

Customary Crimes and the Principle of Legality in the National Criminal Code

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ABSTRACT

*In the development of Indonesian criminal law, the recognition of living law through Law Number 1 of 2023 concerning the Criminal Code presents a new dynamic, particularly regarding the position of customary offenses in the national criminal law system. This condition has given rise to debate regarding the suitability of the recognition of unwritten customary norms with the basic principle of legality, which requires the formulation of crimes clearly and in writing. This study aims to analyze the construction of the legality principle in the national criminal law system and examine the position of customary offenses as living law in society from the perspective of the legality principle of the National Criminal Code. The research method used is normative legal research with a statutory approach, a conceptual approach, and a historical approach. The legal materials used include legislation, criminal law doctrine, and literature relevant to the concept of living law and the principle of legality. The results of the study indicate that the recognition of customary offenses in the National Criminal Code reflects an effort to integrate state law and customary law within the framework of Indonesian legal pluralism. This recognition is intended to accommodate social values that exist in society and strengthen substantive justice. However, regulations regarding living law still leave unclear norms, particularly regarding the criteria for the applicability of customary norms that can be used as a basis for criminal penalties. This situation has the potential to create legal uncertainty and open up room for differing interpretations in law enforcement practices. Therefore, conceptual reconstruction and the formulation of clear parameters are needed to ensure that the recognition of customary crimes remains in line with the basic principles of legality, particularly the principles of *lex scripta* and *lex certa*, thereby ensuring legal certainty and the protection of human rights within the national criminal law system.*

Keywords: Principle of Legality, Customary Crimes, Living Law, National Criminal Code, Legal Pluralism.

INTRODUCTION

The principle of legality is a fundamental principle in criminal law, asserting that no act can be punished without prior legal provisions. This principle is classically formulated in the adage *nullum delictum nulla poena sine praevia lege poenali*, which serves as the basis for the formation and application of modern criminal law.¹ From a normative perspective, the principle of legality in Indonesia is reflected in Article 1 paragraph (1) of the Criminal Code, which states that no act can be punished except based on the strength of criminal regulations in previously existing laws and regulations.² This provision

¹ Amalia, M., Judijanto, L., Sepriano, S., & Kastama, I. M. (2025). *Hukum Pidana: Dalam Dinamika Asas, Teori, dan Pendapat Ahli Pidana*. PT. Sonpedia Publishing Indonesia.

² Fitri, F. A., Muftia, N., Trilia, I., Munthe, A. H., & Ramlan, R. (2024). Tinjauan teoritis tentang asas legalitas dalam hukum pidana Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(2), 202-209. <https://doi.org/10.71153/jimmi.v1i2.134>



demonstrates that criminal law places statutes as the sole primary source in determining the existence of a crime. Thus, the principle of legality serves as a limiting instrument for state power, preventing it from arbitrarily imposing penalties on citizens.

In criminal law doctrine, the principle of legality not only has a formal dimension but also carries substantive significance related to the protection of human rights. Criminal law experts such as Moeljatno emphasize that the principle of legality guarantees individual freedom from the possibility of arbitrary criminalization by those in power.³ This principle requires that every criminal offense be formulated clearly, firmly, and without openness to multiple interpretations, so that the public can understand which actions are prohibited by law. Therefore, the principle of legality is not only related to the existence of laws, but also to the quality of the formulation of criminal norms. If criminal norms are formulated in a vague or unclear manner, the primary objective of the legality principle, which is to ensure legal certainty, becomes difficult to achieve.

Theoretically, the principle of legality has several important consequences in the criminal law system, including the prohibition of analogy in criminal law, the prohibition of the retroactive application of criminal law, and the obligation to formulate crimes clearly and definitely (*lex certa*).⁴ This consequence emphasizes that judges are not permitted to expand the meaning of a criminal provision beyond the limits established by law. This principle aims to prevent arbitrary law enforcement authority from expanding, potentially harming individual rights. From a legal theory perspective, the principle of legality is also closely related to the rule of law principle, which places law as the basis for legitimizing the exercise of state power.⁵ Therefore, the principle of legality serves not only as a technical principle in criminal law, but also as a constitutional principle that protects citizens from potential abuse of power. However, developments in modern society demonstrate that the application of the principle of legality cannot be understood rigidly and solely positivistically. Complex social realities often give rise to various new forms of behavior that are not yet fully accommodated by laws and regulations. In this regard, several criminal law experts argue that the principle of legality needs to be interpreted dynamically to remain able to respond to social developments occurring in society. This approach is not intended to ignore the principle of legality, but rather to adapt its application to the ever-evolving dynamics of social life. Therefore, the application of the principle of legality in modern criminal law practice often involves considering the social values prevailing in society.

