

The Urgency of the Problem of Customary Criminal Execution in the Architecture of the Integrated Criminal Justice System after Law No. 1 of 2023

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Abstract. *The New Indonesian Criminal Code (Law No. 1 of 2023) formally recognizes customary criminal law (living law), yet this development generates a fundamental paradox between legal formalization and the absence of procedural mechanisms. The urgency of this issue arises from the inconsistency between the recognition of customary sanctions and the Criminal Procedure Code (KUHP), which designates the Prosecutor as the sole authority responsible for executing criminal judgments. In practice, the Prosecutor lacks the cultural competence and institutional capacity to implement spiritual and restorative customary sanctions, which traditionally fall under the authority of Customary Leaders. This misalignment between legal authority and practical competence creates an executorial crisis, rendering sentences in the form of "fulfillment of customary obligations" potentially non-executable. Using normative legal research methods and analysis of primary and secondary legal materials, this study finds that the absence of KUHP reform accompanying the New KUHP exacerbates legal uncertainty. As a result, non-executable judgments are likely to increase, undermining judicial authority and weakening the functional position of customary law within the national criminal justice system.*

Keywords: *Criminal; Customary; Executorial; Prosecutor.*

1. INTRODUCTION

The enactment of Law No. 1 of 2023 concerning the Criminal Code (hereinafter referred to as the New Criminal Code), which will come into effect in January 2026, marks a fundamental paradigm shift in the history of Indonesian criminal law. Philosophically, the New Criminal Code seeks to transform the orientation of punishment, moving from retributive justice (retribution) inherited from colonial law to restorative justice that focuses on recovery. This spirit is in line with Indonesia's constitutional promise as a country based on the rule of law, which not only relies on legal positivism but also explores the noble values of the nation. At the core of this philosophical shift is the formal recognition of "living law," or what is commonly known as customary criminal law (Siregar, 2024). This recognition is legally and normatively stipulated in Article 2 paragraph (1) of the New Criminal Code, which states that "The provisions referred to in Article 1 paragraph (1) do not diminish the applicability of the laws that exist in society which determine that a person should be punished even though the act is not regulated in this Law".

This article is a progressive step and an effort toward the decolonization of criminal law. It formally adopts the principle of contextual or material legality, whereby the sources of criminal law are no longer limited to written laws, but also recognize unwritten norms that are recognized as valid by indigenous peoples. However, this recognition is not absolute (Yamin & Rachman, 2025). To prevent potential arbitrariness or rights violations, Article 2 paragraph (2) of the New Criminal Code establishes strict normative limits. The laws that exist within society can only apply “as long as they are not regulated in this Law and are in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and the general principles of law recognized by the international community.” This measure, in theory, is an effort to uphold legal pluralism while maintaining the unity of the national legal system.

The fundamental challenge lies not in the intention to recognize customary law, but in the method of recognition chosen by the state. The New Criminal Code requires that customary offenses, which are inherently dynamic, unwritten, and highly specific to each community, be formalized into written state legal instruments. Specifically, these customary offenses are required to be reinforced through Regional Regulations (Perda) at the provincial or district/city level (Susanto dkk., 2025). This regional regulation is positioned as the key to officially identifying at least three crucial elements: 1) The name and boundaries of recognized customary law communities; 2) Acts (customary offenses) that are recognized and punishable under customary law; and 3) Procedures for enforcement and customary sanctions that can be imposed, which must prioritize restorative justice.

This is where the central paradox of the New Criminal Code lies. The state seeks to recognize the law (living law), but the prerequisites for its recognition (through the codification of local regulations) have the potential to freeze and kill its “living” nature. The essential characteristics of customary law, which is unwritten and dynamic, allowing it to evolve according to the needs of the community, are now forced to submit to a formal legislative process that is rigid, bureaucratic, and time-consuming. The New Criminal Code, in its noble attempt to respect customary law, is in fact forcibly reforming the face of customary law. It changes the existence of customary law from a dynamic socio-cultural entity into a static legal-formal entity, or in other words, changes living law into local state law (*de Sousa Santos, 2023*).

