

Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

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ABSTRACT: The recognition of customary criminal law in Law Number 1 of 2023 concerning the Criminal Code is an important reform in the Indonesian criminal law system. This study aims to elaborate on customary criminal law in the new Criminal Code as a positive and negative function. This study uses a juridical-normative method with a doctrinal approach, focusing on the normative analysis of Article 2 of the Criminal Code and other related provisions. The results of the study show that customary criminal law in the new Criminal Code has two functions, namely a positive function, as a basis for punishment based on the law that lives in society; and a negative function, as a justification that can eliminate the unlawful nature. This provision reflects a shift from the principle of formal legality to the principle of material legality, which is more inclusive of local values. However, its implementation requires caution and compliance with the principles of Pancasila, human rights, and the general principles of the international community.

KEYWORDS: customary criminal law; new Criminal Code; principle of legality; positive function; negative function

I. INTRODUCTION

Indonesia has a diversity of cultures, customs, so that it has an impact on the applicable legal system. From this diversity, customary law emerged and developed long before the birth of the national legal system. Customary law in several regions and communities in Indonesia plays a significant role, its existence is not only as a conflict resolution, but also plays a role in maintaining order, protecting the values that live in society. The customary law arises from the customs of the local community which are maintained from generation to generation, so that it becomes a guideline for behavior, and becomes a social norm in the community. So philosophically customary law emphasizes more on restorative, not just retaliation (Helnawaty 2017) . Therefore, customary law has an important role in shaping behavior and also as social control (Utama 2020) .

Customary law in each country can be different in its development. Customary law with *a common law system* can develop dynamically with the legal system of the country concerned because it is sourced from court decisions in which the trial process presents *a jury* from the community. While customary law with *a civil law system* does not easily develop dynamically with the legal system of the country concerned because it is sourced from laws and regulations or written laws made by the country. Some examples of countries such as Ethiopia (Wondwossen Demissie Kassa and Muradu Abdo Srur 2016) South Africa make their customary law as one of the instruments in resolving legal problems, even customary law in these countries is included as one of the sources of law in the national legal system (Jacques Matthee 2021) . In Indonesia itself, so far, customary criminal law has not been formally recognized, so that its application is informal in each indigenous community, without explicit recognition in the national legal system which prioritizes the principles of legality and legal certainty.

Law Number 1 of 2023 concerning the Criminal Code (KUHP) marks a substantial reform in the Indonesian criminal law system. One of its important updates is the recognition of customary criminal law as a source of national law as explained in article 2, which stipulates that the law that lives in society can be used as a basis for criminalization. (Ardiansyah, Dwi Kurnia, and Rahayu 2024) . Customary criminal law in the New Criminal Code provides two important dimensions to the concept of "against the law," namely the positive function implies an expansion of the scope of acts that can be subject to criminal penalties, including acts that are prohibited according to customary law norms even though they are not regulated in statutory regulations, and the negative function acts as a limitation, where an act that formally fulfills the elements of a crime but does not materially conflict with the law that is in force in society can be exempted from punishment (Agustina et al. 2016) .

Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

These provisions not only accommodate local values, but also provide meaning that there is a paradigm shift in understanding the principle of legality which has been the main pillar of Indonesian criminal law, to the principle of formal and material legality. Of course, there will be challenges in the implementation of customary criminal law, both in positive and negative functions, these challenges will certainly arise in law enforcement, because so far the doctrine of the principle of formal legality, the term of which is often known as "*Nullum delictum nulla poena sine praevia lege poenali*" in Indonesian criminal law has been very strong and embedded in the minds of law enforcement officers. Moreover, this principle consists of two things that are often used in criminal law enforcement, namely that criminal acts must be formulated/mentioned in statutory regulations (*lex scripta*), these regulations must exist before the occurrence of the crime (*lex praevia*) (Sudarto 2023).