Indonesia, as a country with a pluralistic social structure, faces unique challenges in implementing the principle of legality purely within a positive legal framework. The national legal system is influenced not only by continental legal traditions that emphasize the role of legislation, but also by the existence of customary law that lives and thrives within society.⁶ Customary law is a system of social norms formed from values, traditions

³ Saraya, S., Plaikoil, M. V., Mulya, J. F., Muhni, A., Maramba, R. S. M., Saputra, E., & Layungasri, R. G. R. (2025). *Hukum Pidana Indonesia: Literasi & Wawasan Komprehensif Hukum Pidana di Indonesia*. PT. Star Digital Publishing, Yogyakarta-Indonesia.

⁴ Musdalifah, D. A., Masyhar, A., & Wulandari, C. (2025). Eksistensi dan Perluasan Asas Legalitas dalam Undang-Undang No. 1 Tahun 1946 dan Undang-Undang No. 1 Tahun 2023. *JISPENDIORA Jurnal Ilmu Sosial Pendidikan Dan Humaniora*, 4(1), 590-602. <https://doi.org/10.56910/jispendiora.v4i1.2485>

⁵ Gustriani, W. S., Aswata, I., Arifin, F., & Rifqi, S. M. (2025). Perkembangan Ilmu Hukum Tata Negara Dalam Perspektif Demokrasi dan Rule of Law di Indonesia. *Jurnal Sosial dan Sains (SOSAINS)*, 5(9).

⁶ Willis, R. P., & Hanifah, M. (2026). TINJAUAN KOMPREHENSIF TERHADAP PERKEMBANGAN SISTEM HUKUM DI DUNIA. *Journal Orchestration*, 1(1). <https://istilahhukum17.com/jih/index.php/journalorchestration/article/view/17>

and customs that have long been practiced by indigenous communities.⁷ In many cases, customary law has its own mechanisms for regulating the behavior of community members and imposing sanctions for violations of established norms. The existence of customary law demonstrates that the legal system in Indonesia cannot be separated from social realities rooted in local values.

The recognition of the existence of customary law is normatively reflected in the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society. This constitutional provision provides legitimacy to the existence of customary law as part of the national legal system. From the perspective of the theory of legal pluralism, this recognition shows that a country's legal system is not always monistic, but can consist of various normative systems that exist side by side.⁸ Therefore, customary law is not only viewed as a social phenomenon, but also as a source of values relevant to the formation of national law. The existence of these customary norms often serves as the basis for resolving various social conflicts that arise in society.

In practice, various indigenous communities in Indonesia still employ customary crime-based dispute resolution mechanisms aimed at restoring social balance. Customary crimes are essentially violations of customary norms that are deemed to disrupt harmonious social relations within a community.⁹ Unlike modern criminal law, which focuses on punishing the perpetrator, customary law tends to emphasize restoring relationships between the perpetrator, the victim, and the community. Customary sanctions typically include fines, apologies, rituals, or other forms of social responsibility aimed at restoring balance within society.¹⁰ This approach shows that customary law has a restorative character that is different from the retributive approach in formal criminal law.

Various empirical studies show that indigenous communities still consider customary law to be an effective and legitimate conflict resolution mechanism. In a number of indigenous communities in Sumatra, Kalimantan, and Papua, violations of customary norms are often resolved through customary deliberation forums involving community leaders and traditional figures.¹¹ This mechanism serves not only to determine the appropriate form of sanction but also to restore social relations disrupted by norm violations. Public trust in this customary mechanism demonstrates that customary law has a strong force of enforcement in social life. This situation also demonstrates that state law is not always the sole mechanism for resolving disputes in Indonesian society.