The above problems are exacerbated by a most pressing factual urgency, namely the technical regulatory gap (Keumala dkk., 2025). Article 2 paragraph (3) of the New Criminal Code explicitly and imperatively mandates that “Provisions regarding the procedures and criteria for determining laws that are alive in society shall be regulated by Government Regulations (PP)”. These Government Regulations are at the heart of the implementation of Article 2, which serves as a national guideline for local governments to draft local regulations on customary offenses. However, the actual legal situation shows that, with the New Criminal Code due to come into force in 2026, this crucial implementing regulation has not yet been issued. The absence of this PP creates a massive and dangerous legal vacuum (*rechtvacuum*). This vacuum is not merely an administrative problem, but has the potential to cause systemic paralysis that threatens the entire architecture of customary law recognition. As a result, when the New Criminal Code comes into full effect, one of its most progressive features, namely the recognition of customary law, cannot be implemented (inoperable). This

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The architecture of customary law enforcement operates with a diametrically opposed logic. Empirical evidence from various customary practices in Indonesia shows that customary enforcement is not punitive in nature, but rather aims to restore justice (*rechsherstel*). Its main objective is to restore the balance of the cosmos or social harmony that has been disrupted by the occurrence of a crime. The sanctions imposed are not imprisonment, but rather "fulfillment of customary obligations." These take many forms, ranging from dialogue between the victim and the perpetrator, social reintegration efforts, the performance of customary ceremonies (for example, in Bali), payment of customary fines (which are managed by the community, not deposited into the state treasury), or other forms of compensation for losses (I Nyoman Nurjaya, 2023).

The most fundamental characteristic is the figure of the executor. Customary execution must be carried out by individuals or institutions that have cultural and spiritual legitimacy in the eyes of the indigenous community, not formal legal legitimacy from the state. A factual case study in Papua, for example, shows that the legitimate customary executors are the Ondoafi (tribal chief) or Abu Akho (the Ondoafi's representative). In South Sumatra, in the context of the Regional Regulation on Customary Institutions, the authority to impose customary sanctions rests with the Pemangku Adat Marga (Customary Institution Leader). The level of compliance of those convicted with these customary executors is reported to be very high, because it is based on communal respect, not state coercion (Bako & Nasution, 2025).

The most pressing issue that the Integrated Criminal Justice System (SPPT) will face in relation to the implementation of Article 2 of the New Criminal Code is the dualism in the execution of "customary obligations" decisions. This impasse arises because the two existing scenarios are both impossible: if the execution is carried out by the prosecutor (in accordance with the authority of the Criminal Procedure Code), he or she does not have the cultural competence or customary legitimacy to lead the sanction ritual; However, if the execution is handed over to the Customary Leader, he does have cultural legitimacy but does not have formal legal authority and state

coercive power to carry out the court's decision. This legal checkmate position, exacerbated by the absence of a legal basis for the delegation of authority, will ultimately render the judge's decision non-executable or merely a "paper tiger." The factual consequence is a double delegitimization: the authority of the state court collapses because it is unable to enforce its decisions, while the customary institution also loses its cultural authority. Ironically, efforts to respect customary law have the potential to weaken both legal systems (state and customary) simultaneously.

2. RESEARCH METHODS

This study uses the normative legal research method (doctrinal legal research) (Zainuddin Ali, 2024), Focusing on substantive analysis and synchronization of laws and regulations related to the recognition and enforcement of customary criminal law after the enactment of Law No. 1 of 2023 concerning the Criminal Code. The approach used is a statute approach to examine the hierarchy and consistency of norms between the New Criminal Code and the Criminal Procedure Code, as well as a conceptual approach to analyze the concept of "living law," the principle of material legality, and the executorial crisis arising from dualism of executors. Primary legal data includes Law No. 1 of 2023, the Criminal Procedure Code, and related Government Regulation (PP) plans, while secondary legal data consists of research results, legal journals, and literature related to the integrated criminal justice system and customary law. Data analysis was conducted qualitatively with systematic and logical interpretation to formulate normative solutions to the problems of legal vacuum and the potential for non-executable decisions at the Attorney General's Office level.

