

## **Contribution of Local Wisdom Values in The Development of Criminal Punishment in The National Criminal Code**

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### **Abstract**

The issue of punishment plays a significant role in criminal law, reflecting a nation's socio-cultural value system. The Indonesian nation has a conflict resolution mechanism based on local wisdom, which is essentially living law. In criminal law reform policies, particularly in criminal law, local wisdom values are incorporated into substantive content. The purpose of this paper is to determine the suitability of local wisdom values in criminal law, considering the central socio-political, socio-philosophical, and socio-cultural values, and the contribution of local wisdom values to the development of criminal law in the National Criminal Code. Through a doctrinal approach, using literature studies on secondary data and qualitative analysis, it can be explained that living law is equated with customary criminal law. The local wisdom values that form the substantive content of criminal law in the National Criminal Code align with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society. The legal contribution that exists within society to criminalization in the National Criminal Code is customary criminal law, as reflected in Article 2 concerning the applicability of customary law, which allows for the imposition of customary sanctions even if the act is not specifically stated in the Criminal Code. Furthermore, Article 66 of the National Criminal Code regulates additional sanctions, of which subparagraph (1) letter f covers one form, namely the fulfillment of local customary obligations

**Keywords:** criminalization, criminal code, local wisdom

### **Abstrak**

*Masalah pemidanaan berperan penting dalam hukum pidana dimana merupakan pencerminan sistem nilai-nilai sosial budaya suatu bangsa. Bangsa Indonesia telah memiliki mekanisme resolusi konflik dengan kearifan lokal yang pada hakikatnya merupakan hukum yang hidup dalam masyarakat (living law). Dalam kebijakan pembaharuan hukum pidana khususnya dalam pemidanaan, nilai-nilai kearifan lokal dijadikan sebagai muatan substantif. Tujuan penulisan ini untuk mengetahui kesesuaian nilai-nilai kearifan lokal dalam pemidanaan ditinjau dari nilai-nilai sentral sosio politik, sosio filosofis, sosio kultural dan kontribusi nilai-nilai kearifan lokal dalam perkembangan pemidanaan pada KUHP Nasional. Melalui pendekatan doktrinal dengan studi kepustakaan terhadap data sekunder dan analisis secara kualitatif, maka dapat dijelaskan bahwa hukum yang hidup dalam masyarakat (living law) inilah yang dipersamakan dengan hukum pidana adat. Nilai-nilai kearifan lokal yang menjadi*

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*muatan substantif pada pemidanaan di KUHP Nasional mempunyai kesesuaian dengan nilai-nilai sentral sosio politik, sosio filosofis, sosio kultural masyarakat Indonesia. Kontribusi hukum yang hidup dalam masyarakat terhadap pemidanaan dalam KUHP Nasional berupa hukum pidana adat yang tercermin dalam Pasal 2, tentang berlakunya hukum adat, yang memungkinkan pemberian sanksi adat meskipun perbuatan tersebut tidak secara khusus tertuang dalam KUHP. Selain itu dalam Pasal 66 KUHP Nasional mengatur tentang sanksi tambahan, di mana subparagraf (1) huruf f mencakup salah satu bentuknya, yaitu pemenuhan kewajiban adat setempat.*

**Kata kunci:** kearifan lokal, KUPNasional, pemidanaan

## 1. INTRODUCTION

Law No. 1 of 2023 concerning the Criminal Code (KUHP) is the result of national legal reform, specifically the reform of criminal law. This is so because the National Criminal Code contains elements of criminal law reform. According to Barda Nawawi Arief, national legal reform, including criminal law reform, is essentially a reform of fundamental ideas—often interpreted as a renewal of concepts or basic ideas—rather than simply changing the textual formulation of articles.<sup>1</sup> He further stated that:

Criminal law reform essentially means an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie Indonesian social policy, criminal policy and law enforcement policy.<sup>2</sup>

This means that in carrying out legal reform, especially *penal reform*, it cannot be separated from the idea or policy of developing a national legal system based on Pancasila as the values of the aspired national life. which contains a balance of values or ideas or moral paradigms of religious (divinity), humanity (humanistic), nationality, democracy and social justice. The values of Pancasila which are a philosophy of life (life outlook, life guidelines, life instructions, *way of life*) must always be realized in all aspects of national and state life, including in the legal field, especially regarding criminal law reform.

