



THE LEGAL AND REGULATORY FRAMEWORK OF ADAT COURTS AS AN ALTERNATIVE DISPUTE RESOLUTION IN INDONESIA

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ABSTRACT

This study examines the legal and regulatory framework of Adat Courts in Indonesia, evaluating their viability as an Alternative Dispute Resolution mechanism. Despite the formal recognition of customary law in the 1945 Constitution and the new National Criminal Code (Law Number 1 of 2023), regulatory gaps persist regarding the harmonization of customary decisions with the national legal system. Utilizing a doctrinal legal approach with statutory, conceptual, and case analyses, this research investigates dispute resolution mechanisms across various customary jurisdictions. The findings reveal that Adat Courts offer a highly effective, restorative justice-oriented approach that promotes social harmony. However, their implementation requires rigorous state supervision to prevent conflicts with constitutional rights. This research contributes a novel perspective by positioning Adat Courts not merely as an ADR, but as a Primary Dispute Resolution (PDR) mechanism within a legally pluralistic framework. Robust supporting regulations are essential to prevent the rigid codification of dynamic customary laws while ensuring legal certainty.

A. INTRODUCTION

The discourse surrounding the existence of law in Indonesia cannot be separated from the classic adage of Marcus Tullius Cicero, "*Ubi Ius Ibi Societas*," meaning where there is society, there is law.¹ This statement forms the ontological foundation that law is not always identical to the written norms produced by state legislative institutions. In the context of Indonesia, legal pluralism is a sociological inevitability that has existed for centuries. Long before the establishment of the Unitary State of the Republic of Indonesia, the

¹ Frenova Noersal, "UBI SOCIETAS IBI IUS: Di Mana Ada Masyarakat, Di Situ Ada Hukum (Marcus Tullius Cicero)," *fnaplaw.com*, 2022. <https://fnaplaw.com/id/ubi-societas-ibi-ius/>, Accessed on October 30, 2025. See also, Agus Mulyawan, *Eksistensi Pengadilan Adat dalam Sistem Peradilan di Indonesia* (Surabaya: LaksBang Justitia, 2015). See also, Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 2003), 43.

people of the archipelago already had an autonomous, organic social regulation system rooted in communal values, known as Hukum Adat (Customary Law). This system is not static but continually evolves in response to the dialectics of time. As the living law, customary law is not just a collection of traditions but a functional legal system with the authority to maintain cosmic balance and social harmony at the grassroots level.² The existence of customary law reflects the spirit of the nation (*volksgeist*), giving a unique identity to each indigenous community in the archipelago, from kinship systems to the judicial systems they adhere to.

However, the dominance of legal positivism for centuries, especially from the colonial period to the modern era, has created a tendency to marginalize the role of customary courts. Legal positivism tends to view law merely as a command of the ruler that must be codified into written laws. In the lens of legalism, justice is often reduced to mere legal certainty, and this paradigm frequently fails to capture the substance of justice as it is actually experienced by people on the ground due to its rigid focus on statutory texts. As a result, dispute resolution through formal litigation in state courts often leads to a win-lose solution. The formalistic and bureaucratic nature of state judicial processes often positions the parties as adversaries seeking to defeat each other in court. While legally the dispute may be considered resolved with a binding court ruling, sociologically, such decisions often leave behind polarization, resentment, and a prolonged rupture in social cohesion. The inability of formal law to address the restoration of human relations prompts the urgency to reconsider the position of Customary Courts as a more honorable means of dispute resolution.³

Contemporary phenomena demonstrate a public revival or renewed trust in customary courts. This is evidenced by various legal events in different customary jurisdictions across Indonesia. People are beginning to realize that justice is not always sought in grand court buildings but can be found in deliberations at customary halls. For example, in Bali, a significant case arose involving I Wayan Dharma Yudha in Sanur. The imposition of the heaviest customary sanction, kanoroyang (expulsion or revocation of customary rights), for putting up a billboard for a Klian Adat candidate serves as empirical evidence of the strong coercive power of customary law.⁴ This case highlights

² Ellyne Dwi Poespasari, *Hukum Adat Indonesia: Suatu Kajian Kepustakaan dan Perkembangannya* (Jakarta: Kencana, 2021), 23.