The development of the national criminal justice system in recent decades has shown a tendency to accommodate legal values that exist within society. This is evident

⁷ Tahali, A., Alhabsyi, M. S., Massi, R. A. R., & Almahdali, A. A. (2025). EFEKTIVITAS SANKSI HUKUM ADAT DI DESA BINANGGA KECAMATAN MARAWOLA KABUPATEN SIGI. *Comparativa: Jurnal Ilmiah Perbandingan Mazhab dan Hukum*, 6(1), 1-26. <https://doi.org/10.24239/comparativa.v6i1.200>

⁸ Kusumawarni, B. A. (2022). Pluralisme Hukum Dalam Praktik Penerapan Hukum Internasional Di Indonesia: Kajian Terhadap Hubungan Hukum Internasional Dan Hukum Nasional. *Unizar Recht Journal (URJ)*, 1(4). <https://urj.unizar.ac.id/urj/article/view/21>

⁹ Putranto, A. C., & Triadi, I. (2025). Konsep Hukum Pidana Adat Pasca Pemberlakuan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Perspektif Living Law. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(5), 7317-7338. <https://doi.org/10.61104/alz.v3i5.2372>

¹⁰ Saravistha, D. B., Sukadana, I. K., & Suryana, K. D. (2022). Optimalisasi Penerapan Sanksi Adat Dalam Upaya Pengejawantahan Asas Restoratif Justice Di Desa Adat (Studi Kasus Di Desa Adat Penyaringan, Kabupaten Jembrana). *Jurnal Impresi Indonesia*, 1(3), 201-210. <https://doi.org/10.58344/jii.v1i3.32>

¹¹ Zakiya, W. (2025). Peran Hukum Adat dalam Penyelesaian Sengketa Tanah. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(6), 8794-8801. <https://doi.org/10.61104/alz.v3i6.2664>

in efforts to reform criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code, which replaces the colonial-era Criminal Code. This law recognizes living law as a consideration in criminal law enforcement.¹² This recognition demonstrates that national criminal law is no longer entirely based on a positivist paradigm that recognizes only statutes as the sole source of law. Instead, national criminal law is beginning to open up space for local values that develop within society as part of a more contextual legal system.

The recognition of living law within society in the National Criminal Code reflects a paradigm shift from a legalistic approach to one that is more responsive to social realities. From the perspective of the responsive legal theory put forward by Philippe Nonet and Philip Selznick, law should be able to adapt to societal needs and take into account evolving social values.¹³ Thus, law functions not only as an instrument of social control but also as a means to create substantive justice. This approach allows for the integration of state law and customary law within the framework of the national legal system. However, this integration still requires clear boundaries to avoid uncertainty in the application of criminal law. Although recognizing living law in society is a progressive step in criminal law reform, the regulation of customary offenses in the National Criminal Code still raises significant normative issues. One major issue is the lack of clarity regarding the boundaries and criteria used to determine whether a customary norm qualifies as a criminal offense. Provisions regarding living law do not explicitly define the objective parameters that must be met for a customary norm to be applied in criminal law enforcement. This ambiguity has the potential to give rise to differing interpretations among law enforcement officials. Consequently, the application of living law in society can create legal uncertainty and open up opportunities for abuse of authority.

This situation raises fundamental issues regarding the relationship between customary crimes and the principle of legality in the national criminal law system. On the one hand, the principle of legality requires that every criminal act be clearly defined in law. On the other hand, recognition of the existing law within society opens up the possibility of sources of criminal law that are not fully written down in statutory regulations. The tension between these two principles raises questions about the extent to which customary crimes can be accommodated without diminishing the meaning of the principle of legality as a guarantee of legal certainty. Therefore, a more in-depth study is needed regarding the normative construction of customary crimes in the National Criminal Code and its implications for the application of the principle of legality in the Indonesian criminal law system.

METHODS

The research method used in this article is normative legal research, which focuses on the study of legal norms applicable within the positive legal system. Normative legal research essentially positions law as a system of norms analyzed through an approach to statutory regulations, legal principles, and doctrines developing within legal science. According to Peter Mahmud Marzuki, normative legal research is the process of discovering legal rules, legal principles, and legal doctrines to address the legal issues at

¹² Ari, E. A., Sugiarto, A., Sudrajad, Y., Rasiwan, I., & Triestanto, J. (2026). Pengaturan Living Law Dalam Kuhp Nasional: Antara Pengakuan Hukum Adat Dan Kepastian Hukum. *Jurnal Kolaboratif Sains*, 9(1). <https://doi.org/10.56338/jks.v9i1.10124>

¹³ Djauzie, M. Z. (2025). Pancasila Sebagai Grundnorm Menurut Teori Hukum Murni Hans Kelsen Dan Teori Hukum Responsif Oleh Philippe Nonet Dan Philip Selznick. *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 11(1), 239-252. <https://doi.org/10.55809/tora.v11i1.456>

hand.¹⁴ This approach is used to systematically examine the construction of customary crimes and the principle of legality within the national criminal law system, particularly in relation to the provisions of Law Number 1 of 2023 concerning the Criminal Code. Through this normative approach, this study aims to critically analyze the relationship between the recognition of existing law in society and the principle of legality as the foundation of modern criminal law.