3. RESULTS AND DISCUSSION

3.1. Legal Vacuum in Implementing Regulations and the Paradox of Formalizing Customary Offenses

The enactment of Law No. 1 of 2023 on the Criminal Code (New Criminal Code) marks a historic moment in Indonesian criminal law policy. One of the most fundamental breakthroughs, regarded as a "criminal law revolution," is the formal recognition of "living law," or what substantively refers to customary criminal law, as a source of substantive criminal law. The noble intention (*ratio legis*) behind this recognition, as outlined in the Academic Draft of the Criminal Code, is to break free from the shackles of the rigid formal principle of legality inherited from colonialism. The legislators sought to expand the principle of legality into the material realm, in line with post-independence legislative policy and the constitutional mandate for judges to "explore, follow, and understand the values of living law" within society (Muladi, 2023).

The philosophy behind this recognition is to uphold legal pluralism, local wisdom, and a sense of authentic justice within indigenous communities. However, this philosophical idealism of recognizing socio-cultural, unwritten, and dynamic legal entities has been confronted with the positivistic legal construct formulated in the body of the law itself (Fadli, 2025). Article 2 of the New Criminal Code, which forms the basis for this recognition, actually establishes a rigid and highly procedural normative architecture. Instead of providing space for customary law to thrive, the construction of this article creates two fundamental disruptions that are the focus of this research analysis. First, it creates procedural paralysis in the form of a legal vacuum (*rechtvacuum*) due to the

stalling of the issuance of implementing regulations. Second, it gives rise to a philosophical contradiction inherent in a formalization paradox, whereby efforts to recognize living law through the codification of state law (Regional Regulations) have the potential to kill the very essence of the “living” nature of the law itself. This discussion will unravel these two substantive paralyses.

The first root cause of the paralysis of the substance of living law is juridical-procedural in nature. It stems from the state's failure to provide the implementing regulatory instruments that are imperatively mandated by the New Criminal Code itself (Christinawati, 2024). The legal fact to date is that the Government Regulation mandated by Article 2 paragraph (3) has not yet been issued. This regulation is still in the form of a Draft Government Regulation (RPP). Various stakeholders, such as the Attorney General's Office of the Republic of Indonesia, are still in the position of “overseeing the drafting of the RPP” to ensure protection for Indigenous Peoples. The absence of this PP is not merely an administrative delay. Legally, this condition creates a legal vacuum or, at the very least, serious legal uncertainty. This legal vacuum is procedural in nature because the “procedures” mandated by the law do not exist, but its impact is substantive, namely the paralysis of the entire mechanism for the recognition of living law as designed by the New Criminal Code. Without the PP, there are no valid and binding national guidelines that can be used by local governments (Pemda) to answer fundamental questions regarding “how” (procedures) and “what” (criteria) customary offenses may and may not be formalized into local regulations (Perda).

The legal vacuum at the central level due to the non-issuance of a Government Regulation (PP) as mandated by Article 2 paragraph (3) of the New Criminal Code has directly impacted the paralysis of local government authority. In fact, various analyses, including those from the Supreme Court, emphasize that Local Regulations (Perda) are key to the implementation of customary offenses in the field. Perda are needed to identify and formalize three crucial elements, namely the name and boundaries of customary law communities, recognized acts (customary offenses), and procedures for enforcing sanctions that prioritize restorative justice. However, local governments are now in a dilemma because, in the hierarchy of legislation, they cannot formulate local regulations that contradict higher regulations. Without a government regulation as a valid “rule of the game” (*spelregels*), any local regulation on customary offenses that is issued will have a high potential for legal defects. As a result, local governments cannot exercise their authority and must wait for the PP to be issued, which effectively renders the entire architecture of living law recognition in the New Criminal Code inoperable. This is a fundamental legal paralysis, born of the state's procedural failure (Wardhani, 2023).