³ Hanifah Dwi Jayanti, "Pakar Sebut Pengadilan Negeri Tak Bisa Gantikan Peradilan Adat Dalam Penegakan Living Law," *HukumOnline.com*, 2025. <https://www.hukumonline.com/berita/a/pakar-sebut-pengadilan-negeri-tak-bisa-gantikan-peradilan-adat-dalam-penegakan-living-law-lt68ff2afa676e7/>, Accessed on October 30, 2025.

⁴ I Wayan Dharma Yudha, "Warga Desa Adat Intaran Sanur Dijatuhi Sanksi Kanoroyang, Dharma Yudha Anak TNI AU Melapor Ke Komnas HAM," *Atnews.id*, 2025. <https://atnews.id/portal/news/26837/>, Accessed on October 30, 2025.

the intersection between individual political rights in a democracy and the sovereignty of customary authorities in maintaining neutrality and internal order within adat villages. Sociologically, it reinforces that indigenous communities still recognize customary courts as an effective dispute resolution institution with authority surpassing formal law in local contexts.

Similarly, in Pontianak, West Kalimantan, the dispute resolution process involving Rizky Kabah through the Dayak Customary Council at Rumah Betang highlights another dimension of customary justice: transparency and collectivism.⁵ Rumah Betang is a philosophical symbol of harmonious communal life. The imposition of customary sanctions in an open setting aims to deter and simultaneously educate the public, without focusing on retribution. In Dayak legal philosophy, disputes are seen as a fire that can burn community harmony if not quickly extinguished through customary mechanisms. The strength of Customary Courts lies in their role as the purest and most contextual form of Alternative Dispute Resolution (ADR). Unlike formal courts, which rigidly separate civil and criminal matters, Customary Courts view each offense as a disruption to community harmony, prioritizing consensus and mutual agreement.

To understand why customary courts are viewed as an ideal means of dispute resolution, it is essential to explore the concept of the living law introduced by Austrian legal sociologist Eugen Ehrlich. Ehrlich proposed the thesis that the center of gravity for legal development lies not in legislation or judicial decisions, but in society itself. He distinguished between state law created by formal authorities and the living law that actively governs the behavior of community members in their daily interactions. Customary law in Indonesia is the purest manifestation of living law; it grows bottom-up from the community rather than being imposed from above. Effective law, in Ehrlich's perspective, is obeyed not out of fear of state sanctions but because it reflects the internal order of the social association. Consequently, customary decisions often have a higher level of voluntary compliance compared to state court decisions, as rejecting a customary decision is akin to ostracizing oneself from the community.

Philosophically, customary law in the archipelago has long practiced Restorative Justice, a concept that emphasizes the restoration of social harmony rather than solely focusing on punishment.⁶ The Western legal paradigm tends to be retributive, but customary law has a more humane horizon. Restorative justice in customary courts rests on three interrelated

⁵ Tim DetikKalimantan, "4 Hukum Adat untuk Rizky Kabah, Apa Saja?" *detikKalimantan*, 2025. <https://www.detik.com/kalimantan/budaya/d-8155480/4-hukum-adat-untuk-rizky-kabah-apa-saja>, Accessed on October 30, 2025.

⁶ Allison Morris and Gabrielle Maxwell, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford: Hart Publishing, 2001) 12.

pillars. The first pillar is restoration, where the main focus is repairing the harm experienced by the victim and the community, returning the disrupted balance to its original state. The second pillar is collective accountability, meaning disputes involve the extended family and community, creating strong social control.⁷ The third pillar is reconciliation, which ensures that the ultimate goal is the return of social harmony, allowing the parties to coexist peacefully without prolonged resentment.⁸

Furthermore, customary courts manifest the values of Pancasila as the fundamental norm (Grundnorm) of Indonesia. The existence of customary courts is a concrete manifestation of Pancasila principles in legal practice. Regarding the principle of Just and Civilized Humanity, justice in customary courts is conducted while upholding human dignity, humanizing the parties through dialogue rather than processing bodies through prison bars. Under the principle of Democracy Guided by the Wisdom of Deliberation, decisions are made not based on dividing votes, but through the wisdom of customary elders guiding discussions toward a fair resolution. Finally, concerning Social Justice for All the People of Indonesia, justice is achieved when balance in society is restored. Customary fines are often allocated for the restoration of the victim or communal interests, ensuring that social harmony remains the top priority.

