social and cultural conditions of Indonesian society, because the Dutch Criminal Code. The Criminal Code that applies in Indonesia until now is also different from the *Wetboek Van Strafrecht* because the *Wetboek Van Strafrecht* is different from the Dutch Criminal Code.

*Van Strafrecht* is a Criminal Code for colonized countries that limits the freedom of the colony and has stricter provisions in regulating criminal acts for the Indonesian people. As is known, customary law was born, grew, and developed from Indonesian society and is one of the unwritten positive laws. The law of a nation is a picture or reflection of the culture of the nation concerned because law is part of culture and by understanding customary law as a whole it is hoped that it will clarify the understanding of customary law as one aspect of Indonesian culture. Law acts as a system of norms that apply. It is natural that the law always undergoes increasingly dynamic changes by following the development of society both in terms of individuals, social, and political state. The statement that the law must adapt to the development of society is actually reflected in the living law or in this case customary law as the natural mind of the Indonesian people (Apriani & Hanafiah, 2022). Sociological Jurisprudence as explained is part of the legal philosophy family. Its main study examines law and society, where the real law is a law that is in accordance with the customs and values that develop in society.

As described above, it is clear that sociological jurisprudence is a school that views the system, doctrine and legal institutions as critical social phenomena and studied through conditions, structures, social development through a multidisciplinary approach (Atmasasmita & others, 2012). In addition, sociological jurisprudence aims to connect the gap between law and social justice. So that in general, a red thread can be drawn that jurisprudence seeks to produce a synchronization between legal certainty in positive law with living law as a law that lives in society as an effort to meet the needs of the community for law derived from life values as the direction of legal orientation. Countries in the world have a legal system to regulate and order their citizens. The legal system of each citizen has its own differences. The state law that is applied can be referred to as the national law of the nation. National law is formed based on the cultural characteristics of each nation, because national law is actually the result of values that grow as a reflection of the nation's culture (Darmawan, Nugraha, & Sukmana, 2022).

Especially in Indonesia, customary law is a law that reflects the nation's culture because it grows from the habits of the community over time (Neltje, Delicia, Putri, & Lestari, 2023). Although all of them are in the unity of Republic of Indonesia, but there are differences owned by each region (Marewa & Parinussa, 2020). So that all of these customs can be united with the motto *Bhineka Tunggal Ika*, which is different but still one. The term customary law was first popularized in the book "*De Atjeher*" by Snouck Hurgronie in 1983. In his book, Shouck mentions the term *adat* or referred to as customary law which is a law whose validity is intended for the *Bumiputera* group or what is currently referred to as indigenous Indonesians and foreign Eastern groups during the Dutch East Indies colonial period. Since then, customary law has become an object of positive legal study.

The form of law is in the form of unwritten law (Rosana, 2014). Von Savigny argued that the law follows the *volkgeist* of the community based on the place where the law applies because each community's *volkgeist* is different. Likewise, Indonesian customary law grows and is maintained by indigenous peoples as a source of culture of their respective customary law communities. Therefore, the validity of customary law depends on each region. There are 2 things that limit the area where customary law applies, including (E. Sinaga, 2019); Culture in Society, because basically customary offenses are an aspect of culture; The community, where customary offenses are born, grow, develop and disappear. The relationship is that customary offenses are viewed as offenses based on the structure of the community. In the Indonesian legal system, customary law as unwritten law is different from continental law as written law. Koesno argues that the values that form the basis of customary law include

(Muhlizi, 2019) ; Individuals are part of a society that has their own functions for the continuation of society. Each individual within the unit operates in service to the entire unit. In such a traditional view of individual interests, it is difficult to articulate each individual's interests. In adat, order exists in the universe. In the traditional view, customary provisions do not have to be accompanied by the requirement to ensure their enforcement by means of force.

