

Normative Analysis of Customary Offenses in the Criminal Code and Their Implications in West Sulawesi

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Abstract

This study aims to conduct a normative legal analysis of the regulation of customary offenses (delik adat) within the Indonesian Criminal Code (KUHP) and to examine its implications for the settlement of customary law cases in Sulawesi Barat. This research employs a normative legal method by analyzing primary legal materials, including statutory regulations, particularly the KUHP, and secondary legal materials such as legal doctrines, scholarly articles, and relevant literature. The data were collected through a library research approach and analyzed qualitatively using statutory and conceptual approaches. The findings reveal that the regulation of customary offenses in the KUHP reflects the recognition of living law within society. However, its application presents several challenges, including issues of legal certainty, limitations in interpretation, and the need for harmonization between customary law and national law. Furthermore, the incorporation of customary offenses provides an opportunity for more contextual and culturally responsive dispute resolution mechanisms. Nevertheless, clearer regulatory frameworks and technical guidelines are required to prevent ambiguity in legal enforcement. This study concludes that the normative regulation of customary offenses in the KUHP has the potential to strengthen a more just and culturally grounded national legal system, particularly in resolving customary law cases in Sulawesi Barat. Therefore, it is essential to ensure normative synchronization and enhance the capacity of law enforcement authorities in understanding and implementing these provisions effectively.

Keywords: Customary Offenses; Criminal Code; Customary Law; Sulawesi Barat

Abstrak

Penelitian ini bertujuan untuk menganalisis secara normatif pengaturan delik adat dalam Kitab Undang-Undang Hukum Pidana (KUHP) serta implikasinya terhadap penyelesaian perkara hukum adat di Sulawesi Barat. Pendekatan yang digunakan adalah penelitian hukum normatif dengan mengkaji bahan hukum primer berupa peraturan perundang-undangan, khususnya KUHP, serta bahan hukum sekunder seperti literatur, jurnal ilmiah, dan doktrin hukum yang relevan. Teknik pengumpulan bahan hukum dilakukan melalui studi kepustakaan, sedangkan analisis dilakukan secara kualitatif dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukkan bahwa pengaturan delik adat dalam KUHP mencerminkan adanya pengakuan terhadap hukum yang hidup dalam masyarakat (living law), namun implementasinya masih menghadapi berbagai tantangan, terutama terkait dengan batasan penerapan, kepastian hukum, dan harmonisasi antara hukum adat dan hukum nasional. Selain itu, keberadaan delik adat dalam KUHP memberikan peluang bagi penyelesaian perkara yang lebih kontekstual dan berbasis nilai-nilai lokal, tetapi memerlukan penguatan regulasi dan pedoman teknis agar tidak menimbulkan multitafsir dalam praktik penegakan hukum. Penelitian ini menyimpulkan bahwa pengaturan delik adat dalam KUHP memiliki potensi untuk memperkuat sistem hukum nasional yang berkeadilan dan berakar

pada nilai-nilai masyarakat, khususnya dalam penyelesaian perkara hukum adat di Sulawesi Barat. Oleh karena itu, diperlukan sinkronisasi norma serta peran aktif aparat penegak hukum dalam memahami dan mengimplementasikan ketentuan tersebut secara tepat.

Kata Kunci: Delik Adat; KUHP; Hukum Adat; Sulawesi Barat

Introduction

The development of national criminal law in Indonesia has increasingly reflected the need to accommodate legal pluralism, particularly the recognition of customary law (*hukum adat*) as a living law within society (Mukhlis et al., 2025). This recognition is formally embodied in the enactment of the new Indonesian Criminal Code, known as Kitab Undang-Undang Hukum Pidana (KUHP), which incorporates provisions acknowledging the existence of customary offenses (*delik adat*). Such incorporation marks a significant paradigm shift from a purely positivistic legal system toward a more inclusive framework that integrates societal values and local wisdom into formal legal structures.

Indonesia, as a multicultural and pluralistic nation, has long been characterized by the coexistence of state law and customary law (Murdan, 2025). In many regions, including Sulawesi Barat, customary law continues to play a vital role in regulating social order and resolving disputes within indigenous communities. Customary mechanisms are often perceived as more accessible, culturally relevant, and restorative compared to formal judicial processes. Therefore, the recognition of customary offenses within the KUHP is not merely a legal reform but also a reflection of socio-cultural realities that demand a more contextual approach to justice (Masyhar et al., 2025).