Despite its philosophical strength and sociological effectiveness, a significant regulatory gap exists regarding the integration of customary courts into Indonesia's national legal system. The history of the Indonesian legal system records the tension between state recognition of customary law and the desire to unify national law. Issues frequently arise when customary rulings conflict with national legal norms or individual civil rights guaranteed by the state constitution, as seen in the debate over the kanoroyang sanction in Bali. Furthermore, the jurisdictional reach of customary law over outsiders or non-indigenous people based on territorial principles remains a gray area that requires definitive legal parameters to prevent jurisdictional clashes.

Recently, the enactment of the principal legislation, the new Indonesian Criminal Code (Law Number 1 of 2023), introduced a new chapter in Indonesia's legal history by formally recognizing customary law.⁹ This law explicitly provides space for the recognition of the living law under Article 2,

⁷ Vinda Agustina, H. S. Tisnanta, and Muhtadi Muhtadi, "Restorative Justice as an Effort to Fulfill the Constitutional Rights of Citizens: Restorative Justice sebagai Upaya Pemenuhan Hak Konstitusional Warga Negara," *Jurnal Konstitusi* 21, no. 2 (2024): 244.

⁸ Aliyth Prakarsa and Rena Yulia, *Hukum Pidana Adat: Beserta Kajian Terhadap Pasal Pidana Adat dalam UU No. 1 Tahun 2023 tentang KUHP* (Jakarta: Kencana, 2023), 42.

⁹ Fuadil Umam, "Revolusi Hukum Pidana! Mengupas Tuntas Pengakuan Hukum Adat di KUHP Baru," *MARINews*, 2025. <https://marinews.mahkamahagung.go.id/artikel/revolusi-hukum-pidana-mengupas-tuntas-pengakuan-hukum-adat-05C>, Accessed on October 30, 2025.

serving as a basis for addressing actions deemed disgraceful by the community, even if they are not regulated by written laws. While this represents a tremendous opportunity to strengthen customary courts and transition them from a mere alternative into a primary dispute resolution mechanism, it also demands clear statutory frameworks. These frameworks must ensure that customary justice practices align with restorative justice principles, providing legal certainty and preventing discriminatory practices.

Therefore, the primary objective of this research is to analyze the mechanisms and effectiveness of dispute resolution based on customary law across various customary jurisdictions in Indonesia. Specifically, this study aims to determine the legal status of customary law concerning non-indigenous individuals based on territorial principles, and to comprehensively evaluate the implications of the new National Criminal Code (Law Number 1 of 2023) on the existence and authority of Adat courts as an ideal restorative justice institution.

B. RESEARCH METHODS

This research employs a normative legal research (doctrinal legal research) method with a qualitative approach. This method is chosen because the study primarily focuses on analyzing legal norms, principles, and doctrines concerning the existence and effectiveness of customary courts as a primary dispute resolution mechanism. To ensure full alignment with the stated research objectives, this study utilizes four main approaches: statutory, conceptual, comparative, and case approaches.

The statutory approach is utilized to clarify the regulatory framework that serves as the primary legal basis for this research. The principal legal frameworks analyzed include Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees the state's recognition of customary law, and the new National Criminal Code (Law Number 1 of 2023), specifically Article 2 regarding the recognition of the living law. Furthermore, Special Autonomy Laws and Local Customary Regulations (such as Qanun in Aceh and Perda in Bali) are examined to evaluate their synchronization with national laws and to identify current regulatory gaps.

