



LEGAL IMPLICATIONS OF THE IMPLEMENTATION OF ARTICLE 2 OF LAW NUMBER 1 OF 2023 ON THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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Article Info	Abstract
Article History Received : 2025-04-01 Revised: 2025-04-16 Published: 2025-05-01	<i>The implementation of Article 2 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) marks a significant change in the national legal landscape by formally recognizing the living law in society, including customary law, as the basis for sentencing. This article represents a shift from the principle of formal legality, which primarily recognizes written law, to the principle of material legality that is more inclusive of local norms and values in the criminal justice system. The recognition of customary law in the Criminal Code demonstrates the integration of local wisdom into the national legal framework, ensuring that justice is upheld in a manner that is appropriate to the diverse social and cultural realities of Indonesian society. However, the incorporation of customary law into the national legal system presents challenges in harmonizing it with universally recognized principles of justice and human rights. This study examines the legal implications of the implementation of Article 2 on the criminal justice system, focusing on its impact on law enforcement, prosecution, and decision-making in court. This study also explores potential conflicts between customary law and national law, especially regarding consistency in law enforcement and protection of human rights. This study highlights the need for careful integration of customary law to maintain legal certainty and justice, while respecting Indonesia's cultural diversity. The findings of this study are expected to provide constructive recommendations for policymakers and legal practitioners in managing the application of customary law in the criminal justice system in Indonesia.</i>
Keywords: Legal implications, Article 2, Criminal Code, customary law, criminal justice system.	

I. INTRODUCTION

Law Number 1 of 2023 concerning the Criminal Code (KUHP) in Indonesia has brought significant changes in law enforcement in Indonesia (Malau, P, 2023). One of the articles that is in the main spotlight is Article 2, which regulates the application of living laws in society (customary law) in the criminal justice system (Magala, AS (2023).

Article 2 paragraph (1) states that the provisions in Article 1 paragraph (1) do not reduce the validity of living laws in society which result in changes both materially and substantively in the formulation of the principle of legality regulated in the old Criminal Code (Lago, Y., Ginting, YP, & Sugianto, F. (2023). Customary laws that are still alive in society can be used as a basis for criminalization even though they are not included in the Criminal Code, indicating recognition of the role of customary law in the Indonesian legal system. Article 2 Paragraph (2) states that customary law applies in the area where the law lives, as long as it is not regulated by this law and is in accordance with the values of Pancasila, the 1945 Constitution, human rights, and internationally recognized general legal

principles. (Zain, MA (2023). This means that the application of customary law must be in line with the fundamental principles of the state and human rights, ensuring that customary law does not conflict with recognized national and international values.

Article 2 Paragraph (3) stipulates that the procedures and criteria for determining customary law in society are regulated through Government Regulations and strengthened by Regional Regulations, allowing customary law to criminalize certain acts. The application of this article has an impact on the criminal justice system, from investigation to verdict, where law enforcers must protect the rights of the accused, transparency, and justice, and ensure that judges consider evidence objectively for a fair verdict. However, this recognition of customary law also poses challenges in harmonization with national law. (Ramadhan, MA, & Syahfrudin, MA (2023).

The diversity of customary law in Indonesia can lead to differences in law enforcement that may not be in line with the Criminal Code, so careful efforts are needed to integrate customary law into the national legal system without sacrificing the principles of justice and equality.

Customary law reflects the values and norms of local communities that are often more relevant and accepted by the community than national law, so its recognition in the legal system can strengthen the sense of justice and cultural identity of indigenous peoples (Robekha, J., Pratama, AA, Mulya, MA, & Purba, L. (2024). Recognition of customary law can strengthen cultural identity and provide a deeper sense of justice for indigenous peoples (Yustiana, I. (2024).

However, on the other hand, the diversity of customary law can also cause problems in the consistent application of law throughout Indonesia (Komeni, WH, & Widjajanti, E. (2024). Differences in the interpretation and application of customary law in various regions can lead to legal uncertainty and potential injustice (Komeni, WH, & Widjajanti, E. (2024). Differences in perceptions of customary law between regions can cause confusion and injustice for perpetrators and victims, because an act that is considered a violation in one region may not be so in another region. Another challenge is ensuring that the customary law applied does not conflict with internationally recognized human rights principles, because some customary practices may contain discriminatory elements or be inconsistent with modern standards.