The written law that applies to all areas of customary law was officially recognized by the Dutch Colonial government and is equal to the Law of the Land. European or Western Law through article 131 paragraph 6 of the "Indische Staatsrgeling" (IS). Through this article, customary law is also declared as positive law as a nation. Indonesia. As a result of this, two legal systems emerged, namely Western Law and Customary Law. Western Law applies to Europeans, and Customary Law applies to Bumiputera and foreigners. In terms of the definition coined by C. Van Vollenhpyen, he argues that Customary Law is a unity of rules in behavior that apply to Indonesians. Customary law has forced power and its form is not codified. Referring to the definition above, three things can be underlined, namely regarding the rules of behavior, applicable to the Indonesian Nation, and the Foreign East. Studied further, customary law is the source that comes from the rules and norms that develop in the community in everyday life which is then present as the culture of the Indonesian Nation. So in this case, customary law is a law that is purely owned by the Indonesian Nation and is formed based on Value Conscientiousness from generation to generation which is reflected in habits in social life. Customary law is also judged by the size of their sense of justice and reason. When referring to Von Savigny's opinion, law is a representation of the soul of society. So, especially in Indonesia, customary law is the right one to represent Von Sayigny's expression (Aulia, 2020).

Communities that still adhere to unwritten laws such as customary rules, problem solving with customary law will be It is perceived to provide more benefits of justice compared to national law. Customary law is defined as original Indonesian law that is not written in the form of legislation of the Republic of Indonesia. Long before Indonesia's independence, even before the arrival of Europeans to the archipelago, customary law communities already had their own legal systems that were used as guidelines in community life. In law enforcement, it must pay attention to a legal system that does not refer to written regulations in law. The applicable law is extracted from the values that live in society as unwritten law which includes customs, customary law and local wisdom. Unwritten law is recognized as a living law and has binding force and sanctions as a state of law, Indonesia respects the unity of customary law communities and traditional rights (Arfah, Parulian, & Syahuri, 2024) . This article emphasizes the recognition and respect for community units, provided they fulfill specific conditions. These conditions include their existence throughout life, their alignment with societal development, and their adherence to the principles of the Unitary State of the Republic of Indonesia. Furthermore, the recognition and respect for these community units must be regulated under the provisions of the law.

The existence of indigenous peoples in Indonesia is recognized by the State with the legal basis as contained in Article 18B of the Constitution of the Republic of Indonesia.

Indonesia Year 1945 or abbreviated as the 1945 Constitution, where it is stated that "The State recognizes and respects the unity of customary law communities along with 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, which are regulated by law". Another legal basis that regulates customary law communities is contained in the provisions of Article 281 paragraph (3) of the 1945 Constitution which states that "cultural identity and traditional communities are respected in line with the development of the times and civilization". Jeremy Bentham said that the certainty generated by law (zekerheid door het recht) for individuals in society is the main purpose of law. Furthermore, Bentham formulated that the main purpose of law is to guarantee as much happiness as possible to as many people

as possible (Hendri, 2020) . The task of law is to ensure this certainty, especially in mediating various disputes or conflicts that occur in the midst of society. Therefore, the law is a guide to what is feasible and what is not feasible the law is an order.

The Constitution of the State of Indonesia acknowledges and respects customary law, as reflected in the constitutional guarantees and state recognition of its existence. This recognition is embedded in the 1945 Constitution, particularly in Article 18A (1), which mandates the government to consider regional specificity and diversity. Article 18B (1-2) further elaborates this recognition by stating that the state acknowledges and respects special or specific local government units as regulated by law. Additionally, the state recognizes and respects customary law communities and their traditional rights, as long as these are still alive, align with societal development, and adhere to the principles of the Unitary State of the Republic of Indonesia. The phrase "as long as it is alive" in Article 18B (2) indicates the pluralistic nature of the Indonesian Constitution, emphasizing the importance of customary law as a source of guidance for social life in modern times. Customary law, being flexible and dynamic, can serve as a foundation for drafting national legislation. Despite maintaining its traditional values, customary law is characterized by its adaptability and capacity for change, ensuring its relevance in a dynamic and modern society.