The conceptual approach is applied to build a robust theoretical framework surrounding the concepts of living law, restorative justice, and inclusive legal pluralism. To address the objective of evaluating the mechanisms and effectiveness of customary dispute resolution, a comparative approach is used to identify the similarities and differences in Adat court practices across various jurisdictions, including Bali, Aceh, Kalimantan, Toraja, and Papua. Concurrently, the case approach focuses on the concrete decisions and practices of customary courts. This approach is specifically used to evaluate the real-world implications of customary rulings, particularly

concerning the application of the territorial principle and the jurisdictional reach of customary law over non-indigenous individuals.

The legal materials used in this research consist of primary and secondary sources. Primary legal materials include the aforementioned legislation, actual customary court decisions, and official state documents directly related to the implementation of customary law. Secondary legal materials comprise recent peer-reviewed scholarly journals, legal textbooks, and research papers discussing restorative justice and legal pluralism, while tertiary materials such as legal dictionaries are used to clarify specific terminology.

The collection of legal materials is conducted through comprehensive library and documentary research. All gathered legal materials are then analyzed qualitatively using a descriptive-analytical method. Through systematic legal reasoning, this analysis aims to explain the intricate relationship between national legal norms and customary law practices, ultimately providing a solid doctrinal foundation for evaluating Adat courts and formulating recommendations for legal reform.

C. DISCUSSION

1. The Mechanisms and Effectiveness of Customary Dispute Resolution in Indonesia

This section delves into the empirical practices on the ground that show the variations, dynamics, and effectiveness of customary law in responding to various social issues. Through case studies from various regions, it is evident that customary law not only survives but also adapts to political realities, digital challenges, and modern human rights demands.

a. Customary Arbitration Practices in the Western and Central Regions

1) Aceh: Formal Legitimacy of the Gampong Court

Aceh represents the model of customary courts with the strongest formal legitimacy in Indonesia. Through Law Number 11 of 2006 on the Governance of Aceh and various local regulations (Qanun), the state grants full delegated authority to the village level or Gampong. The Gampong Court is legally recognized to resolve at least 18 types of light cases, ranging from family disputes, petty theft, to other customary violations.

The strength of the Aceh model lies in the legal certainty provided for customary functionaries. Gampong court decisions are final and binding socially, and are recognized by both the police and formal courts. This significantly reduces the burden on state courts and ensures that local conflicts do not escalate into larger communal grudges.

2) Kalimantan (Dayak): The Philosophy of Peace and Transparency

In Kalimantan, particularly in West and Central Kalimantan, Dayak customary courts operate under the Dayak Customary Council (DAD). Unlike the formal legal system, which is often perceived as closed and elitist, Dayak customary courts prioritize public access.

The Pontianak Case (Rizky Kabah): The imposition of four types of customary punishments on public figure Rizky Kabah at Rumah Betang set an important precedent. The Dayak customary court system operates under the Dayak Customary Council (DAD/*Dewan Adat Dayak*), emphasizing transparency and public access. This openness ensures that justice is collectively achieved, preventing any bias. As noted by Pandiangan, the recognition of customary court decisions in regions like Aceh demonstrates how such transparency fosters trust in these institutions.¹⁰ The use of Rumah Betang as the courtroom site is symbolic; it represents transparency, where every community member can witness justice being upheld. This is crucial to prevent the perception of "self-judgment" and ensure that the sanctions are based on careful collective consideration.

In South Kalimantan (Adat Badamai), the Adat Badamai practice shows the flexibility of customary law in handling crimes that formally fall under criminal law, such as assault and traffic accidents. Through criminal mediation (Baparbaik), customary law prevents the occurrence of generational grudges. Sanctions, such as fines or medical expenses, are seen as fairer for the victim compared to simply imprisoning the offender, who offers no compensation for the harm done.