However, the integration of customary law into the national criminal law system raises several critical legal issues. One of the main concerns is the potential tension between legal certainty and legal flexibility. On the one hand, the formalization of customary offenses in the KUHP aims to provide a legal basis for acknowledging living law practices (Junaidi & Susanto, 2025). On the other hand, customary law is inherently dynamic, unwritten, and varies across regions, which may lead to inconsistencies in interpretation and application. This condition creates a fundamental question regarding how normative legal provisions can effectively accommodate diverse customary practices without undermining the principle of legal certainty.

Furthermore, according to (Mansur et al., 2025) the recognition of customary offenses also brings implications for the authority and role of law enforcement institutions. In practice, the application of customary law often involves traditional leaders and community-based dispute resolution mechanisms. The inclusion of such elements within the framework of the KUHP requires a clear delineation of authority between state institutions and customary institutions. Without proper guidelines, there is a risk of overlapping jurisdictions, legal ambiguity, and even potential conflicts between formal and informal systems of justice.

Another important issue relates to the protection of fundamental rights within the application of customary law. While customary mechanisms are often praised for their restorative nature, they may also contain practices that are not fully aligned with contemporary human rights standards (Abimbola et al., 2023). Therefore, the normative regulation of customary offenses must ensure that the recognition of local wisdom does not compromise the protection of individual rights and the principles of justice upheld in national and international legal frameworks.

In this context, a normative legal analysis becomes essential to examine how the provisions of the KUHP regulate customary offenses and to assess their implications for the

settlement of customary law cases. Unlike empirical research, which focuses on practical implementation, normative legal research emphasizes the analysis of legal norms, principles, and doctrines. This approach is particularly relevant for understanding the legal framework governing the recognition of customary law and identifying potential gaps or inconsistencies within the legislation (Arifin et al., 2025).

This study seeks to analyze the normative regulation of customary offenses in the KUHP and its implications for resolving customary law disputes, with a particular focus on Sulawesi Barat as a contextual reference. Although the research adopts a normative approach, the selection of this region is based on its strong adherence to customary traditions, which highlights the relevance of integrating living law into the national legal system. By examining statutory provisions and legal doctrines, this study aims to contribute to the ongoing discourse on legal pluralism and the development of a more responsive and culturally grounded criminal law system in Indonesia (Arifin et al., 2025).

Ultimately, this research is expected to provide a comprehensive understanding of how customary offenses are positioned within the KUHP and to offer insights into the challenges and opportunities associated with their implementation. The findings may serve as a reference for policymakers, legal practitioners, and academics in strengthening the harmonization between customary law and national law. In doing so, the study contributes to the broader objective of achieving a balanced legal system that upholds justice, legal certainty, and cultural relevance in the Indonesian context.

Literature Review dan Method

Literature Review

The discourse on the recognition of customary law (*hukum adat*) within national legal systems has been widely discussed within the framework of legal pluralism. Legal pluralism refers to the coexistence of multiple legal systems within a single socio-political space, where state law interacts with non-state legal orders, including customary law (Tamanaha, 2021). Scholars argue that in pluralistic societies such as Indonesia, the integration of customary law into formal legal systems is essential to ensure that the law remains socially relevant and culturally grounded. The acknowledgment of living law within the Kitab Undang-Undang Hukum Pidana (KUHP) reflects this broader theoretical perspective.

Customary law has long been recognized as an integral part of Indonesian legal identity (Syahril, M. A. F., & Hasan, N. 2025). According to legal scholars, customary law is characterized by its unwritten nature, flexibility, and strong connection to local values and traditions. It functions not only as a mechanism for dispute resolution but also as a means of maintaining social harmony within communities. In regions such as Sulawesi Barat, customary practices continue to play a significant role in resolving conflicts through deliberative and restorative approaches. This reinforces the argument that formal legal systems should accommodate such practices to enhance their legitimacy and effectiveness.

The concept of customary offenses (*delik adat*) has also been examined in previous studies, particularly in relation to their compatibility with modern criminal law. Some scholars emphasize that the recognition of customary offenses represents a progressive step toward a more inclusive legal system. It allows the incorporation of local wisdom into the formal legal framework and supports alternative dispute resolution mechanisms that prioritize restoration over punishment. However, other scholars raise concerns regarding the potential challenges posed by such recognition, especially in terms of legal certainty and uniformity.