The approaches used in this research include a statutory approach, a conceptual approach, and a case study approach, if necessary, to strengthen the analysis of the application of legal norms. The statutory approach is carried out by examining various legal provisions related to customary crimes and the principle of legality, both in the constitution and in relevant laws and regulations. The conceptual approach is used to examine various legal concepts and theories related to the principle of legality, legal pluralism, and the law that exists in society. According to Soerjono Soekanto, normative legal research aims to examine law as a rule or norm that guides human behavior in society.¹⁵ The analysis in this study was conducted qualitatively by interpreting various primary and secondary legal sources systematically in order to find comprehensive legal arguments regarding the position of customary crimes within the framework of the principle of legality in the National Criminal Code.

RESULTS AND DISCUSSION

Construction of the Principle of Legality in the National Criminal Law System

The principle of legality is a fundamental principle in modern criminal law, born as a reaction to the practice of absolute power that developed in the monarchical system of government in Europe in the past. During that period, rulers had very broad authority to determine whether an act was considered a crime and to determine the type and severity of punishment without clear legal limits. This condition gave rise to arbitrary punishment practices and did not guarantee protection for individual freedom. Therefore, the birth of the principle of legality can be understood as a form of intellectual resistance to the absolutism of power that is not bound by legal norms. In this case, the principle of legality functions as an instrument to limit the power of the state in using criminal law as a repressive tool.¹⁶ Thus, the principle of legality is not only a technical principle in criminal law, but also has a philosophical dimension related to the protection of individual rights in a state based on law.

The idea of the importance of the principle of legality in modern criminal law was heavily influenced by the ideas of Enlightenment thinkers, particularly Cesare Beccaria. In his landmark work *Dei Delitti e delle Pene*, Beccaria strongly criticized criminal justice practices that granted judges broad discretionary interpretation of the law.¹⁷ He believes that such authority has the potential to create legal uncertainty and open up opportunities for abuse of power by state officials. Therefore, Beccaria emphasized that

¹⁴ Sukmawan, Y. A., & Damayanti, D. (2025). Metode Penelitian Hukum Normatif dan Empiris sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum. *Notary Law Journal*, 4(3), 114-128. <https://doi.org/10.32801/nolaj.v4i3.116>

¹⁵ Zainuddin, M., & Karina, A. D. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. *Smart Law Journal*, 2(2), 114-123. <https://e-journal.unkaha.ac.id/index.php/slj/article/view/26>

¹⁶ Wirawan, A., Sembiring, M. S. A., & Saragih, H. (2025). Asas Legalitas dalam Perkembangan Politik Hukum Pidana di Indonesia. *Almufi Jurnal Sosial dan Humaniora*, 2(3), 477-482. <https://doi.org/10.63821/ash.v2i3.564>

¹⁷ Martini Idris, S. H., Saputra, J. A., SHI, M., Novrianto, M., & SH, M. (2025). *Kriminologi*. Prenada Media.

only the law has the right to determine what acts are punishable and the types of punishments that can be imposed.¹⁸ This thinking then gave rise to the idea that criminal law must be formulated in writing and clearly to provide legal certainty for society. This concept later developed into the principle of legality, which serves as the foundation of the modern criminal law system.

The development of the principle of legality was then institutionalized in the continental legal system known as the civil law tradition. In this legal tradition, statutes are viewed as the primary source of law, possessing the highest authority in determining the legal norms applicable in society.¹⁹ This principle places statutory regulations as the legitimate basis for determining the existence of a crime and the sanctions that can be imposed on the perpetrator. Thus, the principle of legality serves as a crucial mechanism to ensure that every criminal action is based on pre-established legal rules. This approach also limits the scope for judges' interpretation, preventing them from expanding the definition of a crime beyond the limits set by law. Therefore, the principle of legality in the continental legal tradition serves as an instrument for maintaining consistency, certainty, and stability within the criminal legal system.

In subsequent developments, the principle of legality is not only understood as a technical principle in the formation of criminal law, but also as part of efforts to protect human rights.²⁰ This principle ensures that every individual has certainty regarding what actions are prohibited by law and the legal consequences that may arise from violating these norms. With the principle of legality, the state cannot retroactively designate an act as a crime after it has been committed. This provides protection for individuals from the possibility of arbitrary criminalization by those in power. Therefore, the principle of legality is closely related to the principle of the rule of law, which places law as the basis for limiting the use of state power. In this regard, the principle of legality serves as a guarantee for the creation of legal certainty and justice in the criminal justice system.