This means that the constitution considers customary law to be among the laws that need to be used as a source of guidance for social life in modern times. Because law is flexible and dynamic, customary law can be used as a source of drafting national legislation. Customary law also has characteristics which include: it contains traditional characteristics, can change, and is able to adjust itself. These characteristics show that although customary law maintains its traditional values, at the same time it can accept the changes that affect it. Herein lies the flexibility of customary law (Zazili, 2012). The Constitution is an organic law, providing a guarantee of legal certainty to customary law and its legal communities by including recognition and respect for the laws that live in the community. The guarantee of legal certainty by the Constitution is also realized by obliging judges as givers and creators of justice in society to explore, follow and understand the values of law and a sense of justice that live in society (Article 5 of Law 48/2009). The court's alignment with customary law will only be seen when the court judges' decisions have shown everything that exists in community life that has gained form as law (N. A. Sinaga & Nugraha, 2022).

This means that every court decision reflects certainty that has legal consequences (*rechtsgevolgen*) in the form of *dwang* (coercion) or certainty in other forms. In Anthony Allott's description of the basic postulates of the law, the characteristics of the judge's decision are "enforceable judge's decision". Meanwhile, Nader and Todd identify ways of resolving disputes that exist in society, and outline that one of the ways of resolving disputes is by taking coercion through the court (adjudication) (Abdillah & Sriwidodo, 2024). The continuous improvement of the Indonesian Criminal Code provides a place for customary law to develop into the scope of national law. This can be seen in the Draft Criminal Code in Article 68 paragraph (1) letter e which includes additional punishment in the form of fulfillment of local customary obligations or obligations according to the laws that live in the community. The inclusion of this additional punishment provides room for the protection of local customary law and restores the disturbed balance due to criminal offenses committed in the community. However, additional punishment can only be carried out together with the main punishment. So that the perpetrators of criminal offenses do not only carry out the main punishment in the form of death penalty, imprisonment, confinement and fines. The number of customary sanctions or customary obligations that still apply in a region is sometimes not in accordance with the objectives of punishment stated in the Draft Criminal Code.

In Bali, customary sanctions or customary obligations are called *pamidanda* or *danda* in each *pakraman* village. have different customary sanctions or obligations. *Maprayascitta* (cleansing ceremony), for example, is a customary sanction/customary obligation that still

applies in several regions in Bali. With the existence of various customary obligations, it is necessary for the judge to understand the customary obligations that are in accordance with the additional punishment in the form of fulfillment of local customary obligations or obligations according to the laws that live in the community, especially in Bali. Another regulation related to the recognition and protection of indigenous peoples is contained in Law No. 6/2014 on Villages. In addition to regulating villages, the law also regulates the government's recognition of the existence of customary villages. The government, in this case the Regional Government, can organize the customary law community unit and establish it as a Customary Village through a regional regulation, provided that the three criteria of the Customary Village are met. The criteria are that the customary law community unit and its traditional rights are actually still alive and in accordance with the development of society and in line with the principles of the Unitary State of the Republic of Indonesia (Zain, 2023).

Through various legal regulations that have been issued by the Government, it can be seen how the State is trying to respect and certainly recognize the existence of customary law communities and the rights of customary law communities themselves in various aspects of life, including in the aspect of criminal law. Customary law communities have their own customary law system and even when violations occur, They have legal rules relating to sanctions that can be applied to members of the customary law community who commit violations of customary law so that they can be subject to customary criminal sanctions. However, as with the majority of customary laws in Indonesia, customary laws relating to customary criminal law, especially those relating to the application of customary sanctions, are conveyed orally and are not contained in written or unwritten law. Another issue that arises when there is a problem involving other people outside the members of the customary law community concerned but occurs within the customary law community. Which national criminal sanction system or customary sanction system will be applied to the case. Because once again, the rights of indigenous peoples are recognized as long as these rights are actually still alive in the environment of the indigenous people concerned (Apriyani & others, 2018).