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<sup>1</sup> Tongat, Said Noor Prasetyo, Nu'man Aunuh, dkk, "Hukum yang Hidup dalam Masyarakat dalam Pembaharuan Hukum Pidana Nasional", *Jurnal Konstitusi*, Vol, 17:1, 2020, hlm. 158.

<sup>2</sup> Barda Nawawi Arief. 2008. *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*. Kencana Prenada Media Group. Jakarta. hlm. 25-26.

The issue of imposing sanctions or punishment is one of the three main issues in criminal law, alongside the issue of criminal acts and criminal responsibility. This makes the issue of punishment crucial. According to Muladi and Barda Nawawi Arief, the importance of the issue of punishment lies in the fact that through punishment, both in theories of criminal justification and in the form of punishment policies, it reflects a nation's socio-cultural value system, particularly regarding a nation's perception of human rights.<sup>3</sup>

The imposition of sanctions or punishment is the result of an act that is violated, resulting in consequences for the perpetrator to be punished. Indonesian society with its diversity of languages, cultures, and traditions has a variety of rules and norms that are characteristic of each. In the Indonesian region, each community has its own unique and different customary laws, and each of these customary laws has specific sanctions for those who violate norms or act against the common interest, such as the Ambonese people have the *pela mechanism*, the Dayak people in West Kalimantan have *basaru sumangat*, the people in NTT have *ndempa*, and the Acehnese have *tepung tawar*. Various institutions of conflict resolution mechanisms are present and built through different socio-historical contexts. However, they have the function of integrating society in a peaceful social system.<sup>4</sup> Most of the customary law regulations in Indonesia relating to customary criminal law, particularly those relating to the application of customary sanctions, are conveyed orally and are not contained in written form or *are unwritten law*.<sup>5</sup>

The conflict resolution mechanism known as customary criminal law embodies the values of local wisdom held by the local community. Local wisdom is a legacy from ancestors reflected in life values, integrated into beliefs, culture, and traditions. Over time, communities adapt to their environment by developing knowledge or ideas, as well as

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<sup>3</sup> Muladi dan Barda Nawawi Arief. 1998. *Teori-Teori dan Kebijakan Pidana*. Alumni. Bandung, hlm. V.

<sup>4</sup> Moh. Mudzakkir, Arief Sudrajat, "Resolusi Konflik Berbasis Kearifan Lokal di Jawa Timur: Sebuah Tinjauan Awal", *Prosiding Seminar Nasional Revitalisasi Kearifan Lokal Untuk Membangun Martabat Bangsa*, Fish Unesa, 21 Mei 2016, hlm. 196.

<sup>5</sup> Patricia Pasapan, Juanrico Alfaramona Sumarezs Titahelu, Denny Latumaerissa, "Delik Adat dalam Sistem Hukum Pidana di Indonesia", *TATOHI Jurnal Ilmu Hukum*, Vol 2 (2022), hlm. 193.

tools, integrated with traditional norms, cultural values, and environmental management efforts. All of this is done to meet their needs without sacrificing the sustainability of the surrounding environment.<sup>6</sup> These local wisdom values are essentially living law within the community *as a guideline for behavior*. This living law *is* what is equated with customary criminal law. Eugene Ehrlich stated that living law *is* defined as " *the law that dominates life itself, even though it has not been printed in legal propositions.*" This view can be interpreted as meaning that living law is law that is community-centered, not state-centered. Therefore, living law is not limited to customary law alone but also includes customary law and religious law (Sharia).<sup>7</sup>

Despite the ongoing theoretical debate about the adoption of living law within the community in the reform of national (criminal) law, it is important to emphasize that indigenous communities, with their inherent local wisdom, can serve as a model for addressing various regional issues. The inclusion of local wisdom in the New Criminal Code as a form of criminal law is an effort to achieve the goal of criminal law enforcement in Indonesia, particularly in regional cases related to local wisdom. According to Muladi, the presence of living law within the community can contribute not only as a negative source of law, but also as a positive source of law. This means that the values within the community can contribute as values that eliminate or negate the illegal nature of acts that are clearly regulated by law (a negative source of law). Furthermore, these values can also contribute as a positive source of law, meaning as a basis for determining whether an act is considered illegal.<sup>8</sup>

Based on the description above, this paper raises two issues: first, how are the values of local wisdom in criminal law appropriate from the perspective of central socio-political, socio-philosophical, and socio-cultural values? Second, how do local wisdom values contribute to the development of criminal law in the National Criminal Code?