In the Indonesian legal system, the principle of legality has a strong normative basis through its regulation in Article 1 paragraph (1) of the Criminal Code, which states that no act can be punished except based on the strength of criminal regulations in previously existing laws and regulations.²¹ This provision explicitly states that criminal law cannot be applied retroactively and that only the law has the authority to determine the existence of a crime. This regulation demonstrates that the Indonesian criminal law system adopts the principle of legality as developed in the continental legal tradition. Through this provision, criminal law functions as an instrument of social control bound by clear and measurable legal norms. Thus, the application of the principle of legality in

¹⁸ Sabrina, G., & Musyarri, F. A. (2023). Urgensi Penerapan Pidana Pengawasan Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP. *Jurnal Yudisial*, 16(1), 65-82. <https://doi.org/10.29123/jy.v16i1.586>

¹⁹ Putri, K. A., Alqarina, S. A., Sibarani, N. Q., & Wulandari, S. R. (2025). SUMBER-SUMBER HUKUM PERAN SUMBER-SUMBER HUKUM DALAM PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA: PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA. *Jurnal Multidisiplin Ilmu Akademik*, 2(6), 778-788. <https://doi.org/10.61722/jmia.v2i6.7305>

²⁰ Wanggai, F. R. M., Hartono, M. S., & Parwati, N. P. E. (2026). Penerapan Living Law Dalam Kuhp Baru Dan Pengaruhnya Terhadap Asas Legalitas Serta Kepastian Hukum Di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4(1), 6993-6999. <https://doi.org/10.61104/alz.v4i1.4517>

²¹ Nugraha, R. S., & Silalahi, C. F. (2024). Pembaharuan Berlakunya Asas Legalitas Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana. *PALAR (Pakuan Law Review)*, 10(1), 73-81. <https://journal.unpak.ac.id/index.php/palar/article/view/10164>

the Indonesian legal system aims to ensure that the use of criminal law does not violate the principles of legal certainty and the protection of human rights.

Along with the development of national law, the principle of legality has not only been maintained within the framework of the old Criminal Code but has also been strengthened in various national legal instruments that emphasize the importance of legal certainty in criminal law enforcement. This principle has also gained constitutional legitimacy through the recognition of the rule of law within the Indonesian constitutional system. In the reform of criminal law, the principle of legality remains a fundamental principle in the formulation of criminal norms.²² This can be seen in the provisions contained in Law Number 1 of 2023 concerning the Criminal Code, which maintains the principle of legality as the foundation of the national criminal law system. Therefore, despite various changes in the criminal law system, the principle of legality remains a key pillar that cannot be ignored in the formation of criminal norms.

In criminal law doctrine, the principle of legality has several derivative principles that serve to strengthen its application in law enforcement practice. The principle of *lex scripta* asserts that criminal law must be formulated in written form so that it can be clearly understood by the public.²³ The principle of *lex certa* demands that every formulation of a crime be formulated clearly and not give rise to multiple interpretations that could give rise to legal uncertainty.²⁴ Meanwhile, the principle of *lex stricta* prohibits the use of analogy in criminal law because it can expand the meaning of criminal norms beyond the limits defined by law. Furthermore, the principle of legality also prohibits the retroactive application of criminal law, which aims to protect individuals from the possibility of arbitrary criminalization. These four principles form a system of legal protection that ensures that the application of criminal law remains within the framework of legal certainty.

The existence of derivative principles within the principle of legality plays a crucial role in maintaining the integrity of the criminal legal system. Without these principles, the application of criminal law has the potential to experience uncontrolled expansion of its meaning, which could harm individual rights. The principles of *lex scripta*, *lex certa*, and *lex stricta* collectively serve as a control mechanism for the criminalization process within the criminal legal system.²⁵ Due to these limitations, law enforcement officials cannot freely interpret criminal norms outside of the provisions established by law. In a state governed by the rule of law, these limitations are essential to ensuring that the application of criminal law remains within the framework of legal certainty and justice. Therefore, the principle of legality and its derivative principles are fundamental elements in maintaining a balance between the state's authority to impose penalties and the protection of citizens' rights.