Customary law, as a manifestation of living law, is fundamentally different from positive state law. Sociologically, customary law is in line with the Sociological Jurisprudence school of thought, in which authentic law is found in social reality, customs, and community propriety (customs), rather than solely in formal legislative regulations. It is communal in nature, prioritizes togetherness, and functions to maintain social order with an orientation towards restoring balance and restorative justice, rather than retribution. An essential difference can also be seen in its nature, which has two main characteristics that are opposite to state law, namely that it is unwritten and dynamic, flexible, and constantly evolving (evolutionary) in accordance

with the needs of the times and the values of the community. Furthermore, its legitimacy stems purely from the socio-cultural acceptance of the indigenous community itself (bottom-up), rather than being a delegation of authority from the state (Forsyth, 2022).

The “fundamental paradox” of the model for recognizing customary law in the New Criminal Code is the state's demand, through the Explanation of Article 2 and the mandate of the Regional Regulation, that laws that are essentially “unwritten” and “dynamic” be ‘compiled’ and “regulated in writing” in Regional Regulations. This act of “formalization” philosophically changes the very nature of customary law itself. As emphasized by Prof. Dr. Dominikus Rato, customary law is defined as law that is “not formed by the state,” so that when it is formalized by the state through local regulations, it “no longer has the characteristics of customary law.” This process transforms customary law in two vital aspects: it changes from dynamic to static, because its nature becomes “rigid” and changes can no longer be made through customary deliberation, but must go through a formal legislative process in the local government that is procedural and time-consuming. In addition, it changes from socio-cultural to juridical-positivistic, where customary law ceases to be a “living” entity and becomes a “dead” written legal entity. Ironically, the state's efforts to “recognize” living law by forcing it into the mold of legal positivism (local regulations) actually ‘kills’ or “erodes the dynamic essence” of the law itself (I. Nyoman Nurjaya, 2023).

Characteristics	Customary Law (as Living Law)	State Formalization (as Local Regulations)
Source of Norms	Socio-cultural; Bottom-up (from the community)	Legal-Positivistic; Top-down (from the state/local government)
Form	Unwritten, Oral, Customary	Written, Codified, Static
Nature of Norms	Dynamic, Flexible, Evolutionary (evolving with the times)	Rigid, Static, Procedural
Process of Change	Social evolution, traditional deliberation	Formal legislative process (Prolegda, Plenary Meeting, etc.)
Focus on Justice	Restorative, Communal, Cosmic balance	Procedural, Retributive (punishment), Legal Certainty
Legitimacy	Acceptance of indigenous communities	Approval by state authorities (Regional Representative Council and Regional Head)

The foreseeable negative consequences of this formalization paradox are very serious, even if the process is successful. The risk of reduction and sterilization arises because the “compilation” process in local regulations carries a high risk of simplifying rich and philosophical customary laws into a mere rigid “list of offenses,” reducing them from a value system to a criminal inventory (Sulastriyono, 2023). In addition, there is a risk of co-optation (hijacking) by the state, whereby local governments become gatekeepers that determine which customs are recognized, thereby subordinating autonomous customary law to state law. This is exacerbated by the risk of incompetence and distortion, namely the concern that customary norms will be “shaped by people who do not understand,” because the drafters of local regulations (local councils and bureaucrats) most likely do not have a deep philosophical understanding of the laws they are codifying. This legislative process also opens up the risk of politicization and discrimination, where “political interests” can creep in so that the resulting local regulations are “discriminatory” against vulnerable or minority groups. Finally, there is a risk of confusion among legal subjects due to the conflict between the territorial

principle (local regulations apply in regencies/cities) and the personal principle (customary law applies to community members), which raises the question of whether local regulations on customary offenses apply to everyone in the region or only to certain indigenous peoples (Safitri, 2022).

There are two main root causes that lead to the paralysis of the living law substance in the New Criminal Code: 1) procedural problems in the form of *rechtvacuum* (legal vacuum) due to the absence of Government Regulations (PP) that paralyze local governments; and (2) philosophical problems in the form of the “Paradox of Formalization,” where the formalization process itself actually destroys the essence of living law. These two problems do not stand alone; procedural *rechtvacuum* is an inevitable symptom of a philosophical paradox that lawmakers have failed to resolve. Logically, lawmakers are caught between the desire to recognize unwritten sociological (customary) law and the inability to abandon the positivist paradigm (the need for written legality). The “compromise” solution chosen is “formalization through local regulations,” but to control the risk of distortion and politicization of this process, they require a government regulation as a “safety brake” at the central level to regulate procedures and criteria.