Another conceptual challenge will arise a conflict between legal certainty and justice, where the formal unlawful nature as a manifestation of the principle of formal legality upholds legal certainty, so that what is called a criminal act as described in the law or textually, is in contrast to the material unlawful nature that upholds justice, so the approach is contextual, not only what is described in the law, but the law that lives in society if it considers someone's actions as a criminal act, even though it is not formulated in the law, it can be used as a basis for criminalization (Sudarto 2023). Doctrinally, this becomes a *legal problem* that needs to be analyzed more deeply, the presence of the new Criminal Code brings the spirit of decolonization, and a fairly radical paradigm shift in Indonesian criminal law into the future, so it needs to be analyzed further in relation to customary criminal law between positive and negative functions. Therefore, the purpose of this study is to elaborate customary criminal law in the new Criminal Code as a positive function and negative function.

To examine and dissect the problem, this study will use the legal system theory of Lawrence M. Friedman, which explains that in the study of law enforcement, its effectiveness and success are determined by three main elements in the legal system (Al Kautsar and Muhammad 2022), namely: legal structure, which refers to institutions and law enforcement officers; legal substance, which includes applicable norms, rules, and legislation; and legal culture, which reflects the attitudes, values, and perceptions of society towards the law. These three elements must work synergistically so that law enforcement can be carried out optimally (Razak 2023). Based on this and related to the *legal problems* discussed, the tendency in this study is directly to the substance of the law, so that it will elaborate the provisions normatively in the articles relating to customary criminal law in the new Criminal Code as positive and negative functions.

II. RESEARCH METHODS

This research is included in the category of doctrinal research with a normative legal approach, which aims to identify and examine relevant legal norms based on legal theory, in order to gain an understanding of the legal substance in the new Criminal Code (KUHP). The main focus of this research is to analyze the role of customary criminal law, both in its positive and negative functions. In this context, the theory of legal systems is used as an analytical framework to resolve the legal issues studied, with a particular emphasis on the tendency towards the substantive aspects of law. The data used are secondary data, sourced from Law Number 1 of 2023 concerning the Criminal Code and various academic literature. Data collection is carried out through literature studies, while data analysis is carried out qualitatively, namely by elaborating legal norms (statutory regulations), legal theories, and expert opinions, which are then combined with the legal issues raised. Thus, it is hoped that a systematic analysis pattern can be found in answering the legal issues studied.

III. RESULT AND DISCUSSION

A. Customary Criminal Law as a Material Unlawful Nature

Whether an act is considered unlawful or not, the measure is not only the written law or law, but also the unwritten law in society must be considered. The unlawful nature of the act in fact in the formulation of the crime can be erased based on the provisions of the law and also unwritten rules. So according to this teaching, being unlawful is the same as being against the law and also against the unwritten law in society. (Sudarto 2023). Regarding the understanding of material unlawfulness, it needs to be distinguished into two things, first; negative function, namely recognizing the existence of things that are outside the provisions of the law, eliminating the provisions of the unlawful nature formulated in the law. So that in this case it is used as a reason to eliminate the unlawful nature. second; positive function, namely considering an act as a criminal act or offense, even though it is not formulated in the law, so that the measure is another measure that is outside the law. So that it is considered a source of positive law (Sudarto 2023).

Normatively, this is in accordance with Muladi's view that in a very pluralistic condition and some people still live in rural areas, it would be very wise to apply the teachings of the unlawful nature of material and place the principles of justice as a pair of legal certainty. Of course, this will also be a challenge and difficult to understand for people who think individually (Nyoman Serikat Putra Jaya 2005). Barda Nawawi Arief in his professorial inauguration speech explained that one of the things that needs

Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

to be studied and is urgent as an alternative to renewing the Indonesian Criminal Code is a study of the legal system that lives in society. The living and developing legal values are sourced and originate from customs and religious values, so it is appropriate to explore the principles and norms of criminal law contained in living law, studied with Pancasila values, so that the similarities in these principles and norms can be raised and become the principles of positive criminal law in enforcing customary law (Pujiyono 2023)