²² Yamin, B., & Rachman, M. T. (2025). Problematik Yuridis Pasal 2 KUHP Baru Dalam Perspektif Prinsip-Prinsip Dasar Asas Legalitas. *Unizar Law Review*, 8(2), 170-180. <https://doi.org/10.36679/ulr.v8i2.106>

²³ Wirawan, A., Sembiring, M. S. A., & Saragih, H. (2025). Asas Legalitas dalam Perkembangan Politik Hukum Pidana di Indonesia. *Almufi Jurnal Sosial dan Humaniora*, 2(3), 477-482. <https://doi.org/10.63821/ash.v2i3.564>

²⁴ Nursaidah, F., & Rusdiana, E. (2025). Analisis Frasa "Penguasa Umum" dalam Pasal 160 KUHP dikaitkan dengan Prinsip Lex Certa (Studi Putusan PN Bondowoso No. 26/Pid. B/2025/PN Bdw). *Ekspose: Jurnal Penelitian Hukum dan Pendidikan*, 24(2), 377-391. <https://doi.org/10.30863/ekspose.v24i2.10615>

²⁵ Dwiyantri, A., Citranu, C., Sari, O. N., Budiyantri, B., Muntazar, A., Girsang, H., ... & Amalia, M. (2024). *Pengantar hukum pidana: Teori, prinsip, dan implementasi*. PT. Green Pustaka Indonesia.

From a criminal law perspective, the principle of legality is understood as a fundamental principle that serves not only as a technical basis for formulating crimes but also as a guarantee of individual freedom from the potential abuse of state power. This view is explicitly stated by Moeljatno, who states that the principle of legality is an instrument of legal protection for citizens to prevent arbitrary criminal prosecution by those in power.²⁶ According to this view, every criminal act must have a clear legal basis and be predetermined in statutory regulations. Thus, the principle of legality serves as a limiting mechanism against the possibility of criminalization carried out without a valid legal basis. This principle also provides certainty to society regarding the boundaries of behavior that can be classified as a criminal act. Therefore, in classical criminal law doctrine, the principle of legality is positioned as a primary pillar in guaranteeing the protection of individual freedoms within the criminal law system.

In line with this view, Sudarto emphasized that the principle of legality has an important function as a limit on the state's authority in using criminal law as an instrument of social control.²⁷ According to Sudarto, without the principle of legality, the state has the potential to expand the scope of criminalization indefinitely, which could threaten the freedom of citizens. Therefore, the principle of legality must be understood as a control mechanism for the use of state power in the criminal law field. Within this framework, criminal law must not be used as a repressive tool used arbitrarily by those in power. The principle of legality demands that every criminalization policy be based on rational considerations and clearly outlined in law. Therefore, the application of the principle of legality is a crucial requirement for the creation of a just and democratic criminal law system.

Conceptually, the principle of legality is also closely related to the theory of the rule of law, which places law as the basis for legitimacy in the exercise of state power. In a state based on the rule of law, all government actions must be based on clear legal norms and must not be carried out arbitrarily. This principle emphasizes that state power must be limited by law to prevent violations of citizens' fundamental rights. In criminal law, the principle of legality serves as an instrument to ensure that criminalization and sentencing processes are carried out transparently and are legally accountable.²⁸ Therefore, the existence of the principle of legality is an important indicator in assessing the extent to which a country consistently applies the principles of the rule of law. Without a strong principle of legality, the criminal legal system has the potential to become a tool of power that threatens individual freedom.

Besides its relevance to the concept of the rule of law, the principle of legality is also closely related to the protection of human rights. This principle guarantees that an individual cannot be punished for an act that was not yet legally recognized as a crime at the time it was committed. This provision protects against the possibility of retroactive application of criminal law, which could be detrimental to individuals. From a human

²⁶ Abdulloh, U. (2022). Relevansi Penerapan Asas Legalitas dalam Penjatuhan Sanksi pada Masyarakat Hukum Adat. *Al-Qadlaya: Jurnal Hukum Keluarga Islam*, 2(1), 8-18. <https://doi.org/10.55120/qadlaya.v2i1.928>

²⁷ Triadi, I., & Heradika, D. (2025). ASAS LEGALITAS DALAM DINAMIKA PENEMUAN HUKUM PIDANA: KAJIAN NORMATIF TERHADAP BATASAN KEWENANGAN HAKIM. *Jurnal Analisis Hukum dan Kebijakan*, 6(4). <https://ejournals.com/ojs/index.php/jahk/article/view/4120>