Ironically, the task of formulating the PP, which is to standardize nationally something that is essentially non-formal, dynamic, and diverse in thousands of communities, is conceptually impossible or at least politically very difficult. As a result, the formulation of the PP has been slow and has not been completed, which in turn has created a *rechtvacuum*. This paralysis is twofold: *de jure*, the recognition of living law is completely paralyzed due to the absence of regulatory infrastructure (government regulations and local regulations). However, *de facto*, this procedural paralysis has inadvertently become a “savior” for the authenticity of customary law itself. The state's failure to formulate procedures has protected living law from being destroyed by the procedures themselves (Benda-Beckmann, 2022). Customary law remains “alive” in society precisely because it has failed to be ‘formalized’ and “eliminated” by the state.

3.2. Executive Issues: Dual Authority in SPPT and Implications of Non-Executable Decisions

The architecture of the SPPT as stipulated in the Criminal Procedure Code (KUHP) is designed with a monolithic paradigm that places the prosecutor as the sole authority in the execution of criminal sentences. The formal legal basis for this authority is absolute and unambiguous (Alimudin, 2025). Chapter XIX of the Criminal Procedure Code specifically regulates the “Execution of Court Decisions.” Central to this architecture is Article 270 of the Criminal Procedure Code, which imperatively states: “The execution of court decisions that have obtained permanent legal force shall be carried out by the prosecutor, for which the court clerk shall send a copy of the decision to him.” This provision is reinforced by other legislation, including the Attorney General's Office Law (which places the Attorney General's Office as an agency whose functions are related to judicial power) and the Judicial Power Law itself.

Doctrinally, prosecutors are known as “executing prosecutors,” which is a logical extension of the principle of *dominus litis* (case controller) held by prosecutors since the prosecution stage. Within the framework of the SPPT, prosecutors have full authority to execute principal penalties, whether capital punishment, imprisonment (in

coordination with correctional institutions), or fines (through collection and auction mechanisms). However, it is this monolithic design that is the source of the problem. The architecture of the Criminal Procedure Code (KUHP) is designed for a homogeneous criminal system with standardized sanctions that are retributive (punitive) and can be measured physically or administratively (number of days in prison, amount of fines) (Muda, 2023). This system, by design, was never intended to accommodate or process pluralistic sanctions, especially customary sanctions that are restorative, communal, and spiritual-magical in nature. The formal legal legitimacy of prosecutors, which is so strong in the execution of prison sentences, ironically becomes paralyzed and irrelevant when faced with the execution of sanctions that require cultural competence, such as leading customary rituals.

On the opposite pole, the state simultaneously recognizes the existence of customary law communities (MHA). This recognition is even constitutional in nature, as mandated by Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects MHA units and their traditional rights. This constitutional recognition is then incorporated into various laws and regulations, including in the form of Regional Regulations (Perda) or Qanun in certain regions. For example, Aceh Qanun No. 9 of 2008 explicitly gives customary institutions the authority to resolve disputes and impose customary sanctions, such as *diyat* (compensation), *sayam* (reconciliation through the slaughter of animals), and social sanctions in the form of ostracism. Similarly, local regulations in other regions, such as the Wuna Customary Institution Local Regulation, also confirm the function of customary institutions in “dispute resolution”.

This is where the “recognition paradox” lies. Legal recognition of customary institutions (both in the 1945 Constitution and in local regulations) tends to create a parallel or hybrid justice system, rather than an integrated one. Customary institutions are recognized as having the authority to administer justice within their own domains, often as an alternative dispute resolution (ADR) mechanism (Forsyth, 2024). However, this recognition is not accompanied by the granting of a formal mandate to the Customary Authorities to act as an executive body on behalf of the state. This means that when a District Court judge “borrows” customary sanctions and incorporates them into a formal decision, the state does not recognize the “owner” of these sanctions (the Customary Authorities) as the legitimate executor of the state's decision. Customary leaders have absolute cultural legitimacy to enforce sanctions within their communities, but they have no formal executive authority to enforce District Court decisions.