In social life, customary law is applied in all areas of life. For the community, customary law is the main reference for life guidelines. In fact, it is not only in the daily life of the community that customary law is applied. Even if a judge tries a case and cannot find written law, he must find the law that lives in the community. This means that customary law, although unwritten, can be applied in the formal process of litigating in court. With the ratification of the Criminal Code Bill by Commission III of the House of Representatives and the Government, which has officially agreed on the Draft Law on the Criminal Code, the Government has decided that the Criminal Code Bill should be approved by the House of Representatives. The Criminal Law (Draft Criminal Code) to be approved as the Criminal Code Law includes the application of the principle of material legality and the law that lives in the community (living law), the doctrine of *ultimum remedium* restorative justice and the application of diversion, the shift to neo-classical flow (paying attention to subjective and objective factors), the expansion of the subject of criminal law, the application of the principle of absolute and substitute responsibility, the regulation of new types of basic punishment (supervision and work).

Customary law has its own authority and stands alone in handling every case within a particular indigenous community. Laws that live in the community can be the reason for criminalizing someone who commits a criminal act (*adat*). Although the determination of customary crimes, there is no agreement on the formulation of laws that live in the community. In the process of drafting the Criminal Code Bill, from a total of around 646 articles, substantially most of them have been agreed between the DPR and the government. There is one provision that continues to reap debate, namely the existence of living law or law that lives in the community in the Criminal Code Bill. He admitted that the current Criminal Code does not make the law that lives in the community a positive law. This is because customary law has its own authority and stands alone in handling every case within certain indigenous

communities. In the hierarchy of laws and regulations in Indonesia, customary law is not given a formal place. Customary law is formally recognized in legislation, custom, judges' decisions or scholars' opinions. The existence of a stigma of distinction between written law in laws and regulations and customary law, justice related to social, such as sociological jurisprudence, can be found in point 5 of Pancasila as the legal basis for every legal formation in Indonesia, social justice is a society or the nature of a just and prosperous society, happy for everyone, no humiliation, no oppression, no exploitation. So it can be said that to make a legislation must be based on Pancasila. There is no legislation that can be said to be a legislation if it is not in accordance with Pancasila which is based on the soul of life, the existing habits of Indonesian society. So it can be said that customary law can be said to be Pancasila as the basis for every legislation in Indonesia. Based on the above background, the author wants to examine the urgency and application of **“The Position of Living Law as a Legal Institution in Law No. 1 of 2023 on the Criminal Code .”**

## **METHOD**

This research uses a normative legal method with a statutory approach and a case approach to analyze the application of legal norms in practice, especially through the study of regulations such as the 1945 Constitution and Law No. 1 of 2023 on the Criminal Code. The research data comes from primary, secondary, and tertiary legal materials collected through a literature study, involving legislative documents, scientific papers, and related journals. The data was analyzed qualitatively to explore the dynamic relationship between theories, concepts, and data, resulting in arguments that answer legal issues and provide input in legal explication.

## **RESULTS AND DISCUSSION**

### **Consideration of Living Law (Customary Law) in Law Number 1 of 2023 Concerning Us Criminal Law Law**

Customary law, derived from the Dutch term *adat recht*, is the unwritten rules of custom, binding force, and legal sanctions that are accepted and obeyed by society. The word "adat" is thought to come from Arabic (*habit*) or Sanskrit (*immaterial*), and has been used for thousands of years. Customary law reflects the values, norms and culture that live in society, which function to regulate behavior and have social sanctions for violations. Experts such as Prof. Soepomo and M.M. Djodiguno emphasized its role in building community justice and filling the void of formal law. As a constitutional mandate, customary law is a source of national law that is in line with the values of Pancasila, adaptive to the times, and meets the needs of modern society. Critics of legal ethnocentrism highlight the importance of integrating customary law without dominating Western law. In the Indonesian legal system, judges are required to consider local customs according to Law No. 4 of 2004 Article 28. Although unwritten, customary law remains a cultural identity and an important basis in the formation of national law.