²⁸ Yani, M. S. A., & Sulchan, A. (2025). PERAN KEPOLISIAN DALAM MENCEGAH KRIMINALISASI PROSES HUKUM DI SISTEM PERADILAN PIDANA. *Jurnal Media Akademik (JMA)*, 3(11). <https://doi.org/10.62281/v5xen071>

rights perspective, the principle of legality is a fundamental guarantee in a fair criminal justice system.²⁹ This principle ensures that every individual has certainty regarding the legal norms governing their behavior. Thus, the principle of legality serves not only as a principle of criminal law but also as part of the human rights protection system in a democratic state. Despite its crucial function in ensuring legal certainty, the application of the principle of legality in criminal law practice is often criticized for being too formalistic. An approach that overemphasizes the existence of written norms in laws can ignore the social realities that develop within society. In some cases, there are behaviors that are clearly detrimental to society but are not explicitly regulated in legislation. This situation creates a dilemma between the need to maintain legal certainty and the need to respond to social developments. Criticism of this formalistic approach has led to the development of a more contextual approach to understanding the principle of legality. Thus, the principle of legality is not understood rigidly but still takes into account the social dynamics that develop within society.

In the reform of national criminal law, developments in thinking about the principle of legality indicate a paradigm shift from a positivistic approach to one that is more contextual and responsive to social realities. The positivist approach positions statutes as the sole legitimate source of criminal law, requiring all forms of criminalization to be explicitly defined in statutory regulations.³⁰ However, in practice, the criminal law system is confronted with various social phenomena that legislators cannot always quickly accommodate. Therefore, there is a need to integrate the social values entrenched in society into the criminal law system. This paradigm shift demonstrates that criminal law cannot be completely separated from the social context in which it applies. Therefore, national criminal law reform seeks to strike a balance between legal certainty and the need to adapt the law to societal developments.

This development was also influenced by the emergence of responsive legal theory, which emphasizes that law must be able to adapt to the needs of society. This theory argues that law should not only function as a rigid system of rules but must also be able to respond to social changes occurring in society. In criminal law, a responsive approach encourages the integration of local values and social norms into the national legal system. This is evident in efforts to reform criminal law that provide space for the recognition of existing laws within society. This approach demonstrates that criminal law is no longer viewed solely as a repressive instrument, but also as a means to create substantive justice. However, this integration of social values still requires clear boundaries to avoid obscuring the basic principle of legality. Although criminal law reform provides space for the recognition of existing laws within society, the application of the principle of legality in the Indonesian legal system still faces various complex problems. One key issue is the tension between the demand for legal certainty and the need to realize substantive justice in a pluralistic society. On the one hand, the principle of legality demands the clear formulation of crimes in the law. However, social reality shows that various norms prevailing in society are often not written down in laws and regulations. This situation poses the risk of broadening the meaning of crimes in law enforcement practices if law

²⁹ Kurniawan, M. R., & Setyawan, F. (2025). Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia. *KUNKUN: Journal of Multidisciplinary Research*, 2(1), 55-63. <https://ejournal.mediakunkun.com/index.php/kunkun/article/view/244>

³⁰ Hutapea, T., Koto, Z., & Syafruddin, S. (2024). Kebijakan Polri dalam Upaya Mengefektifkan Penerapan Konsep Hukum Pidana Baru Dalam UU RI Nomor 1 Tahun 2023 Tentang KUHP. *Jurnal Ilmu Kepolisian*, 18(1). <https://doi.org/10.35879/jik.v18i1.445>

enforcement officials attempt to accommodate unwritten social norms. Therefore, a conceptual reconstruction of the application of the principle of legality is necessary to ensure legal certainty without ignoring the existence of legal pluralism in Indonesian society.

The Position of Customary Crimes as Living Law in Society from the Perspective of the Principle of Legality of the National Criminal Code

The concept of living law is an important concept in legal theory, emphasizing that law is not limited to written norms established by the state, but also encompasses social norms that develop and are actually adhered to in society. From the perspective of sociological legal theory, law is understood as a social phenomenon that grows out of the values, customs, and practices that exist within society.³¹ Therefore, law is not always identical to statutory regulations, but also reflects behavioral patterns recognized as norms by a particular social community. This concept demonstrates that the validity of law is determined not only by the formal legitimacy of the state but also by social acceptance within society. In this regard, laws that live within society often have stronger enforceability than laws that are merely formal. Thus, the concept of living law provides a broader perspective in understanding the dynamics of the relationship between law and society.