Critical review is needed so that customary law integrated into the national legal system remains in line with universal human rights values. The integration of customary law requires a comprehensive and inclusive approach, with collaboration between the government, legal experts, customary leaders, and civil society to build a legal framework that respects customary law and upholds the principles of justice and human rights. This study evaluates the implementation of Article 2 of Law No. 1 of 2023 and its impact on criminal justice, with the aim of providing constructive policy recommendations. In addition, this study examines the dynamics of customary law, its interaction with national law, and the influence of international law, so as to enrich the understanding of the integration of customary law and support fair, effective, and responsive justice for the community.

II. RESEARCH METHODS

This normative legal research focuses on the legal implications of the application of Article 2 of Law Number 1 of 2023 to the Indonesian criminal justice system, by highlighting the interaction of the article with legal principles such as justice,

human rights, and the objectives of criminal law. This research uses a descriptive-analytical approach to describe in detail the content and scope of Article 2, and analyze its practical impact in the context of real cases, especially related to drug abuse among adolescents. This approach also involves an analysis of the consistency and effectiveness of the implementation of the article in daily judicial practice, which is expected to provide input for improving the criminal justice system through suggestions for revising laws or policy recommendations.

To analyze the impact of Article 2, this study combines legislative and conceptual research approaches, and utilizes secondary data such as statutory texts, court decisions, legal literature, and official documents from related institutions. Data collection techniques include documentation studies, literature analysis, and previous research reports. Data analysis is conducted qualitatively using content and comparative analysis methods, which aim to understand the legal implications of the application of Article 2 and compare approaches and practices in various courts. The results are expected to provide comprehensive insight into the impact of Article 2 on the Indonesian criminal justice system and support improvements in its implementation.

III. RESULTS AND DISCUSSION

A. Legal Basis for Living Law in Society/Customary Law in Indonesia

Customary law in Indonesia has a strong basis in the constitution and national regulations, as stated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which recognizes the rights of customary law communities as long as they are in accordance with the principles of the Unitary State of the Republic of Indonesia. This recognition shows that customary law is an official part of the national legal system and must run hand in hand with positive law. MPRS No. II/MPRS/1960 also emphasizes the role of customary law in fostering national law. Customary law functions as a guideline for decision-making, especially in cases that are not covered by written law, in accordance with the Sociological Jurisprudence view which emphasizes that law must reflect community values. This shows the importance of customary law in maintaining a balance between legal certainty and social justice.(Elaies, 2023)

The update of the Criminal Code through Law Number 1 of 2023 emphasizes the

importance of customary law by providing greater space for community norms through a shift from the principle of formal legality to the principle of material legality. This change allows customary law to be the basis for criminalization even though it is not written, recognizing customary law as an integral part of the national legal system. This principle of material legality strengthens the relevance of customary law, which is considered important in reflecting the principles of justice recognized by the constitution.(Vincentius Patria Setyawan, 2023)

This change marks an important step in Indonesia's criminal justice system, making customary law more central to the enforcement of just law and reflecting local values. The principle of material legality replaces the principle of formal legality inherited from colonial times, making criminal law more inclusive and allowing for the integration of customary law. This step broadens the scope of criminal law, creating a better balance between the interests of perpetrators and victims.(Vincentius Patria Setyawan, 2023).

History shows that customary law has long been recognized as an important part of Indonesia's legal identity, reflecting the nation's culture and values in line with Pancasila. Despite facing challenges from positive law, customary law continues to be applied, especially in resolving local disputes, and is recognized in Article 18B paragraph (2) of the 1945 Constitution which emphasizes the state's respect for the rights of customary law communities as long as they are in accordance with the development of society and the principles of the Republic of Indonesia.(Firmansyah et al., 2021).