Laws originate from community customs that develop into customs and binding laws with the authority of the state to enforce them. In society, customary law becomes the main guideline, even applied in judicial proceedings if written law is not available. Customary law serves as the basis of national law that must reflect the social values of the community to be effective and authoritative. However, the recognition of customary law in the Indonesian legal system is still limited, especially in the protection of indigenous peoples' rights to land, culture and natural resources. Recognition of customary law requires the fulfillment of the following conditions: indigenous peoples must be alive, customary law is in accordance with the development of society, does not conflict with the principles of the Unitary Republic of Indonesia, and is regulated in law. Currently, two of the four conditions have not been met, namely its suitability with the development of society and its regulation in legislation. Official recognition of customary law in law is needed to ensure its existence as part of legitimate

positive law in Indonesia. Customary law also reflects the values of gotong royong, compliance, and community participation in social life and development.

Customary law in Indonesia has a special place in national criminal law, as recognized in the 1945 Constitution which mandates the recognition of customary law communities as long as it is in accordance with the development of society and the principles of the Republic of Indonesia. Customary law, although unwritten, regulates various forms of customary criminal offenses and resolves conflicts through traditional approaches, such as customary peace, which can strengthen social stability. However, the current Criminal Code, as a Dutch colonial legacy, does not fully reflect the values of customary law living in Indonesian society. To address this, the new Draft Criminal Code has accommodated the applicability of customary law as an exception to the principle of legality, so that it can better reflect social justice. At the national level, regulations such as the Judicial Power Law direct judges to explore customary law values in their decision-making, in line with international principles such as the UN Declaration on the Human Rights of Indigenous Peoples. Therefore, reforming the Criminal Code to better accommodate customary law is an important step to strengthen national legal identity rooted in local culture.

### **The Form of Living Law That Will Be Applied in The Reform Of National Criminal Law**

Customary law in Indonesia is a living law that is hereditary and remains relevant today, reflecting traditional values that are respected. Experts such as Van Vollen, Soepomo, Ter Haar, and Surojo Wignjodipuro divided customary law into various fields such as family law, land, inheritance, offense, and debt. Customary law is characterized by togetherness, concrete, visual, open, and simple, so it is easy to adapt to changes without losing its basic spirit. Its recognition is regulated in Article 18B paragraph (2) of the 1945 Constitution, which emphasizes that customary law must be in accordance with the development of society. In the formation of laws, it is important for policy makers and judges to explore the legal awareness of the community, making customary law the basis for maintaining order and harmony in community life. This is in line with the thinking of the school of history and sociological jurisprudence that sees law growing from public awareness, despite the challenges in integrating it into the modern legal system.

Customary law communities in Indonesia, also known as indigenous peoples, refer to groups of people who live by customary rules and norms that apply for generations. These communities have a legal entity, a ruler, and a regulated environment based on shared rights to land and water. Their lives are communal, with strong principles of gotong royong and solidarity. Customary law communities can be divided into two main types: genealogical and territorial. Genealogical customary law communities, such as patrilineal (based on male lineage), matrilineal (based on female lineage), and parental (based on the lineage of both parents), are bound by blood relations. Meanwhile, territorial indigenous peoples are bound to the same area of residence, and are divided into village associations, regional associations, and village associations, which have independent government structures but still coordinate with each other in regulating common interests. As such, indigenous peoples retain their customs and traditional laws as the basis of their social, economic and political life.

Customary Criminal Law in Indonesia regulates offenses that disturb the social balance in indigenous communities. Unlike Western legal systems, customary law integrates social, religious, and magical norms, which are believed to be capable of restoring the disturbed balance. Acts that violate these values are considered "customary offenses" and may result in customary reactions, such as the payment of fines, corporal punishment, or exile. Types of offenses regulated include treason, arson, witchcraft, incest, and theft, with reactions varying depending on the severity of the offense and the status of the offender. Customary criminal law is dynamic, evolving according to the community's sense of justice, and does not differentiate

between criminal or civil law offenses, as its main objective is the restoration of a disturbed community balance.