The executive deadlock occurs at the point of collision between these two poles of legitimacy, creating a fundamental asymmetry of competence. On the one hand, prosecutors (formal executors), despite holding the mandate of Article 270 of the Criminal Procedure Code, face insurmountable sociological and cultural obstacles. The execution of customary sanctions is not merely an administrative act. Customary sanctions, as analyzed in anthropological-legal studies, often involve “magical-religious rituals/prayers of the local community.” These sanctions aim to restore the disturbed balance of the cosmos, not merely to punish the perpetrator. Prosecutors, as state officials with a legal-retributive orientation, inherently lack the cultural competence to lead, supervise, or even understand such spiritual processes. Any attempt by prosecutors to forcibly carry out customary rites will not only fail, but may also be considered a violation of the sanctity of the rites themselves.

On the other hand, traditional leaders (cultural executors), despite being the only parties with cultural competence, do not have formal legal authority. Traditional leaders are not equipped with the coercive power of the state. A study of the execution of Dayak customary law judgments shows that the implementation of customary law judgments is highly dependent on the willingness and compliance of the convicted person. If the convicted person refuses, the sanctions that can be applied by the Customary Authorities are only social (ostracism, being considered uncultured) or spiritual (believed to encounter difficulties in life). The Customary Authorities cannot, for example, carry out forced confiscation on behalf of the state to enforce *diyat* (customary fines) decided by the District Court (Supriyadi, 2024).

In the general context of law, the ultimate goal of the judicial process is the enforcement of judgments. Enforcement is a *conditio sine qua non* of a condemnatory judgment. Without enforcement, a final court judgment is nothing more than a “paper tiger,” a symbolic statement with no real impact. A ruling is generally declared non-executable for technical-legal reasons, such as formal defects in the lawsuit (obscure *libel*) that make the object of the dispute unclear. However, in the context of customary sanctions, the problem is much more fundamental, namely systemic executorial defects. The ruling is clear, the sanctions are clear, but the implementing apparatus is not synchronized. Failure to execute is a major challenge to the charisma of the judiciary. In a study on the execution of Administrative Court (PTUN) decisions, the failure of state officials to implement decisions is seen as a form of abuse of the judiciary (Wignarajah, 2023).

This impact is even more destructive in the context of customary criminal law. While failure to enforce PTUN decisions “only” delegitimizes the administrative authority of the court, failure to enforce customary sanctions delegitimizes the sense of justice itself. For indigenous peoples, the purpose of punishment is not retribution, but the restoration of harmony and balance in the cosmos. When customary ceremonies or *diyat* payments ordered by the court fail to be carried out, what occurs is not merely an administrative failure, but a substantial failure to restore restorative justice for the victim and the community.

The inconsistency and confusion of the judicial system in dealing with the execution of customary sanctions is clearly reflected in jurisprudence and judicial practice. An analysis of existing verdicts reveals an “Executorial Paradox,” namely that the state judicial system (SPPT) is in a schizophrenic position. It is willing to recognize completed customary executions as grounds for dropping formal charges, but it fails or is unwilling to use its apparatus to ensure the implementation of the customary executions that it itself has decided upon (Schneider, 2024). The most obvious example is Supreme Court Decision No. 984 K/Pid/1996.24 In a case of adultery (a criminal offense under Article 284 of the Criminal Code) in the Pamona indigenous community, the perpetrators were tried by the Indigenous Council and sentenced to a customary fine (three cows). One of the perpetrators (Enta) had paid the customary fine. When the prosecutor continued to pursue criminal charges for the same offense, the Supreme Court, in its cassation decision, stated that because customary sanctions had already been imposed for the same incident, the prosecutor's criminal charges must be declared inadmissible (the principle of *ne bis in idem* in the context of customary law). This is a form of *de facto* recognition of the executive power of customary courts, which nullifies the authority of the SPPT.