The views of Muladi and Barda Nawawi Arief, in line with the results of the national seminar held to discuss the renewal of national criminal law, in the discussion provided the view that customary criminal law is one of the main foundations that supports the existence of national law, customary criminal law can reflect the philosophy, beliefs, culture, and character of Indonesian society, all of which are reflected in Pancasila. From several scientific meetings, the results are explained as follows:

Table 1. Report of Scientific Meeting Discussing Customary Criminal Law

Scientific Meeting	Results
Resolution of the 1st National Law Seminar in 1963 in the Field of Criminal Law	In the resolution of the seminar in the field of criminal law there are 2 resolutions, namely <i>first</i> ; resolution point IV which explains the prohibition of customary law acts that are alive and do not hinder the formation of the desired society with customary sanctions that can still be in accordance with the dignity of the nation. <i>Second</i> ; resolution point V number 4 explains that elements of religion and customary law are interwoven in the Criminal Code.
National Law Seminar III 1974	The conclusion of this seminar explains that national legal development must pay attention to customary law, which is the law that lives in society (<i>the living law</i>).
Report of the 4th National Law Seminar in 1979	Sub B II report letter a, letter e, and letter f regarding the national legal system, concludes that in order to create order and legal certainty to facilitate national development, national law is attempted to be in written form as far as possible. In addition, unwritten law remains part of national law.
Report of the 6th National Law Seminar in 1994	In this report, written law is still an important thing for the source of national law, because written law and unwritten law should be complementary. This is based on the formation of unwritten law is more flexible than the formation of written law, because it can overcome the gap between the validity of the law and its effectiveness.

Source: adapted from the book by Nyoman Serikat Putra Jaya and Umi Rozah (Rozah 2024)

The results of the scientific meeting provide an indication that the principle of legality in Article 1 of the Criminal Code is something fundamental and must be maintained, but its use must be done wisely and carefully, otherwise it will backfire. It would be very tragic if on the basis of the principle of legality the values that live in society cannot be channeled properly or even rejected. It is said to be tragic because customary law, which reflects the values and beliefs that grow and develop in Indonesian society, is killed by the products of the colonizers (Nyoman Serikat Putra Jaya 2005) . The next development related to the renewal of national criminal law, marked by the birth of Law no. 1 of 2023 concerning the Criminal Code (abbreviated as the new Criminal Code), in substance the desire of academics and practitioners of national criminal law to accommodate customary criminal law is realized with the provisions of Article 2 of the new Criminal Code, which in substance are as follows :

Table 2. Recognition of Customary Criminal Law in Law No. 1/2023

Chapter	Substance
Article paragraph (1)	2 " The provisions referred to in Article 1 Article (1) does not reduce the validity of the law who live in a society that determines that a person deserves to be punished even though the act is not regulated in the law. this law"
Article paragraph (2)	2 " The law that exists in society as referred to in paragraph (1) applies in the legal place itself and as long as it is not regulated in this law and is in accordance with the values contained in Pancasila, the 1945 Constitution, human rights and general legal principles recognized by the community of nations."

Source: Law no. 1/2023 concerning the Criminal Code.

These provisions provide an illustration that there is a paradigm shift in the principle of legality, so that what we adhere to is not the principle of formal legality but the principle of material legality, thus providing an opportunity for customary criminal law as a source of positive law and a source of negative law (Nyoman Serikat Putra Jaya 2005) .

Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

B. Customary Criminal Law as a Negative Function in the New Criminal Code

The development of substance in the new Criminal Code, there are several main ideas or basic ideas that are the basis for the renewal of national criminal law. According to Muladi, there are five basic ideas for the renewal of the Criminal Code, including (Prasetyo, Aunuh, and Fajrin 2020) :

- a) Sociologically, politically and practically it must be arranged within the framework of Pancasila ideology.
- b) Criminal law reform must take into account human conditions, nature, and Indonesian traditions, which must recognize the laws that exist in society, both as sources of positive law and sources of negative law.
- c) Criminal law reform must be in line with universal values that grow in civilized society.
- d) The purpose of criminal punishment is not only retributive, but must be able to prevent criminal acts from occurring, so that criminal law reform is directed not only as a repressive instrument but also as a preventive one.
- e) Criminal law reform must always be responsive to developments in science.