Although recognized as an important part of the national legal system, customary law still faces obstacles in harmonizing with written law which is prioritized in legislation. Customary law is often considered more relevant and effective than formal state law, but its application is still limited by regulations that prioritize written law. With a more inclusive approach, customary law is expected to continue to play a role in maintaining justice and social balance in Indonesia.(Firmansyah et al., 2021).

Formal recognition of customary law in Indonesia is reinforced in various regulations, especially in the management of natural resources and the environment, reflecting the important role of customary law in a broad context. Article 18B paragraph (2) of the 1945 Constitution recognizes and respects customary law

communities and their rights as long as they are in accordance with the development of society and the principles of a unitary state, which are further emphasized in sectoral laws such as Law No. 5 of 1960 concerning Agrarian Affairs, which enforces customary law as long as it does not conflict with national interests.(Bayo et al., 2023).

In criminal law reform, customary law is considered a key element in building a more inclusive legal system. This recognition is strengthened in the forestry sector through Law No. 41 of 1999, which allows indigenous peoples to manage forests based on customary law, and Law No. 32 of 2009 concerning the Environment which recognizes local wisdom in environmental management. Thus, customary law is recognized as a legitimate source of law in the national legal system, in line with the principle of unity and national interests.(Bayo et al., 2023).

Efforts to integrate customary criminal law into the Criminal Code face major challenges in ensuring its conformity with the principles of legality and positive legal norms. This criminal law reform reflects the importance of local values and wisdom in indigenous communities, with the recognition of customary criminal law that is adjusted to the principles of Pancasila and humanitarian values in various drafts of the Criminal Code Bill, so that it becomes part of an inclusive and futuristic national criminal law system.(Rusdi Antara et al., 2021).

The challenges of implementing customary law include efforts to provide a proper place for customary justice in the formal legal system without reducing the power of positive law. Judges need to consider customary sanctions in law enforcement to maintain balance and justice in accordance with living law in society. Harmonizing customary criminal law with the principle of legality and positive legal norms remains a challenge, but the integration of customary law into the Indonesian Criminal Code is an important step towards a legal system that respects cultural diversity and local values within a national framework.(Rusdi Antara et al., 2021)

Formal recognition of customary law in the new Criminal Code shows an effort to place customary law more centrally in law enforcement. However, the main challenge in its implementation is the lack of clear recognition of customary courts in regulations, so that customary courts often do not get a proper place in the formal legal system. As a result, indigenous peoples are reluctant to use customary courts because they doubt the binding power of their

decisions.(Ardiansyah & Azima, 2023). Integration of customary law into the national legal system reflects efforts to maintain a balance between written legal norms and local values that live in society. Customary law remains important in the national justice system as an alternative dispute resolution. Therefore, written recognition of the position of customary law is needed, along with the revitalization of customary justice, to expand access to justice for indigenous communities and support justice that is in accordance with local values.(Ardiansyah & Azima, 2023).

The integration of customary law into the national legal system reflects an effort to maintain a balance between written legal norms and local values that live in society. Customary law remains important in the national justice system as an alternative dispute resolution. Therefore, written recognition of the position of customary law is needed, along with the revitalization of customary justice, to expand access to justice for indigenous communities and support justice that is in accordance with local values.(Triasmono, 2017). Customary law in Indonesia remains an important part of creating an inclusive and adaptive legal system to the needs of diverse communities, reflecting efforts to adapt criminal law to local values that are unique to Indonesia. The recognition of customary law in the new Criminal Code is not only a matter of legality, but also maintaining local wisdom as part of the national legal identity. It is hoped that this update will not only provide legal certainty but also maintain a balance between written legal norms and community values, minimize the gap between state law and community law, and create a more inclusive and just system.(Triasmono, 2017).

The biggest challenge in integrating customary law into a modern legal system is ensuring its relevance and fairness within the framework of the principle of legality. In legal reform in Indonesia, customary law, or "the living law," is considered important to create a national criminal law that is inclusive and in accordance with the needs of the community. Customary law, which developed in indigenous communities, is often more in line with local values than universal positive law. Its recognition in the new Criminal Code reflects Indonesia's cultural diversity and emphasizes that criminal law must be adaptive to community norms. However, this integration requires ongoing harmonization so that customary law remains in accordance with the principles of justice and universal human rights,

creating a just and sustainable legal system.(Tolkah, 2021).