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<sup>6</sup> Jamiatur Robekha, Anggerdi Adji Pratama, Musa Alam Mulya, dkk, "Pengaruh Budaya Lokal Terhadap Pelaksanaan Hukum Pidana di *Indonesia*", *Journal Humaniora: Jurnal Hukum dan Ilmu Sosial*, Vol. 02: 01, 2024, hlm. 67.

<sup>7</sup> Nella Sumika Putri, "Memikirkan Kembali Unsur "Hukum Yang Hidup Dalam Masyarakat" Dalam Pasal 2 RKUHP Ditinjau Perspektif Asas Legalitas Indonesia", *Criminal Law Review*, Vol. 1: 1, :2021, hlm. 63.

<sup>8</sup> Tongat, Said Noor Prasetyo, Nu'man Aunuh, dkk., *Op Cit*, hlm. 160.

## **2. RESEARCH METHODS**

This paper uses a doctrinal approach. The data types and sources used are secondary data, using literature study data collection methods and qualitative content analysis.

## **3. RESULTS AND DISCUSSION**

### **3.1. The Conformity of Local Wisdom Values in Criminal Procedure Reviewed from the Central Values of Socio-Politics, Socio-Philosophies, and Socio-Culturalism**

Judicial inconsistency in sentencing remains a critical concern in Indonesia's criminal justice system, especially in cases involving juvenile offenders. This issue becomes particularly visible when courts deliver different sentences in cases with nearly identical legal elements and factual circumstances. In such instances, inconsistency reflects not only a lack of standardization in judicial reasoning but also a failure to uphold the principles of equality before the law and proportionality in sentencing.<sup>9</sup> The problem becomes even more significant when it involves children, who should be afforded special protection under Law Number 11 of 2012 on the Juvenile Criminal Justice System. While judges are granted discretionary powers in deciding cases, unregulated and subjective discretion often results in disparities that undermine public trust and the legitimacy of court decisions. To demonstrate how inconsistency materializes in practice, this study compares two court decisions that adjudicated juvenile theft cases with similar characteristics but led to strikingly different outcomes.<sup>10</sup>

Barda Nawawi Arief reminded us that a nation's law is "nation- centric." Therefore, legal reform within a nation including criminal law reform is essentially an effort to review and reassess the sociopolitical, sociophilosophical, and sociocultural values that underlie and inform the normative and substantive content of the desired criminal law. Thus, legal reform within a nation cannot be separated from the culture of the nation in

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<sup>9</sup> Iskandarsyah Siregar and Aziz Rahimy, "A Normative Analysis of Juvenile Sentencing Laws in Indonesia: Reconciling Justice, Rehabilitation, and Victim Redress," *Polit Journal Scientific Journal of Politics* 3, no. 3 (September 2, 2023): 160–69, <https://doi.org/10.33258/polit.v3i3.969>.

<sup>10</sup> William Maxey et al., "Discrepancy between Policy and Practice: A Case Study on Hegemony within an Indonesian Juvenile Correctional Center (LPKA)," *Children and Youth Services Review* 177 (October 2025): 108469, <https://doi.org/10.1016/j.chilyouth.2025.108469>.

question.<sup>11</sup>

Based on the above, if local wisdom values are used as substantive content in criminal law reform policies, particularly in sentencing, then their compatibility with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society needs to be discussed. Therefore, the following will describe, in sequence, the compatibility of local wisdom values with the central socio-political, socio-philosophical, and socio-cultural values, the objectives of sentencing, and the benefits of the parties.

### **3.1.1. The Congruence of Local Wisdom Values with Socio-Political Values**

In general, politics has two meanings, namely politics in the sense of public interest (*politics*) and politics in the sense of policy (*policy*). Politics in the first sense is a series of principles, conditions, paths, methods or tools that will be used to achieve a goal or a desired state accompanied by the paths, methods and tools that will be used to achieve the desired state. Politics in the second sense is the use of certain considerations that are considered to better guarantee the implementation of an effort, ideal, desire or desired state. The emphasis is on the process of consideration; ensuring the implementation of an effort; the achievement of the desired ideal.<sup>12</sup>

Based on the above definition of politics, the definition of socio-political values is the principles, principles, conditions, and goals desired by society. The goals desired by the Indonesian people are said to be the National Goals of the Indonesian Nation, which are stated in the Preamble and the Body of the 1945 Constitution and several laws and regulations.<sup>13</sup>

The National Goals of the Indonesian Nation as regulated in the 4th Paragraph of the Preamble to the 1945 Amendment to the Constitution are as follows:

- 1) Protecting all the Indonesian people and all Indonesian blood;
- 2) Promote the general welfare;
- 3) Enlightening the life of the nation;

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<sup>11</sup> *Loc.cit*

<sup>12</sup> Noor Ms. Bakry. 2002. Pendidikan Kewarganegaraan, Kewiraan. Liberty. Yogyakarta. hlm. 164.