The provision provides a firmness that the renewal of criminal law cannot ignore aspects of Indonesian tradition while still recognizing the law that lives in society. So that customary criminal law is a very important thing in national criminal law. Article 2 paragraphs 1 to 3 of the new Criminal Code explained in the previous discussion provide space for customary criminal law to be applied and implemented, what must be underlined is the urgency of this customary criminal law as *the Indonesian Way* or characteristic of Indonesian law, this is based on a system of legal norms that are recognized and believed in by indigenous peoples from generation to generation. So that these rules become a framework for regulating community behavior, establishing norms, morals, and sanctions for people who violate the provisions that have been believed in in community life (Handayani and Prabowo 2024) .

It should be noted regarding the urgency of customary criminal law in maintaining harmony and social order. This is a local and cultural identity, with the development of the era towards modernization and global relations, the interaction between customary criminal law and the national legal system often becomes complex, but it is worth noting that customary criminal law is a tool for resolving violations as a reflection of the organic process and evolution in society, which is based on the needs of society to maintain internal order and harmony (Handayani and Prabowo 2024) .

In terms of meaning, customary criminal law prioritizes the concept of restorative, not only retributive, in other respects customary criminal law prioritizes balance, reconciliation, and rehabilitation, therefore customary criminal law is a tool to strengthen social solidarity and maintain moral norms in society . If associated with the function of customary criminal law as a negative function, in the provisions of the new Criminal Code it is used as a basis for justifying the elimination of acts, this is stated in article 35 which explains "The absence of an unlawful nature of a Criminal Act is a justification". This is related to article 12 paragraph (2) which provides an explanation related to criminal acts, namely being considered a criminal act either threatened by laws and regulations or contrary to the laws that exist in society.

The provisions of Article 12 paragraph (2) are closely related to the teachings of the formal and material unlawful nature, so the negative function of customary criminal law in the new Criminal Code is used as a justification for the elimination of an act or criminal act even though it is formulated in the Law. This is something that does not exist and is not regulated in the old Criminal Code, the implications will be very beneficial for the development of law in Indonesia where values, norms that are believed in and lived in society can eliminate criminal acts. However, the question is whether every customary criminal law can be applied to Article 35 of the new Criminal Code? Of course, it must still refer to Article 2 paragraph (2) where customary criminal law can be applied in a limited manner in matters such as in accordance with the values contained in Pancasila, the 1945 Constitution, human rights and general legal principles recognized by the community of nations.

So in the implementation of the negative function of customary criminal law, there is a territorial principle, which provides the understanding that if someone commits a crime that has met the formulation of the law, but by the community the act committed by the perpetrator is considered not to be a crime and meets the provisions of Article 2 paragraph (1), this can be a justification. This is intended to answer the rigidity of law enforcers in viewing and assessing a criminal law event. The hope is that cases that are heartbreaking and the conscience of the Indonesian legal community will not happen again, such as the case of Mbok Minah in 2009, a grandmother accused of stealing three cocoa pods at the Rumpun Sari Antan (RSA) Plantation in Darmakradenan, Banyumas, Central Java, who was charged with theft under Article 362 of the Criminal Code. Or the case of Grandma Asyani in 2015 who was charged with theft for stealing wood (two teak trees) belonging to the forestry department (Arifin 2023) .