One of the central debates in the literature concerns the tension between flexibility and certainty in the application of customary law. While the dynamic nature of customary law

enables it to adapt to changing social conditions, it may also lead to inconsistencies in interpretation and enforcement when incorporated into statutory law. This issue becomes particularly relevant in the context of the KUHP, where the formalization of customary offenses requires clear boundaries and guidelines to prevent ambiguity.

In addition, the literature highlights the importance of aligning customary law practices with fundamental legal principles, including the protection of human rights (López et al., 2025; Mehta, 2025). Although customary mechanisms are often valued for their restorative approach, there is a need to ensure that they do not conflict with contemporary standards of justice and equality. Therefore, the integration of customary offenses into the KUHP must be accompanied by safeguards that uphold these principles (Hardinanto et al., 2024).

Overall, existing studies indicate that the recognition of customary law within national legal systems presents both opportunities and challenges. While it enhances cultural relevance and social legitimacy, it also requires careful normative regulation to maintain legal certainty and coherence. This study builds upon previous research by providing a focused normative analysis of the regulation of customary offenses in the KUHP and examining its implications within the Indonesian legal context.

Method of Research

This study employs a normative legal research approach to examine the regulation of customary offenses (*delik adat*) within the Kitab Undang-Undang Hukum Pidana (KUHP) and its implications for the settlement of customary law cases. This approach focuses on analyzing legal norms, principles, and doctrines relevant to the research issue.

The study utilizes primary, secondary, and tertiary legal materials. Primary materials include statutory regulations, particularly the KUHP. Secondary materials consist of scholarly books, journal articles, and legal commentaries, while tertiary materials include legal dictionaries and encyclopedias to support conceptual clarity (Williams, 2020). Data collection is conducted through library research, selecting relevant and authoritative sources.

The research applies a statutory approach to interpret legal provisions and a conceptual approach to examine legal theories such as legal pluralism and living law. The analysis is carried out using a qualitative descriptive method, involving the classification, interpretation, and synthesis of legal materials to assess their consistency with principles of legal certainty, justice, and cultural relevance. The discussion is contextualized by referring to Sulawesi Barat, where customary law remains influential, to enhance the relevance of the normative analysis.

Result and Discussion

Results

The analysis of legal norms within the Kitab Undang-Undang Hukum Pidana (KUHP) indicates that the regulation of customary offenses (*delik adat*) reflects formal recognition of living law within the Indonesian legal system. The KUHP provides a normative basis for acknowledging customary norms as part of criminal law, thereby allowing their consideration in resolving certain legal disputes.

Furthermore, the findings show that the inclusion of customary offenses supports the integration of local values into the national legal framework. This is particularly relevant in regions such as Sulawesi Barat, where customary law continues to function as an important mechanism for maintaining social order and resolving disputes within communities.

However, the study also identifies several limitations in the current regulatory framework. The KUHP does not clearly define the parameters for determining what

constitutes a “living law,” nor does it provide detailed procedural guidelines for its application. Additionally, there is a lack of explicit provisions regulating the relationship between state law enforcement institutions and customary authorities.

In addition, the absence of clear parameters for defining “living law” raises significant concerns regarding consistency in legal interpretation. Without standardized criteria, the recognition of customary norms may vary across regions, depending on local practices and the discretion of law enforcement authorities. This condition may lead to unequal application of the law, where similar cases are treated differently based on subjective interpretations. Consequently, this inconsistency poses a challenge to the principle of legal certainty, which is a fundamental element in the administration of criminal justice.

Moreover, the lack of procedural guidelines for the application of customary offenses creates uncertainty in law enforcement practices. The KUHP does not explicitly regulate how customary law should be integrated into formal judicial processes, including the stages of investigation, prosecution, and adjudication. As a result, there is a risk that customary mechanisms may either be underutilized or applied inconsistently. This gap highlights the need for implementing regulations or technical guidelines to ensure that the recognition of customary law can be operationalized effectively within the criminal justice system.

Another important issue concerns the coordination between state institutions and customary authorities. The absence of clear legal provisions governing their relationship may result in overlapping roles and potential conflicts of authority. In practice, customary leaders often play a central role in resolving disputes, particularly in communities where traditional values remain strong. However, without formal recognition of their authority within the legal framework, their decisions may lack legal enforceability. Therefore, it is essential to establish a more structured and harmonized relationship between these institutions to ensure legal coherence and effective dispute resolution.