Recognition of customary law in the Indonesian legal system, as regulated in Article 2 paragraph (1) of Law No. 1 of 2023 concerning the Criminal Code, is an important step in accommodating cultural diversity, allowing customary law to be the basis for criminal sentencing even though it is not written in the Criminal Code. However, the main challenge is ensuring that its implementation remains in line with the principles of human rights and universal legal norms. Harmonization efforts between customary law and positive law are needed so that customary law can be applied fairly without discrimination, with the support of law enforcement officers who understand local wisdom.(Ardi et al., 2023).

The recognition of customary law in Law No. 1 of 2023 concerning the Criminal Code shows an important effort to accommodate local values in the national legal system. The new Criminal Code applies the concept of monodualistic balance that unites the interests of individuals and society in enforcing criminal law, so that customary law that lives in society is recognized and formally integrated. Even so, the application of customary law still faces the challenge of harmonization with the principle of legality. The 2023 Criminal Code addresses this with an inclusive and adaptive approach, making customary law an integral part of a more just legal system and in accordance with the socio-cultural characteristics of Indonesia.(Prawiraharjo, 2023).

The recognition and implementation of customary law in the Indonesian legal system faces challenges, especially in its interaction with state law which places more emphasis on formal legality. Although Article 18B paragraph (2) of the 1945 Constitution recognizes the rights of customary law communities, in practice customary law is often displaced by the dominance of state law and modernization which erodes its value. Efforts to unify law by the state worsen the position of customary law by ignoring legal pluralism, such as in agrarian conflicts where land certification by the state often overrides customary law. More inclusive policy changes are needed to appreciate customary law as part of the national legal system.(Effendi, 2022).

Integration of customary law into the Indonesian national legal system faces challenges in the application of the principle of legality, given the flexibility of customary law which often differs from written law. Article 2 paragraph (1) of the

new Criminal Code recognizes customary law as a basis for criminalization for cases involving local norms, demonstrating respect for the law that lives in society. However, challenges remain in ensuring that customary law is in line with the principle of universal justice and the principle of legality which demands legal certainty. Inclusive policies and dialogue between customary law and positive law are needed so that both can work synergistically to create comprehensive justice.(Lago et al., 2023).

B. Legal Implications of the Application of Article 2 to the Criminal Justice System in Indonesia

Article 2 of Law No. 1 of 2023 concerning the Criminal Code brings about major changes by recognizing the laws that live in society, including customary law, as the basis for imposing criminal penalties. This reflects a shift from the principle of formal legality, which only recognizes written law, to the principle of material legality which is more inclusive of local norms that live in society.(Yoserwan, 2023). The shift in the 2023 Criminal Code gives customary law space to function in communities that practice it, avoiding being marginalized by written law. Customary law now has a stronger foothold and is recognized as a legitimate source of law in the national criminal justice system.(Warman et al., 2018). This recognition reflects the integration of local values into national law, enabling the creation of contextual justice that is appropriate to the social conditions of the community.

Table. Analysis of the Implementation of Article 2 of Law Number 1 of 2023 concerning the Criminal Code (KUHP) to the Criminal Justice System in Indonesia

Analysis Aspects	Description	Comparison with Other Countries	Implications for the Criminal Justice System in Indonesia
Implementation of Article 2 of the Criminal Code	The application of Article 2 of the Criminal Code recognizes the laws that exist in society, including customary law, as the basis for sentencing in the criminal justice	In some countries, such as New Zealand, customary law is recognised through customary courts that operate alongside national courts.	Changing the national legal paradigm by including customary law as a basis for legality, expanding the scope of officially recognized law.