These provisions should be understood by law enforcement officers so that they are not rigid in viewing criminal law events, the normative provisions of customary criminal law in the new Criminal Code as justification or negative function need to be understood as follows:

Figure 1. Customary Criminal Thought Scheme as Justification



Source: processed from Law No. 1/2023

The renewal is a progressive step to adapt to the ideology of the Indonesian nation and the characteristics of Indonesian society. It is hoped that with this scheme, law enforcement officers can comprehensively see the provisions of the substance, not only the law, but the law that lives in society so that cases that hurt the conscience of the Indonesian people do not recur. Of course, they must pay attention to territoriality and the limitations of the application of customary criminal law.

C. Customary Criminal Law as a Positive Function in the New Criminal Code

The provisions on customary criminal law in the New Criminal Code Revision as a recognition and respect for customary criminal law, so that with this it is hoped that it will increase responsiveness to the need for justice based on local, especially being able to accept criminal law that aims to strengthen compliance with the law (Astuti 2015). This recognition does not necessarily implement customary criminal law haphazardly, because customary criminal law that can be enforced according to Article 2 paragraph (2) of Law No. 1/2023 must be in accordance with the values contained in Pancasila, the 1945 Constitution, human rights and general legal principles recognized by the community of nations.

The positive function of customary criminal law in the new Criminal Code places customary criminal law as a basis for criminal punishment even though it is not formulated in the Law, but if the community considers someone's actions to be a crime, then it can be used as a basis for criminal punishment. This is in accordance with the teachings of the unlawful nature of material in carrying out positive functions. This shows that law cannot be separated from society, so that the source of customary criminal law is society (Beni Kharisma Arrasul 2023).

Nyoman Serikat Putra Jaya's opinion, customary criminal law which is the basis for the formation of national criminal law must be based on; *first*; The customary criminal law is still alive in Indonesian society. *Second*; The customary criminal law does not hinder the achievement of a just and prosperous society. *Third*: In accordance with the noble values of Pancasila. These provisions can be a guide for judges in imposing additional sanctions in the form of customary obligations to perpetrators of criminal acts, if their actions are carried out in an area or community that believes in certain customary laws. In the end, if customary sanctions are imposed on perpetrators of criminal acts, they must have rational reasons and have sufficient considerations (Barda Nawawi Arief 2022).

The recognition of customary criminal law as a positive function in practice has been carried out in Indonesian courts, this is based on the decision of the Supreme Court of the Republic of Indonesia No. 948/K/Pid/1996 dated November 15, 1996, which in essence states that if an act has been resolved through customary law applicable in the community, and the perpetrator has been tried by the local Customary Court by imposing sanctions in the form of customary fines which are then paid by the perpetrator, then the act can no longer be prosecuted using the Criminal Code (KUHP). This provision aims to avoid double criminalization.

The decision provides an illustration that the positive function of customary criminal law before the birth of the new Criminal Code has been implemented in practice by judges. So at this time the provisions have been standardized to emphasize the function of customary criminal law can be used as a basis for criminalization, in addition to Article 2 paragraph (1), and (2) there is Article 597 concerning Criminal Acts Based on Living Law in Society, the article consists of 2 paragraphs which in essence if an act is committed by a person according to the law living in society, it can be threatened with criminal punishment. And the sanctions imposed can be in the form of fulfilling local customary obligations.

In substance, the existence of these articles aims to better fulfill the sense of justice that lives in society. In reality, in several regions in the country, there are still unwritten legal provisions, which live and are recognized as law in the relevant region, which determine that violations of the law are punishable. In practice, judges can impose sanctions on perpetrators of criminal acts to fulfill local customary obligations. The positive function of customary criminal law provides meaning that the values and norms that live in society are still recognized and protected.