3) Toraja: Customary Law's Response to the Digital Age

The case involving comedian Pandji Pragiwaksono against the Torajan Customary Institution, Tongkonan Adat Sang Torayan (TAST), illustrates that customary law can respond to modern challenges, including verbal offenses in cyberspace. Violations of symbols and cultural honor in Toraja are resolved through customary mechanisms with highly measured sanctions:

Material Sanction (*Lolo Patuan*): The obligation to provide 96 buffaloes and pigs. While this may seem financially burdensome, in Torajan cosmology, the fine reflects the level of harm caused to harmony. Moral Sanction (*Lolo Tau*): The obligation to pay a fine of IDR 2 billion to restore the damaged cultural symbols.

¹⁰ Eko Ardiansyah Pandiangan, "Kekuatan Putusan Peradilan Adat Gampong di Aceh," *HukumOnline.com*, 2019. <https://www.hukumonline.com/klinik/a/kekuatan-putusan-peradilan-adat-gampong-di-aceh-lt5d51136391178/>, Accessed on October 30, 2025.

This case proves that customary jurisdiction extends beyond physical geographical boundaries and reaches anyone whose actions impact the cultural integrity of a community, even in the digital realm. From the above case studies, a common thread emerges: customary courts in Indonesia have different characteristics but share the same goal: restoration. The following table summarizes the essential differences in the approach to customary law across these regions:

Table 1. Comparative Approaches to Customary Dispute Resolution

Region	Main Focus	Dominant Type of Sanction	Main Legal Foundation
Aceh	Legal Certainty	Social & Administrative Sanctions	Law Number 11/2006 & Qanun
Kalimantan	Social Balance	Customary Fines (Material)	Dayak Customary Council Decisions
Toraja	Dignity & Honor	Financial & Ritual Sanctions	Unwritten Law (Lolo Patuan)
Bali	Purity & Order	Kanoroyang (Social Exclusion)	Bali Adat Village Regulation
NTT	Spiritual Reconciliation	Rituals & Communal Meals	Oral Tradition & Culture

These practices provide evidence that customary courts are far more responsive to local community needs than formal courts. Their effectiveness lies in the speed of the process, the emotional closeness of customary functionaries to the parties involved, and sanctions oriented towards social responsibility rather than mere physical suffering in prison.

However, this effectiveness still requires an "umbrella" of oversight to prevent the absolutism of customary power. Experiences from the Bali case show that supervision is needed to ensure fairness for individuals without curtailing the autonomy of the customary community itself. Thus, customary courts can transform into the best dispute resolution mechanism, modern yet firmly rooted in national identity.

- b. Dynamics in Eastern Regions (Bali, NTB, NTT, Papua)
 - 1) Bali: The Controversy of Kanoroyang and the Limits of Customary Power
- In Bali, the Desa Adat system holds vast authority. However, the incident involving I Wayan Dharma Yudha in late 2025 in Sanur brought the discourse of customary law to a more complex level. The imposition of the Kanoroyang sanction (expulsion or exclusion from customary rights) for erecting a political billboard demonstrated the harsh side of customary law as a social control tool.

Effectively, Kanoroyang is the most feared sanction, capable of creating absolute order. However, academically, this case sparks tension between customary sovereignty and human rights, as well as citizens' political rights. The debate arises: can customary autonomy override an individual's constitutional right to freedom of expression? This phenomenon shows that customary courts in Bali are currently in a dialectical phase, finding a balance between upholding the dignity of tradition and respecting individual rights in the framework of a modern state.

2) NTT: Psychological Conflict Management through the Mela Sareka Ritual

Conflict resolution through the customary ritual known as mela sareka (peace ritual) is practiced in NTT. The peace process follows stages that start with Getun Liko Pepin Peka (separating the parties), followed by Soba Sewalet (inviting reconciliation), Uku Loyak Gatu Gatan (reconstructing the truth), Haput Ele Kirin (symbol of forgiveness), and finally Mela Sareka (achieving complete peace).

3) Papua: Personal Jurisdiction and Special Autonomy

Through Law Number 21 of 2001 on Special Autonomy, Papua is granted ample space to conduct customary courts. The uniqueness of Papua lies in the recognition of personal jurisdiction; that is, customary courts have the authority to adjudicate both civil and minor criminal cases, as long as the parties involved are members of the indigenous community. Papua's customary courts function as institutions that emphasize local wisdom in managing natural resources and customary land, which are often the main sources of conflict in the region.