Discussion

The recognition of customary offenses in the KUHP represents a significant advancement in accommodating legal pluralism within Indonesia’s criminal law system. By incorporating elements of living law, the KUHP moves beyond a rigid positivistic approach and adopts a more contextual legal framework that reflects societal values. This development enhances the legitimacy of the legal system, particularly in areas where customary law remains influential.

Nevertheless, the absence of clear normative standards raises concerns regarding legal certainty. In criminal law, the principle of legality requires that legal provisions be clearly defined to avoid arbitrary interpretation. The lack of precise criteria for identifying customary law may lead to inconsistencies in its application by law enforcement officials and judges.

Moreover, the coexistence of customary and state legal systems presents challenges related to authority and jurisdiction. Without clear boundaries, there is a risk of overlapping roles between formal institutions and customary leaders, potentially leading to legal conflicts. This issue highlights the need for a more structured framework that defines the interaction between these two systems (Syahril, M. A. F, et.al, 2025).

Another critical aspect concerns the alignment of customary law with fundamental legal principles, particularly human rights. While customary dispute resolution mechanisms often emphasize restorative justice, they must still conform to principles such as equality before the law and due process. Ensuring this alignment is essential to prevent potential injustices arising from the application of customary norms.

In the context of Sulawesi Barat, the integration of customary offenses into the KUHP has the potential to strengthen community-based dispute resolution. However, its effectiveness depends on the establishment of clear legal guidelines, harmonization between customary and national law, and the capacity of legal practitioners to interpret and apply these provisions consistently.

In addition, the recognition of customary offenses within the KUHP can be understood as part of a broader shift toward restorative justice in criminal law. Customary law traditionally emphasizes reconciliation, compensation, and the restoration of social harmony rather than punishment. This approach aligns with contemporary legal developments that promote alternative dispute resolution mechanisms. Therefore, the incorporation of customary norms provides an opportunity to humanize the criminal justice system by prioritizing social balance and community cohesion.

However, this integration also requires careful institutional adaptation. Law enforcement officials, including police, prosecutors, and judges, must possess adequate understanding of customary law and its underlying values. Without proper training and capacity building, there is a risk that customary provisions will be misinterpreted or applied in a purely formalistic manner, thereby undermining their intended purpose. This highlights the importance of developing legal education and professional training programs that incorporate aspects of legal pluralism and customary law.

Furthermore, the effectiveness of customary offense regulation depends on the existence of harmonized legal instruments. The KUHP, as a general legal framework, needs to be supported by implementing regulations that provide technical guidance on the recognition and application of customary law. Such regulations should clarify procedural mechanisms, define the scope of customary authority, and establish safeguards to ensure compliance with fundamental legal principles. Without these supporting instruments, the normative recognition of customary law may remain symbolic rather than functional.

Finally, the integration of customary law into the national legal system must be continuously evaluated to ensure its alignment with evolving societal values and legal standards. As Indonesian society becomes increasingly complex, the interaction between traditional norms and modern legal principles will require ongoing adjustment. In this regard, a dynamic and responsive legal framework is essential to maintain the balance between cultural preservation and the protection of universal legal values. This continuous evaluation will ensure that the recognition of customary offenses contributes meaningfully to the development of a just and adaptive legal system.

Conclutions

This study concludes that the regulation of customary offenses in the Indonesian Criminal Code (KUHP) represents a progressive effort to accommodate legal pluralism by recognizing living law within society, especially in regions such as West Sulawesi where customary law remains strong. However, from a normative perspective there are still fundamental weaknesses, particularly the absence of clear parameters for defining “living law,” the lack of detailed procedural guidelines, and the unclear division of authority between state institutions and customary authorities, all of which risk creating legal uncertainty, inconsistent application, and jurisdictional conflicts. At the same time, the integration of customary offenses opens opportunities to strengthen restorative justice approaches that are more contextual and oriented toward social harmony, as long as they remain aligned with fundamental legal principles, including the protection of human rights. Therefore, it is necessary to develop implementing regulations, harmonize institutional roles, and enhance

the capacity of law enforcement officials so that the recognition of customary offenses is not merely symbolic but can be implemented effectively, fairly, and consistently within the national criminal law system.

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