<sup>13</sup> F.A. Allen yang dikutip oleh Barda Nawawi Arief dalam Beberapa Aspek Pengembangan Ilmu Hukum (Menyongsong Generasi Baru Hukum Pidana Indonesia), pidato pengukuhan Guru Besar Ilmu Hukum Undip Semarang 25 Juni 1994. hlm. 17.

- 4) Participate in implementing world order based on freedom, eternal peace and social justice.

The National Goals of the Indonesian Nation as mentioned above consist of the following five things:<sup>14</sup>

- 1) Achieving divinity is intended as a state goal that transcends the limits of empirical positivism. The state not only guides its citizens towards salvation in this world but also in the afterlife, in accordance with their respective religious beliefs. The state must provide full freedom to practice the religious teachings of its citizens. The state must also resolve potential disputes through deliberation and consensus across ethnicities, religions, races, and groups. The state has the authority to prohibit activities that conflict with divine values.
- 2) Achieving universal humanity, protecting all nations, and maintaining world order. Achieving a humane, just, and civilized life is positively correlated with efforts to protect citizens' human rights, as formulated in the Constitution. Humanity is based on the formation of a civilized society, *as constructed in the civil society model*.
- 3) Achieving national unity, localities form a national government and educate the nation. Achieving unity as a comprehensive *nation-state, a community-conscious unity within the local and global realms of humanity. Rational nationalism and religious humanism*. The national government is formed to realize these ideals so that the people can intelligently understand and interpret the meaning of life and live well.
- 4) Achieving democracy and the wisdom of deliberation/representation. Achieving democracy is intended as a collectivity that implements the people's aspirations with the demands of wisdom. Indonesian democracy is a religious, theocentric democracy, not a capitalist, secular, and anthropocentric liberal democracy.
- 5) Achieving social justice. Achieving social justice is the state's duty to provide economic prosperity and spiritual well-being for all Indonesian people.

By paying attention to the formulation and meaning of Indonesia's political goals in the Preamble to the 1945 Amendment to the Constitution, local wisdom values are said to be in accordance if there is a match, harmony with the meaning, and goals of Indonesian politics. The suitability of local wisdom values with Indonesia's political goals is that local wisdom is a manifestation of resilience and growth power manifested through views of life, knowledge, and various life strategies in the form of activities carried out by local communities to answer various problems in fulfilling their life needs, while maintaining their culture. In this sense, local wisdom is the answer to survive and grow sustainably

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<sup>14</sup> Hendra Nurtjahjo. 2005. *Ilmu Negara Pengembangan Teori Bernegara dan Suplemen*. Raja Grafindo Persada. Jakarta. hlm. 27-31.



the culture it supports.<sup>15</sup> It can be concluded that local wisdom values can be a means of protecting the entire Indonesian nation and all of Indonesia's blood can also be a means of advancing general welfare; enlightening the life of the nation, where conflict resolution with the approach of local wisdom values emphasizes quality rather than results, namely making the perpetrator aware of his mistakes, the parties are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act.

### **3.1.2. The Compatibility of Local Wisdom Values with Socio-Philosophical Values**

The meaning of socio-philosophical values can be explained from the meaning of 'values', 'socio' and 'philosophy'. Values *can* be interpreted as a measure that is consciously or unconsciously used by a society or group to determine what is right, good and so on. Socio or social means everything about society or society. Philosophy or philosophy is the result of human thought that is critical, deep, fundamental and comprehensive and produces normative knowledge about ethics, aesthetics and divine philosophy which discusses good and bad, morals and social order.<sup>16</sup>

Thus, the definition of socio-philosophical values is the standards considered good and correct by society for dealing with everyday problems. The socio-philosophical values of the Indonesian nation are based on the values or ethics of Pancasila. The subjective values of Pancasila can be explained as follows:

The values of Pancasila emerged from the Indonesian nation as a result of the assessment and philosophical thinking of the Indonesian nation. The values of Pancasila are a philosophy of life (view of life, life's guidance, life's direction, *way of life*) that is most appropriate for the Indonesian nation, the most just, the wisest, the best, and most appropriate to the Indonesian nation. The values of Pancasila contain four kinds of spiritual values, namely the value of reality/truth, aesthetic value, and religious value, which are manifestations of the essence of the conscience of the Indonesian nation, so they have a subjective nature.<sup>17</sup>

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<sup>15</sup> Ade Makmur, *Op. Cit*, hlm. ix,

<sup>16</sup> Sunoto. 1989. *Filsafat Sosial dan Politik Pancasila*. Edisi Ketiga. Andi Offset. Yogyakarta. hlm. 1

<sup>17</sup> Darji Darmodiharjo dkk. 1991. *Santiaji Pancasila*. Cet. 10. Usaha Nasional. Surabaya. hlm. 56.



Indonesian social ethics are based on the principles of Pancasila, so Indonesian society is said to be:<sup>18</sup>

1) Religious society:

The form of practicing the precepts of the Almighty Godhead is as follows:

- Believe and be devoted to God Almighty in accordance with their respective religions and beliefs according to the basis of just and civilized humanity
- Respect and cooperation between religious adherents and believers of different beliefs, so that harmony in life is built.
- Respect each other's freedom to practice worship in accordance with their religion and beliefs
- Do not force a religion or belief on others.

2) Humanis society:

The form of practicing the principles of Just and Civilized Humanity is as follows:

- Recognizing the equality of rights and obligations between fellow human beings
- Love each other as human beings
- Developing an attitude of tolerance
- Not being arbitrary towards others
- Upholding humanitarian values
- Likes to do humanitarian activities
- Dare to defend truth and justice
- The Indonesian nation feels itself to be part of all humanity, therefore it develops an attitude of respect and cooperation with other nations.

3) A whole and united society:

The form of practice of the principles of Indonesian Unity is as follows:

- Putting the unity, integrity, interests and safety of the nation and state above personal or group interests
- Willing to sacrifice for the interests of the nation and state
- Love for the Homeland and Nation
- Proud to be Indonesian and to have Indonesian homeland
- Promoting social relations for the sake of unity and unity of the nation with Bhinneka Tunggal Ika.

4) Family society:

The manifestation of the practice of Popular Principles Led by Wisdom in Deliberation/Representation is as follows:

- Prioritize the interests of the state and society
- Don't impose your will on other people
- Prioritize deliberation in making decisions for the common good
- Deliberation to reach consensus is filled with a spirit of family

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<sup>18</sup> *Ibid.* 1991. *Santiaji Pancasila*. Cet. 10. Usaha Nasional. Surabaya. hal. 39-48. Lihat juga Sunoto. *Op. Cit.* hlm. 49-53.

- With good intentions and a sense of responsibility to accept and implement the results of the deliberation decisions.
- Deliberation is carried out with common sense and in accordance with a noble conscience.
- Decisions taken must be morally accountable to God Almighty, upholding human dignity and the values of truth and justice.

5) Justice society:

The form of practicing the principles of Social Justice for all Indonesian people is as follows:

- Developing noble deeds that reflect a family and mutual cooperation attitude and atmosphere
- Be fair
- Maintain a balance between rights and obligations
- Respect the rights of others
- Likes to give help to others
- Avoid blackmail towards others
- Not wasteful
- Not a luxurious lifestyle
- Do not commit acts that are detrimental to the public interest
- Likes to work hard
- Appreciate the work of others.
- Working together to achieve equitable and socially just progress.

The values of Pancasila, which are a philosophy of life (life outlook, life principle, life guide, life guidance, *way of life*), must always be realized in all aspects of national and state life, including in the legal field, especially regarding criminal law reform. Local wisdom as a mechanism for resolving social conflicts is a cultural value of Indonesian society that contains the values of peace, harmony, harmony as an explicit and implicit concept that is unique to an individual, a group or society. According to Lev, in social life, most Indonesians tend to Avoiding conflict with anyone, because the social values they uphold are more personal, communal, prioritize solidarity, and have a magical nuance. Therefore, if conflict occurs, it tends to be resolved through compromise and conciliation procedures, prioritizing personal and kinship approaches. The meaning of conflict resolution is not a matter of win-lose (*win-lose solution*), but rather the obligation of the parties to stop the dispute and eliminate the social tension that has occurred.