Papua's unique approach is reflected in the recognition of personal jurisdiction in customary law, where indigenous courts are authorized to resolve disputes involving members of the indigenous community. Safira discusses how customary values are integrated into local regulations, further strengthening the role of customary law in the region.¹¹

The integration of customary law with local regulations ensures that the principles of the indigenous community are upheld, providing a clear framework for dispute resolution within Papua's legal system. This approach helps preserve the cultural integrity of the indigenous people while maintaining harmony and order within their territories.

¹¹ Najwa Safira, "The Integrasi Nilai Hukum Adat Badamai Masyarakat Banjar dalam Perancangan Peraturan Daerah Kalimantan Selatan sebagai Implementasi Keadilan Restoratif," *Jurnal Hukum Lex Generalis* 6, no. 3 (2025): 1–15.

From the various case studies above, a common thread can be identified: customary courts in Indonesia exhibit different characteristics but share the same goalRestoration. The following table summarizes the essential differences in the approach to customary law across these regions:

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2. The Territorial Principle and Jurisdictional Reach Over Non-Indigenous Individuals

A fundamental question often raised within the framework of legal positivism is the extent to which customary law can bind outsiders or non-indigenous individuals who share no genealogical ties with the indigenous community. Through a normative-empirical analysis, it is evident that customary sovereignty in Indonesia is not solely genealogical (based on descent) but inherently territorial. The customary maxim "Where the earth is tread, there the sky is respected" (*lex loci*) establishes that any individual who enters or performs legal acts within a customary territory automatically submits to the prevalent local norms.

The supremacy of this territorial principle was concretely demonstrated in a 2017 case involving an Air Force military officer and the Dayak community in Pangkalan Bun. Normatively, military personnel are subject to exclusive military jurisdiction. However, following an incident of assault within a customary area, the sociological reality necessitated the intervention of customary law. Alongside military disciplinary actions, the imposition of a customary fine (antique jars) served to restore cosmic and social balance.¹²

¹² Nugroho Budi Baskoro, "Sidang Adat Dayak, Perwira TNI AU Didenda 2 Guci Antik dan 15 Belanga," *Kompas.com*, 2017. <https://regional.kompas.com/read/2017/06/17/13525861/sidang.adat.dayak.perwira.tni.au.didenda.2.guci.antik.dan.15.belanga?page=all>, Accessed on October 30, 2025. See also,

This precedent provides de facto recognition that state penal systems alone are insufficient to perform *restitutio in integrum* in conflict areas. It legally affirms that customary jurisdiction is inclusive-territorial rather than exclusive-primordial, possessing an authority that transcends state institutional boundaries to restore local harmony.

Furthermore, the expansion of customary legal subjects is strengthened by the doctrine of voluntary submission. In Customary Case Number 04/BH.Spt-DKA/VIII/2022 involving a non-indigenous entrepreneur, the individual was deemed subject to customary jurisdiction because he voluntarily responded to the proceedings within the customary institution. Juridically, this is analogous to the principle of *pacta sunt servanda* in modern arbitration law. By participating in the customary forum, the party implicitly acknowledges its relative competence. Recognizing this voluntary submission provides legal certainty for the investment climate in customary regions, balancing economic stability with the protection of indigenous communal rights.

3. The Implications of the New National Criminal Code on Adat Courts and Restorative Justice

The enactment of the new National Criminal Code (Law Number 1 of 2023) marks a monumental paradigm shift in Indonesia, transitioning from colonial legal centralism to the formal recognition of inclusive legal pluralism. Article 2 of this legislation represents an ideological transformation by formally acknowledging "the living law" as a legitimate source of criminal law. This breaks the rigid monopoly of the legality principle, affirming that an individual can be held accountable for actions deemed disgraceful by the community, even if such acts are absent from written statutory law.¹³

For Adat courts, this principal legislation carries profound legal implications, primarily concerning the legitimacy of execution and the application of the *ne bis in idem* principle. Customary sanctions, previously marginalized as mere self-judgment (*eigenrichting*), are now recognized as legitimate instruments of community-level restoration. Consequently, a significant jurisprudential discourse emerges: individuals who have fulfilled heavy, restorative customary sanctions should be shielded from double jeopardy within the formal state legal system. If a customary court has effectively restored peace and compensated the victim, state courts should

Muhammad Yamani, "Harmonizing Conservation Values of National and Customary Laws on Turtles Conservation," *Jambe Law Journal* 2, no. 1 (2019): 61–77.