The opposite scenario occurred in Kotabaru District Court Decision No. 28/Pid.Sus/2014/PN.Ktb.24. In a case involving the theft of swallow nests, the Dayak Customary Institution imposed a customary sanction (30 tahir piring putih). However, this sanction has not been carried out by the defendant. Faced with this fact, the District Court Judge continued with the trial and imposed a criminal penalty of imprisonment. These two cases expose a paradox, namely that the SPPT is reactive rather than proactive. If the Customary Authority (with its cultural legitimacy) succeeds in executing the sanction, the SPPT (Prosecutor/Judge) will "step back" and acknowledge its finality. But if the Customary Authorities fail (often due to the absence of formal coercive power), the SPPT (Prosecutor/Judge) will "step forward" and take over entirely with sanctions under the Criminal Code, ignoring the neglected customary sanctions. This is "executive jungle law" that creates legal uncertainty. The District Court's decision to impose customary sanctions falls right in the middle of this paradox, namely that it cannot be enforced because the prosecutor (as the executor of the SPPT) is culturally incapable, while the Customary Authorities (recognized in case MA 984) are not given formal authority to implement it.

The ultimate implications of this non-executable ruling are twofold and equally damaging, both for the state and for indigenous peoples. First, it delegitimizes the authority of the state court. As explained above, a ruling that cannot be directly enforced erodes the authority of the judiciary. For indigenous peoples, a state court that imposes customary sanctions but fails to enforce them will be seen as a toothless institution. The ruling becomes merely a symbolic ruling that has no impact on justice. This exacerbates the crisis of confidence in formal judicial institutions, which are often perceived as distant and failing to deliver local justice (Huroiroh & Roychan, 2023).

Second, the irony of the weakening of customary law itself. This is the most serious and often overlooked consequence. Before state intervention, customary law (such as Dayak customary law) had its own effectiveness based on social coercion (fear of being ostracized) and spiritual coercion (fear of cosmic imbalance or curses). Compliance was voluntary because it was based on collective belief. When this sacred customary law was "drawn" into the formal realm of the District Court, it underwent a process of formalization. However, when formal decisions containing customary sanctions failed to be enforced by state officials (prosecutors), customary law lost its "sacredness." It is now seen by the community as "state law" that has also failed. This is the Counterproductive Effect of Formalization. The state's attempt to 'recognize' customary law by including it in its decisions, without resolving the issue of its execution, actually "kills" the effectiveness of customary law in its natural habitat. The convict ultimately escapes both systems: he is not imprisoned (because of the customary sanction), and he is also not subject to ritual/social sanctions (because the execution fails). The state fails, and customary law loses its "teeth."

Amidst a long-standing executive deadlock, Law No. 1 of 2023 concerning the New Criminal Code (KUHP Baru) was introduced. Although hailed as a progressive reform that recognizes customary law, an in-depth analysis shows that the New Criminal Code, in its lack of synchronization with procedural law (KUHP), has the potential not only to fail to address the problem, but to further complicate and institutionalize the executive deadlock. The recognition of "living law" is a significant normative and philosophical step in Indonesia's New Criminal Code, marking a shift in the national criminal paradigm. Normatively, this recognition is manifested through several key

articles, namely Article 2, which establishes living law as a valid basis for punishment, provided that it remains in line with Pancasila, the 1945 Constitution, and human rights. Furthermore, Article 597 specifically criminalizes acts that are prohibited according to living law, with the threat of punishment in the form of fulfillment of customary obligations. Consistent with this, Article 66 paragraph (1) letter f makes “fulfillment of local customary obligations” one of the recognized types of punishment. Philosophically, this policy reflects a positive effort to expand the orientation of criminal law from merely retributive to greater recognition of the restorative and harmonious values inherent in the customary law system.

However, the “solution” offered by the New Criminal Code actually creates two new fundamental problems that have the potential to exacerbate the deadlock in enforcement. First, the problem of codification (freezing living law). The New Criminal Code (Article 2 and its Explanation) contradictorily requires that customary law, which is essentially a living, dynamic, and unwritten law, must be regulated in Local Regulations (Perda) in order to be applied as a customary criminal offense. This requirement for codification in local regulations forces dynamic customary law to be “frozen” into rigid and static written law, where changes must go through a slow formal legislative process. There are concerns that this effort will not preserve, but rather “kill” the dynamic nature of living law itself.