Therefore, the priority is not resolving the substance of the conflict but rather the conflict resolution procedure.<sup>19</sup>

Judging from the thinking and principles in the conflict resolution mechanism using local wisdom values, it is in accordance with the values of Pancasila. This can be explained that the values of local wisdom that contain peace, deliberation, harmony are in accordance with the 2nd, 3rd, and 4th Principles of Pancasila. The purpose of conflict resolution is based on local wisdom values, where the goal is to make the perpetrator aware of their mistakes, inviting the parties involved to jointly deliberate in accordance with the 2nd and 4th Principles of Pancasila.

### 3.1.3. The Congruence of Local Wisdom Values with Socio-Cultural Values

The definition of socio-culture can be understood from the meaning of socio and the meaning of culture. Socio or social can mean things related to society, namely everything related to the system of living together or living in society of people or groups of people which includes social structures, organizations and values, and aspirations of life and how to achieve them. Culture or culture is a way or attitude of human life in its reciprocal relationship with nature and its environment which also includes all the results of creativity, feelings, both physically material and psychological, ideal and spiritual. Culture consists of everything learned from normative behavioral patterns, meaning it includes all ways or patterns of thinking, feeling and acting.<sup>20</sup> Ralph Linton calls culture a *design for living*, meaning culture is a *blueprint of behavior* that provides guidelines on what should be done and what is prohibited.

The normative elements that are part of culture are:

- a. Elements that involve assessment (*valuational elements*) for example what is good and bad, what is pleasant and unpleasant, what is in accordance with desires and what is not in accordance with desires;
- b. Elements related to what should be (*prescriptive elements*) such as how people should behave;

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<sup>19</sup> T O Ihromi, Antropologi Hukum Sebuah Bunga Rampai, Yayasan Obor Indonesia, Jakarta, 2001, hlm. 210-211.

<sup>20</sup> Jacob Ranjabar. 2006. *Sosiologi Hukum Budaya Indonesia; Suatu Pengantar*. Ghalia Indonesia. Jakarta, hlm. 9.

- c. Elements that concern beliefs (*cognitive elements*) such as having to perform traditional ceremonies at birth, engagement, marriage and so on.<sup>21</sup>

Thus, the definition of socio-cultural is the entire system of values, social order, and behavior of the Indonesian people, which is a manifestation of the work, feelings, and creativity in the life of society, nation, and state. Local wisdom can provide direction for cultural development, as the Indonesian nation is increasingly losing its identity, necessitating the strengthening of local wisdom. This is because local wisdom can redirect Indonesia's identity in accordance with its cultural diversity. The existence of local wisdom can not only be used to resolve conflicts but also enrich noble cultural values.<sup>22</sup>

In terms of elements related to what should be (*prescriptive elements*), especially in resolving a problem or conflict that occurs in society, Indonesian society uses deliberation or peace. This is often found in the field of Customary Law, as indicated by the existence of village court judges regulated in Article 3 a of *the Reglement op de Rechtelijke Organisatie en het Beleid der Justitie* (Regulations on the Composition of Courts and Court Policies), which is still in effect today.<sup>23</sup>

Indonesian customary law considers any deviation from customary rules to cause unrest or imbalance, and therefore, those who violate these rules are subject to customary sanctions. Customary sanctions or customary reactions are actions or efforts to restore the imbalance, including the magical balance caused by disturbances that constitute customary violations. These sanctions serve as a stabilizer, restoring the customary balance between the physical world and the spiritual world, not as a cause of suffering. Soepomo stated that these customary sanctions include:

- Compensation for losses (immaterial) in various forms such as forced marriage to a girl who has been defiled;
- Payment of customary money to the affected person, in the form of a sacred object as compensation for spiritual losses;
- A sacrifice (sacrifices) to cleanse society from all supernatural impurities;
- Cover of shame, apology;
- Various forms of corporal punishment up to the death penalty;

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21 Soerjono Soekanto. 2002. *Sosiologi Suatu Pengantar*. Cet. Ke-34. Raja Grafindo Persada. Jakarta. hlm. 182.