	system in Indonesia.		
Recognition of Customary Law as a Source of Law	The formal recognition of customary law as a source of law in the Criminal Code reflects a shift from the formal to the material legality principle which is more inclusive of local norms.	In South Africa, customary law is also recognized as a source of law, but with limitations so as not to conflict with human rights.	Providing a stronger legal basis for indigenous peoples to maintain their norms, but requiring harmonization with broader national laws.
Integration of Local Values into National Law	Recognition of customary law allows for the integration of local values into national law, creating contextual justice that is more appropriate to the social conditions of the community.	Canada recognizes the customary law of First Nations peoples through customary courts that operate within certain communities.	Strengthening justice that is contextual and relevant to local needs, enabling law enforcement that is more in line with local cultures in various regions.
Strengthening Legal Pluralism	The application of Article 2 of the Criminal Code is a manifestation of legal pluralism that respects local norms, allowing customary law to exist side by side with national law.	New Zealand and South Africa have demonstrated success in managing legal pluralism by integrating customary and national law.	Creating a more inclusive and adaptive legal system, however, requires clear policies to manage conflicts between customary law and national law.
Challenges and Harmonization of Customary Law and National Law	Harmonization between customary law and national law is necessary to ensure that customary law is applied legally and fairly, and does not conflict with universal principles.	Canada faces similar challenges in harmonizing customary law with national law, often requiring mediation and compromise.	Significant harmonization efforts are needed to ensure that the application of customary law does not conflict with national law and human rights principles, through clear regulations.
Principles of Restorative Justice in Customary Law	The application of Article 2 of the Criminal Code reflects the principle of Restorative	In Canada, Restorative Justice is implemented through special programs that involve	Providing a more peaceful and humane alternative dispute resolution, strengthening

	Justice which emphasizes the restoration of social relations through a more humane and inclusive approach.	Indigenous communities in dispute resolution.	g the role of the community in the criminal justice process.
Social Recovery and Harmony in Society	Customary law focuses on social restoration and harmony in society, in line with the Restorative Justice approach recognized in Article 2 of the Criminal Code.	New Zealand prioritizes social recovery in resolving customary disputes through customary court processes.	Increasing opportunities for dispute resolution that restores social relations in indigenous communities, reduces social tensions and strengthens community solidarity.
Challenges in the Application of Customary Law in the National Context	The main challenge is to ensure that the application of customary law remains in accordance with universally recognized principles of justice and human rights.	South Africa sets limits so that customary law does not violate human rights, creating a clear framework for its application.	Requires clear regulations and policies that ensure customary law does not conflict with national laws and international principles applicable in Indonesia.
Law Enforcement Agencies (Police, Prosecutors, Courts, Satpol PP)	Law enforcement agencies such as the police, prosecutors, courts, and Satpol PP need to understand and integrate customary law into their law enforcement practices.	In New Zealand, law enforcement agencies work with customary courts to integrate customary law approaches into legal processes.	Requires special training for law enforcement agencies and Satpol PP to understand and apply customary law, as well as coordination with customary institutions for effective law enforcement.
Examples of Implementation from Other Countries	Learn from the practices of other countries such as New Zealand, South Africa and Canada in integrating customary law with national legal systems to achieve justice.	New Zealand has successfully integrated Māori customary law into the national legal system through special courts.	Indonesia could adopt a similar approach by establishing a special institution to handle customary-based disputes, ensuring customary law functions within the national system.

Processed from various sources.

The Theory of Legal Pluralism is a very relevant basis in understanding the recognition of customary law in the Criminal Code. This theory recognizes that in one country there can be more than one legal system operating simultaneously.(Anggoro & Negara, 2021)In the diverse context of Indonesia, legal pluralism allows customary law to coexist with national law. The application of Article 2 of the Criminal Code is a manifestation of legal pluralism that respects local norms and provides an opportunity for customary law to remain relevant and function as a source of justice.

However, legal pluralism also faces serious challenges, especially in terms of harmonization between customary law and national law. Harmonization is needed to ensure that customary law can still be applied legally without conflicting with more universal national legal principles, such as human rights and justice.(Hamida, 2022). In this context, legal pluralism in Indonesia can develop well if both legal systems can adapt to each other and work together to achieve fair and balanced justice.