The fundamental change of the criminality of an act in this case must not only be formulated in the law but also become a violation of the law that lives in society, and there is no justification. This change is quite interesting and fundamental because

Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

it is different from the criminality of acts in the old Criminal Code. For adherents of the individualist theory, of course, this is very contradictory because it is considered not to provide legal certainty. The positive function of customary criminal law is not only to be used as a basis for punishment, but currently customary sanctions or obligations are standardized in the new Criminal Code and included in the criminal *system* in additional punishment. These provisions are regulated in the following articles:

Table 3.Regulation of Customary Obligations in Law No. 1/2023

Chapter	Substance
Article 66 paragraph (1)	Additional criminal penalties as referred to in Article 64 letter b consist of: f. fulfillment of local customary obligations.
Article 96 paragraph (1)	Additional criminal penalties in the form of fulfilling local customary obligations are prioritized if the crime committed meets the provisions as referred to in Article 2 paragraph (2).
Article 96 paragraph (2)	Fulfillment of local customary obligations as referred to in paragraph (1) is considered equivalent to a category II fine.
Article 96 paragraph (3)	In the event that customary obligations as referred to in paragraph (1) are not fulfilled, fulfillment of customary obligations shall be replaced with compensation of a value equivalent to a category II fine.
Article 116	Additional criminal penalties as referred to in Article 114 letter b consist of: a. confiscation of profits obtained from the Criminal Act; or b. fulfillment of customary obligations.

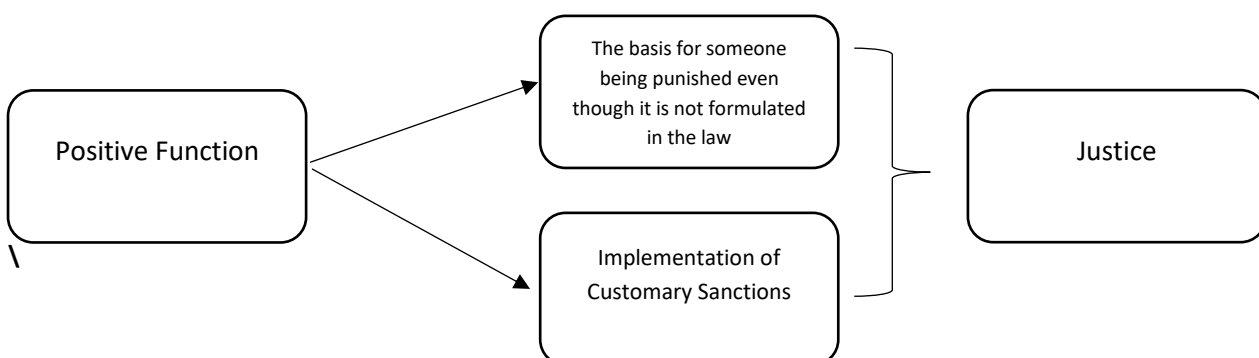
Source: Law no. 1/2023 concerning the Criminal Code

Basically, the existence of customary violations can disrupt the balance in the customary community. So that it brings significant consequences in a society that implements a customary legal system. These consequences reflect the seriousness of the norms and values upheld by the community (Handayani and Prabowo 2024) . Regarding customary sanctions imposed by the judge, of course, they still refer to Article 2 paragraph (2) as explained in Article 97 of Law No. 1/2023.

Regarding customary obligations, they can not only be imposed on individuals or natural persons, but in the new Criminal Code they also include corporations, which are organized groups of people and/or wealth, whether they are legal entities or not. In this case, corporations can be used as a means to commit criminal acts and can also obtain benefits from a criminal act. By adopting the concept that corporations are the subject of criminal acts, this means that corporations, both as legal entities and not legal entities, are considered capable of committing criminal acts and can be held accountable under criminal law, this is in accordance with Article 120 paragraph (1) which explains additional penalties for corporations, namely the fulfillment of customary obligations;

The conceptual framework that must be understood based on this description, then the positive function of customary criminal law in the new Criminal Code is not only as a basis for criminal punishment, but currently according to norms, customary sanctions or customary obligations can be applied, of course this must look at the territorial principle and Article 2 paragraph (2) in implementing it.