22 Herlina Astri, *Op.cit*, hal. 158-159.

23 Hilman Hadikusuma. 1992. *Pengantar Ilmu Hukum Adat Indonesia*. Mandar Maju. Bandung. hlm. 247.

- Exile from society and placing people outside the legal system.<sup>24</sup>

Customary law is usually more effective in resolving social conflicts than existing positive law, because in a pluralistic society like Indonesia, it is not impossible for people to adhere to their own customary laws, including mediatory systems, as seen in Kalimantan, West Irian, and so on.<sup>25</sup> In line with this, TO. Ihromi, as cited by M. Faal, stated:

It is true that the majority of citizens actually apply in their behavior what is detailed in positive law, but quite a lot of citizens ignore the law in their behavior, or follow other norms besides it as guidelines for behavior regarding a matter that has been regulated in law.<sup>26</sup>

The above description shows that not all criminal cases are resolved through the judicial process, but can be resolved through other means such as mediation, discretion, forgiveness, counseling, and so on. Therefore, the local wisdom values integrated into criminal law do not conflict with the prevailing culture of conflict resolution in Indonesian society.

When linked to Kranenburg's teachings or postulates, the nature of traditional social structures actually reflects a universal principle in modern criminal law, namely through restoring balance in society caused by the actions of one of its citizens that result in material or psychological harm to other members of society. The realization of efforts towards restoring balance in the social order of life in this way contains an educational aspect that applies not only to the perpetrator of the crime but also to other members of society.<sup>27</sup>

### **3.2. The Contribution of Local Wisdom Values to the Development of Criminal Procedure in the National Criminal Code**

The existence of customary criminal law in the Unitary State of the Republic of Indonesia is something that cannot be denied. Explicit recognition of the existence and

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<sup>24</sup> Soepomo. 1986. *Bab-Bab Tentang Hukum Adat*. Pradnya Paramita. Jakarta. hlm. 113.

<sup>25</sup> M. Faal. 1991. *Penyaringan Perkara Pidana Oleh Polisi; Diskresi Kepolisian*. Pradnya Paramita. Jakarta. hlm. 31.

<sup>26</sup> *Loc.cit.*

<sup>27</sup> Hermin Hadiati Koeswaji. 1995. *Perkembangan Macam-Macam Pidana Dalam Rangka Pembangunan Hukum Pidana*. Citra Aditya Bakti. Bandung. hal. 117.

unity of customary law communities and traditional rights is granted by Article 18 B paragraph (2) of the 1945 Constitution. However, according to Satjipto Rahardjo's view, the existence of customary law does not depend on recognition or rejection by state authorities, but must be visible and born from the community independently to be called original.<sup>28</sup> Customary criminal law is a law that lives in society and contains local wisdom values.

If the living legal norms are placed as part of the formation of criminal law, this is in line with what was conveyed by Mochtar Kusumaatmadja that the applicable national (criminal) law is a reflection of the values that live in society. If legal norms have been integrated and merged into legal regulations (criminal law) then the living law is no longer in conflict with the principle of legality. Living legal norms have been depicted and written in actions that according to the legislators as reprehensible actions, so that the living legal norms become generally applicable. If seen from the perspective conveyed by Tamahana, which maps the relationship between law and society in a tripartite relationship, namely (a) custom/consent; (b) morality and reason (morality/reason) and (c) positive law (positive law). According to Tamahana, positive law is influenced by custom/consent, because: 1 ) Historically, positive law developed from the social order and was partly controlled by customs and habits; 2) The content of positive legal norms is a product derived from customs and daily practices; 3) Positive law that does not conform to customs, habits, or usages will be ineffective and will not gain legitimacy; and 4) In the extreme, customs, habits, or usages are law. Therefore, it can be concluded that using the concept offered by Tamahana, the existence of living law is essentially inseparable from the process of forming positive law. However, with the heterogeneity of Indonesian society, it is not easy to accommodate all aspects of living law (customary) in positive law. Only living legal norms (customary) that apply generally can be

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<sup>28</sup> Damianus Rama Tene, Andi Mulyono, Nurjanah Lahangatubun, "Implikasi Penerapan Hukum Pidana Adat Dalam Penyelesaian Tindak Pidana Pasca Pembaruan Hukum Pidana Nasional Indonesia", *EKSOMSE: Jurnal Penelitian Hukum dan Pendidikan*, Vol. 22 No 2, 2023, hlm. 31.

accommodated in positive law. Therefore, living legal norms that are local and specific should still be able to apply without having to place them in positive law.<sup>29</sup>

The official recognition of customary criminal law in the National Criminal Code has enhanced its role as an integral component of national criminal law. This commitment is reflected in Article 2, which governs the criminal system and its regulations:<sup>30</sup>

1. The provisions as explained in Article 1, paragraph (1), do not reduce the validity of customary law, which allows for the imposition of sanctions even if the act is not specifically stated in the law.
2. Customary law as referred to in paragraph (1) applies in the area where the customary law applies, provided that it is not stipulated in the law and is in accordance with the principles of Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and legal norms that are widely accepted by civilized society.