¹³ Tim DetikKalimantan, "4 Hukum Adat untuk Rizky Kabah, Apa Saja?" *detikKalimantan*, 2025. <https://www.detik.com/kalimantan/budaya/d-8155480/4-hukum-adat-untuk-rizky-kabah-apa-saja>, Accessed on October 30, 2025.

refrain from imposing retributive prison sentences that risk disrupting the newly achieved social harmony.¹⁴

However, the implementation of Article 2 presents critical regulatory challenges, particularly regarding the risk of positivization and the devaluation of customary values. The mandate to codify living laws into Regional Regulations (Perda) poses a sociological threat; the fluid, dynamic nature of customary law risks being frozen into a rigid, state-controlled format, losing its contextual adaptability. Furthermore, if the state attempts to limit customary sanctions to equate merely with minor criminal fines, it strips away the symbolic honor and deterrent effect integral to indigenous cosmologies.

To overcome these implementation problems, legal harmonization must avoid reducing Adat courts to a mere Alternative Dispute Resolution (ADR) mechanism ("spare tire"). Instead, the regulatory framework derived from the new Criminal Code should position Adat courts as a Primary Dispute Resolution (PDR) institution at the grassroots level. By granting maximum autonomy to customary courts and treating indigenous communities as mature legal subjects, the state can seamlessly integrate the restorative spirit of the living law into the national legal architecture, ensuring justice that is both legally certain and sociologically resonant.

D. Conclusion

Based on the comprehensive analysis, this study concludes with three principal findings that directly address the research objectives. First, regarding the mechanisms and effectiveness of customary dispute resolution, Adat courts offer a highly responsive, restorative justice-oriented approach that efficiently restores social harmony compared to the formalistic state litigation system. Second, concerning the legal status of non-indigenous individuals, customary law possesses a robust territorial jurisdiction (*lex loci*). The doctrine of voluntary submission and the inherent territorial principle ensure that outsiders who perform legal acts within a customary region are bound by its norms, establishing a juridical reach that transcends mere genealogical ties. Third, the enactment of the new National Criminal Code (Law Number 1 of 2023) fundamentally transforms the existence of customary courts by formally recognizing the living law. This recognition provides execution legitimacy to customary sanctions and philosophically justifies the application of the *ne bis in idem* principle for cases resolved adequately through customary channels.

¹⁴ Ali Sodikin, "Restorative Justice dalam Tindak Pidana Pembunuhan: Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 49, no. 1 (2015): 63–100. See also, Maidina Rahmawati, *Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2022).

The theoretical and practical implications of these findings are profound. Theoretically, Indonesia is shifting from colonial legal centralism toward an inclusive legal pluralism, where the living law is acknowledged as a primary source of criminal justice. Practically, this necessitates a paradigm shift in how the state views Adat courts: they must no longer be marginalized as a mere Alternative Dispute Resolution (ADR) mechanism ("spare tire"), but rather integrated and empowered as a Primary Dispute Resolution (PDR) institution at the grassroots level.

Therefore, this study offers several critical recommendations for legal reform and policy development. The government and regional legislatures must exercise extreme caution when formulating Government Regulations (PP) and Regional Regulations (Perda) mandated by Article 2 of the new Criminal Code. These supporting regulations must be drafted carefully to clarify the categories of customary offenses without freezing the dynamic nature of customary law into rigid, state-controlled codifications. Furthermore, enhanced coordination protocols must be established between formal law enforcement agencies and customary functionaries to ensure that customary decisions are respected, thereby preventing double punishment while strictly safeguarding individual constitutional rights.

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