Figure 2. Customary Criminal Thought Scheme as a Positive Function



Source: processed from Law No. 1/2023

Based on the description, Muladi has an opinion regarding customary sanctions as additional punishment and can also be the main punishment. The success of implementing customary sanctions depends on several factors, namely: *first* , the suitability and the same purpose as formal punishment; *second* , accepted by society as a form of punishment; *third* , considering its benefits;

Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

fourth , considered as a necessity in the criminal justice system; *fifth* , supported by adequate infrastructure. Therefore, there will be challenges in implementing customary criminal law in its positive function.

D. Provisions in Legal System Theory

In this study, it has been explained at the beginning that from the theory of the legal system, it will focus on examining the legal substance related to the provisions of customary criminal law in the new Criminal Code. Friedman explains that the substance of law is: "Substance consists of substantive rules and rules about how institutions should behave. What is meant is the rules, norms, and behavioral patterns of people in the system, which are emphasized here on the applicable law, not just the rules in the law books. so that the substance of law concerns the applicable laws and regulations that have binding force and serve as guidelines for law enforcement officers (Al Kautsar and Muhammad 2022) .

So far, Indonesia has adhered to the legal positivism ideology, especially in criminal law, which emphasizes the principle of formal legality. This ideology is greatly influenced by the *Common Regulation framework* brought by the Netherlands and France. The impact is that the understanding of law enforcement in Indonesia is very strong in legal positivism, so that every detail of people's lives must be regulated through regulations and laws that are drafted and made authoritatively by the state. (Susanto 2024)

The provisions in the new Indonesian Criminal Code bring about a significant paradigm shift in the substance of the law, the provisions of customary criminal law are norms that apply in Indonesian society even though their validity is only in the relevant customary area, even so this is a strengthening and recognition of the distinctive characteristics of Indonesian law which is plural. And it should be remembered that the implementation of customary criminal law either as a justification or basis for criminalization is not applied haphazardly, of course it must meet the provisions required in article 2 paragraph (2). So Indonesian criminal law in the future will be very inclusive and plural, so it needs to be understood by law enforcement officers as a guideline in law enforcement.

The recognition and strengthening of customary criminal law in the new Criminal Code is not a formalization or positivization of customary criminal provisions in a regulation, but the provisions of Article 2 of the new Criminal Code should be understood as a reminder for law enforcement officers to continue to explore the laws that live in society to achieve substantive justice, so that in enforcing criminal law, this customary criminal law is not forgotten (Rochaeti and Sutanti 2018) . The binding force on customary criminal law lies in the beliefs of the surrounding community, because it should be understood that these norms grow because of the needs of society collectively, are followed, believed and become a fence in society to behave. So when there is a violation of customary criminal law, it can be a means to restore the balance that has been disturbed. This is certainly very positive for the development of Indonesian criminal law, and even becomes a characteristic of Indonesian criminal law in the future.

IV. CONCLUSION

The recognition of customary criminal law in Law Number 1 of 2023 concerning the Criminal Code (KUHP) reflects a significant paradigm shift in the Indonesian criminal law system. This reform not only marks a bias towards legal values that live in society, but also challenges the dominance of the principle of formal legality that has so far been the foundation for enforcing national criminal law. The legal substance in the new Criminal Code shows the courage to adopt a pluralistic approach, by placing customary criminal law as recognized as valid as a positive function, namely as a basis for criminalizing acts that are considered contrary to the values of indigenous peoples, even though they are not written in laws and regulations, and recognized as valid as a negative function, namely as a justification for eliminating criminal liability for acts that formally violate the law, but are socially accepted by the local community.

The implementation of customary criminal norms in the national legal system is not without challenges. Testing of customary law to be applied must meet the normative criteria as regulated in Article 2 paragraph (2) of the new Criminal Code, namely in accordance with Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the international community. This indicates that the acceptance of customary criminal law in the national legal system is strictly limited to maintain a balance between substantive justice and legal certainty.

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Customary Criminal Law in the New Criminal Code: Between Positive and Negative Functions.

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