Second, a procedural vacuum (executorial vacuum). A fatal flaw in this reform is the ratification of the New Criminal Code (substantive law) without accompanying revisions to procedural law (KUHAP), which regulates enforcement procedures. As a result, there is a massive procedural vacuum, because the current KUHAP still stipulates that the prosecutor is the sole executor (Article 270). The New Criminal Code fails to answer crucial questions such as who will execute the new criminal offense of “fulfillment of customary obligations,” what the technical mechanism for its execution will be, what the standard of proof for Customary Custodians will be, and what the mechanism for fair substitution of sanctions will be. By enacting the New Criminal Code without revising the Criminal Procedure Code, legislators are considered to have consciously “legislated the deadlock,” that is, created formal criminal sanctions that they know cannot be enforced by the executive apparatus under the existing procedural law. Without revising the Criminal Procedure Code (KUHAP), the dualism between prosecutors and traditional leaders as executors of justice will certainly become more acute and problematic. Before the enactment of the New Criminal Code (KUHP), judges who imposed customary sanctions did so based on discretion and the obligation to “explore the legal values that exist in society.” In this context, prosecutors may still be flexible or “turn a blind eye” if traditional leaders carry out these customary sanctions informally. However, after the New Criminal Code came into full effect, “fulfilling customary obligations” transformed into formal criminal offenses.

Based on Article 270 of the Criminal Procedure Code, prosecutors have a legal obligation to carry out criminal sentences. Prosecutors can no longer informally delegate execution to traditional leaders, because this execution is a legal and formal state punishment. Prosecutors are now caught in an executorial crisis for three reasons: 1) they are obliged to execute based on the provisions of the New Criminal Code and the Criminal Procedure Code; 2) they are unable to execute due to a lack of cultural competence in customary matters; and 3) there are no guidelines for execution due to a legal vacuum. Thus, the New Criminal Code has transformed this issue from a

mere judicial dilemma (judicial confusion) into an executorial crisis (an impossible obligation for prosecutors to fulfill), which is projected to increase the problem of non-executable verdicts at the prosecutor's office level.

Prosecutors, as the sole legally authorized executors, are faced with customary sanctions that are restorative and spiritual in nature, for which they lack the cultural competence to enforce. Conversely, traditional leaders, as the only culturally competent actors, lack formal authority and state coercive power to ensure compliance. This conflict creates non-executable decisions that delegitimize the court's authority and undermine the sanctity of customary law (Syaputra & Syauket, 2025). The reform of substantive criminal law through the New Criminal Code (Law 1/2023) has, ironically, exacerbated this impasse. By formalizing "customary criminal law" without providing for revisions to procedural law (KUHAP), this legislation has created a procedural vacuum that institutionalizes the crisis of execution in the hands of the Attorney General's Office.

4. CONCLUSION

The ratification of the New Criminal Code (Law No. 1 of 2023) as a progressive effort to recognize "living law" and shift the criminal justice paradigm towards restorative justice has, paradoxically, created a substantive and procedural crisis. Substantively, the attempt to formalize customary offenses through Regional Regulations (Perda) risks killing the dynamic and unwritten essence of living law itself, transforming it into static state law (the Paradox of Formalization). Procedurally, the recognition of customary law in the New Criminal Code has come to a complete halt due to a legal vacuum caused by the absence of a Government Regulation (PP) as an implementing regulation, which has paralyzed the authority of local governments to draft local regulations on customary offenses. This problem is exacerbated at the implementation level, where the formalization of customary criminal law without revising the Criminal Procedure Code (KUHAP) has transformed the judicial dilemma into an executorial crisis for prosecutors. Prosecutors are now trapped in an absolute obligation (Article 270 of the Criminal Procedure Code) to execute formal customary sanctions without having cultural competence and without legal procedural guidelines, which directly leads to an increase in non-executable verdicts that undermine the authority of the state judiciary and erode the effectiveness of customary sanctions themselves.

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