The progressive legal view of customary law emphasizes the importance of recognition and protection of indigenous peoples in Indonesia. Currently, the recognition of indigenous peoples is only regulated in Home Affairs Regulation No. 52/2004 and the draft Law on Indigenous Peoples (RUU MHA), but the recognition mechanism is still not optimal. Ideally, the recognition of indigenous peoples should be the authority of customary institutions, with the government only tasked with facilitating the registration process. The existing system is too bureaucratic and does not reflect the reality of the existence of indigenous peoples, who should not be evaluated based on administrative procedures, but based on the fulfillment of their rights. In this case, the establishment of a specialized institution such as Lembaga Adat Indonesia that has broader powers, such as verification and monitoring of indigenous peoples' rights, would be more effective in protecting their rights. The regulation of basic rights such as education, environment and culture in the MHA Bill, as well as recognition of international conventions such as UNDRIP, are important to provide comprehensive legal protection to indigenous peoples. The implementation of this progressive law must be in line with Indonesia's moral commitment to respect and protect the rights of indigenous peoples both at the national and international levels.

### **Implementation of Living Law in The Criminal Code**

Living law in Indonesia, which is reflected in the application of customary law, has dynamic and uncodified characteristics, functioning as a law that develops in line with changes in society. This customary law is recognized and preserved as part of Indonesia's cultural diversity. In the context of the new Criminal Code (KUHP), efforts to accommodate living law are reflected through the expansion of the principle of legality, where customary law can now be included in legislation. This change aims to decolonize the KUHP, which was previously considered a colonial legacy, to be more in line with the values of Indonesian society. However, as a country with a Civil Law system, Indonesia still prioritizes the codification of written and binding laws, however, written laws often have difficulty keeping up with rapid social developments. Therefore, the reform of the Criminal Code aims to harmonize the law with the norms and values of the Indonesian nation, making it more relevant to the national ideology of Pancasila.

The contribution of living law in society to the reform of national criminal law in Indonesia is justified not only by national instruments, but also by international instruments. In the context of national law, the 1945 Constitution as the state constitution recognizes the rights of traditional communities, which includes recognition of the norms and values that develop in these communities. The idea of adopting laws that live in the community dates back to the issuance of Law No. 19/1948, which gave authority to village community leaders to decide cases based on the laws prevailing in the community. Although customary courts were abolished during the Soekarno era with Law No. 1 of 1951, the principle of recognizing customary laws and norms that live in the community still has relevance in the reform of national criminal law, in line with the values that develop in society.

The scope of the enactment of statutory regulations in the punishment system includes the principles of the space of the enactment of criminal law consisting of the principles of legality, territorial, active national, passive national, and universal. These principles regulate when and where criminal law can be applied. The draft Criminal Code develops the principle of legality by incorporating aspects of material legality and introducing the concept of *tempus delicti* (time of criminal offense) and *locus delicti* (place of criminal offense), which are not regulated in the existing Criminal Code. In addition, national criminal law can protect national interests, including the rights of Indonesian citizens abroad, and accommodate international/transnational crimes. The validity of the law is influenced by three foundations:



juridical (based on the authority of the regulator), sociological (public acceptance), and philosophical (in accordance with the basic values of the state such as Pancasila). The formation of laws and regulations must take into account democratic principles, with public participation to improve the quality of legal decisions and ensure the protection of public interests.

## CONCLUSION

Customary law in Indonesia, or what is often referred to as "living law," plays an important role in the country's criminal law system, given that Indonesia is a country rich in cultural and customary diversity. In this regard, the new Criminal Code (Law No. 1 of 2023) aims to protect communities, including customary communities, whose existence is recognized by the 1945 Constitution. Although customary law was not accommodated in the colonial Criminal Code, the reforms made in the new Criminal Code provide space for customary law to be further considered. The forms of customary law applied in the criminal context, in accordance with Article 2 paragraph (2), include various forms of punishment tailored to local customs, such as non-material compensation, punishment system in the form of customary money, purification of the community from supernatural impurities, apology, and exile from the community. In its implementation, the implementation of the new Criminal Code must be based on three important aspects: philosophical, sociological, and juridical foundations. The philosophical foundation ensures that the law reflects the values of the state, the sociological foundation involves community acceptance, and the juridical foundation ensures that the law is enforced based on legitimate authority.

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