The implementation of Article 2 of Law Number 1 of 2023 concerning the Criminal Code allows customary law to be the basis for sentencing in the Indonesian criminal justice system, reflecting efforts to respect the diversity of legal culture and the long history of customary law in Indonesia. This step requires law enforcement officers to understand the context of customary law that applies in certain communities, ensuring that the legal process remains fair and consistent with the principles of human rights. This harmonization challenge requires an inclusive approach that accommodates local values while maintaining national legal certainty. With an approach that respects legal history (Aspan, H. (2020), the Indonesian criminal justice system can be more responsive to the needs of society and bridge the gap between written law and living law, creating contextual and relevant justice.

The application of Article 2 of the Criminal Code also reflects the principles of Restorative Justice, which emphasizes the restoration of social relationships rather than merely punishing the perpetrator. Restorative Justice focuses on restoring the damage caused by criminal acts through a process involving the perpetrator, victim, and community.(Flora, 2022)In many indigenous communities in Indonesia, dispute

resolution often places more emphasis on peace and social harmony than retributive punishment.

Customary law, in the context of Restorative Justice, often focuses more on social recovery and the restoration of disturbed relationships. The recognition of customary law in Article 2 of the Criminal Code provides space for a more humane and inclusive approach to justice, where legal solutions do not only seek retributive justice, but also aim to restore harmony in society. (Ningtias et al., 2023) This reflects an effort to create a criminal justice system that is more adaptive and sensitive to social needs.

The restorative justice approach, for example, has been applied in the juvenile criminal justice system in Indonesia, as regulated in the SPPA Law, prioritizing social recovery through diversion outside the court (Sembiring, Ivan Aditya Bistara, Robi Krisna, and T. Riza Zarzani, 2022). The application of Article 2 of Law No. 1 of 2023 concerning the Criminal Code, which recognizes customary law as the basis for sentencing, strengthens this approach by providing space for local values in the judicial process. The integration of customary law allows law enforcers to better understand the cultural context, so that the juvenile criminal justice system becomes fairer and more adaptive to society.

While the application of customary law has many advantages, significant challenges remain, particularly ensuring its compliance with universal principles of justice and human rights. Flexible customary law needs to be applied fairly within the context of national law. Theories of legal pluralism, legal sociology, and restorative justice emphasize the importance of inclusivity, while its application through Regional Regulations and Satpol PP allows for a legal system that is more responsive to local needs. (Wijaya, 2022). However, it is important for Indonesia to learn from best practices in other countries that have successfully integrated customary law into their national legal systems.

Experience from countries such as New Zealand, South Africa and Canada shows that recognition of legal pluralism and Restorative Justice can be achieved by establishing special institutions to handle customary-based disputes. (Gover, 2020). Indonesia can adopt a similar approach to ensure that customary law functions properly within the formal legal system, without neglecting constitutional principles and human rights.

By adopting the theory of legal pluralism, legal sociology, and Restorative Justice in the implementation of Article 2 of the Criminal Code, Indonesia can build a legal system that is more inclusive and responsive to social needs. This will help create a balance between customary law and national law, as well as create a criminal justice system that is more relevant to the lives of people throughout Indonesia.

IV. CONCLUSIONS AND RECOMMENDATIONS

The legal basis for customary law in Indonesia is firmly embedded in the constitution and national regulations. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects customary law communities and their traditional rights, as long as they are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This recognition is reinforced in Law Number 1 of 2023 concerning the Criminal Code, which allows customary law to be the basis for sentencing. This reflects the integration of customary law into the national legal system, in line with the principles of justice and human rights.

The implementation of Article 2 of Law Number 1 of 2023 concerning the Criminal Code brings major changes to the criminal justice system in Indonesia by recognizing customary law as the basis for sentencing. This reflects a shift from the principle of formal legality to the principle of material legality that is more inclusive of local norms. This recognition strengthens the role of customary law in creating contextual justice that is more in line with the social conditions of society, and supports the Restorative Justice approach that focuses on social restoration and harmony within the community.

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