Several crucial points in Article 2 of the New Criminal Code include: First, explicit recognition of the existence of customary criminal law, particularly in cases of customary violations, is presented by Article 2, paragraph (1), which uses the concept of "law applicable in society", including in national law. The additional explanation to Article 2, paragraph (1), explains that this specifically refers to customary criminal law. This explanation further strengthens the purpose of this provision is to form a legal basis for the implementation of customary criminal law. The use of the concept of "law applicable in society", which is similar to the idea of "living law", is often associated with the ideas introduced by Eugen Ehrlich, although not entirely identical. Nevertheless, the introduction of the concept of "law applicable in society" in the New Criminal Code is seen as an innovative step, although it should be a natural step in the evolution of Indonesian law. Second, the provisions in Article 2 of the New Criminal Code can be seen as restrictions and potentially become the basis for the abolition of the customary criminal law system itself. This is due to certain conditions that have been set as limitations on the application of the customary criminal law system. These conditions

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<sup>29</sup> Nella Sumika Putri, *Op.cit*, hlm. 67.

<sup>30</sup> *Op.cit*, hlm. 34.



include the following: 1) Only applicable in areas where the system exists, 2) As long as it is not regulated in this law, and must be in accordance with the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and legal principles generally accepted in civilized societies. In addition to these three conditions, there are other factors that can limit the application of the customary criminal law system, including government regulations and regional laws in areas where the customary criminal law system applies.<sup>31</sup>

The second issue related to customary law regulations in the National Criminal Code relates to customary sanctions. Article 66 of the National Criminal Code regulates additional sanctions, of which subparagraph (1) letter f covers one form, namely the fulfillment of local customary obligations. This regulation has several implications. First, establishing customary penalties as additional penalties makes them secondary or complementary, because additional penalties can only be imposed in conjunction with the main penalty. However, some customary violations can be handled by imposing customary penalties alone. This raises the question of how it is possible to impose customary penalties without the main penalty. Another consequence is that the designation of additional penalties makes the enforcement of customary violations and their sanctions optional, rather than mandatory, depending on the judge's discretion. This resolution also indicates that the imposition of customary penalties is carried out through the state justice system, rather than through customary or community justice institutions, thereby reducing their autonomy.<sup>32</sup>

Fulfillment of local customary obligations as a form of additional punishment provides a new nuance in criminal law enforcement. This regulation is inseparable from the recognition of existing laws in society, as stipulated in Article 2 of the New Criminal Code. This article reflects the New Criminal Code's efforts to recognize local wisdom within the community, in line with the *Bhinneka Tunggal Ika* insight in criminal law reform as conveyed by Prof. Rusli Muhammad. According to him, the *Bhinneka Tunggal*

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<sup>31</sup> *Ibid*, hlm. 35.

<sup>32</sup> *Loc.cit.*

Ika insight is a criminal law reform that is carried out to ensure the inclusion of aspirations, values, and legal needs of diverse community groups.<sup>33</sup>

## **CONCLUSION AND SUGGESTION**

These local wisdom values are essentially living laws within society that serve as guidelines for behavior. This living law is equated with customary criminal law. Local wisdom values serve as substantive content in criminal law reform policies, particularly in sentencing, to align with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society. The legal contribution that exists in society towards criminalization in the Criminal Code is in the form of customary criminal law which is reflected in Article 2, regarding the application of customary law, which allows for the imposition of customary sanctions even though the act is not specifically stated in the Criminal Code. In addition, Article 66 of the National Criminal Code regulates additional sanctions, where subparagraph (1) letter f includes one form, namely the fulfillment of local customary obligations.

Based on the problems above, the author provides suggestions to judges to empower additional criminal penalties in the form of customary sanctions in their decisions.

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<sup>33</sup> Sahran Hadziq, Kearifan Lokal Sebagai Jenis Pidana Dalam Kitab Undang-Undang Hukum Pidana (KUHP) Baru, 2024, diakses dari [https://www.Researchgate.Net/Publication/378212698\\_](https://www.Researchgate.Net/Publication/378212698_)

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