The idea of law living in society was systematically developed by Eugen Ehrlich, known as the pioneer of sociological jurisprudence. Ehrlich argued that the true center of legal development lies not in legislation or court decisions, but rather in the social norms that exist and develop within society.³² According to him, the laws that truly govern societal behavior are norms born from ongoing social practices in everyday life. Therefore, state law often reflects only a small part of the overall system of norms that exist within society. This view demonstrates that law cannot be understood solely as normative without considering the underlying social realities. Therefore, the concept of living law is an important foundation for understanding the existence of customary law as part of the legal system that develops within society.

Within the framework of living law theory, the relationship between social norms, customary law, and state law is a crucial aspect that requires comprehensive analysis. Social norms are unwritten rules that govern the behavior of community members based on shared values. In many cases, these norms develop into customary law, which has its own sanction mechanisms and conflict resolution systems. Customary law is essentially a concrete manifestation of social norms that have gained legitimacy within a particular community.³³ Meanwhile, state law is a system of formal norms established by legislative bodies through statutory regulations. The relationship between these three types of norms is often dynamic and does not always operate harmoniously in the practice of social life.

³¹ Omar, A. K. (2026). HUKUM SEBAGAI FENOMENA SOSIAL: ANALISIS SOSIOLOGIS TERHADAP REGULASI. *Jurnal Sosial dan Humaniora*, 2(1), 26-33. <http://ypmsc.org/index.php/jshu/article/view/63>

³² Zarianto, A. A. A., & Adityarani, N. W. (2025). Eksistensi Sosiologi Hukum pada Masyarakat Indonesia (Literature Review atas Teori Living Law Eugen Ehrlich). *Juridische: Jurnal Penelitian Hukum*, 2(3), 203-219. <https://jurnal.bisakonsul.com/index.php/juridische/article/view/89>

³³ Listyowati, M. Y. E., Prabowo, P. H., Wisuda, S., Fitriansyah, R., & Hetaria, F. G. (2025). Dinamika Living Law: Peran Hukum Adat Bersih Desa dalam Menjaga Kohesi Sosial Masyarakat Lokal Ponorogo: Hukum Adat. *SOSMANIORA: Jurnal Ilmu Sosial dan Humaniora*, 4(4), 961-968. <https://doi.org/10.55123/sosmaniora.v4i4.5455>

In modern legal systems, the relationship between state law and customary law is often understood within the framework of legal pluralism. Legal pluralism recognizes that more than one normative system can exist simultaneously in a society. This situation is evident in Indonesian society, which possesses diverse cultures, traditions, and value systems. State law is not always capable of regulating in detail all aspects of this highly complex social life. Therefore, customary law often serves as an alternative mechanism for resolving conflicts within society. The existence of customary law as part of living law demonstrates that the national legal system cannot be separated from the social realities that develop within society.

The relevance of the concept of living law in the Indonesian legal system is becoming increasingly important considering the pluralistic and multicultural character of Indonesian society.³⁴ Many indigenous communities in various regions still practice customary law systems to regulate social relations within their communities. These customary norms serve not only as behavioral guidelines but also as dispute resolution mechanisms deemed more in line with local values. In some cases, customary law-based dispute resolution mechanisms are considered more effective in restoring disrupted social relations than formal judicial mechanisms. This demonstrates that customary law still retains strong social legitimacy in Indonesian society. Therefore, the concept of living law is relevant in understanding the position of customary law within the national legal system.

The recognition of the existence of customary law in the Indonesian legal system is normatively reflected in the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with societal developments. This constitutional provision provides legitimacy to the existence of customary law as part of the national legal system. This recognition shows that the Indonesian constitution does not place state law as the only legal system applicable in society. Instead, the constitution opens up space for the existence of other legal systems that exist in society as long as they do not conflict with the principles of a unitary state and constitutional values. Thus, the recognition of customary law reflects the application of the principle of legal pluralism in the Indonesian constitutional system.

Within the framework of legal pluralism, the position of customary law in the national legal system cannot be understood absolutely, but rather has certain limitations determined by the constitution and statutory regulations.³⁵ Recognition of customary law is conditional, as long as the customary law community in question still exists and its legal practices are in line with societal developments and do not conflict with the principles of the rule of law. This limitation indicates that customary law cannot be applied freely without regard to the applicable national legal framework. In other words, customary law must remain within the broader framework of the state's legal system. This is crucial to ensure that the application of customary law does not violate fundamental principles such as the protection of human rights and equality before the law. Therefore, the

³⁴ Wicaksono, Y. P., & Mahipal, M. (2025). Eksistensi Hukum Islam Dalam Sistem Hukum Nasional Indonesia: Peluang Dan Tantangan. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(3), 2138-2151. <https://doi.org/10.62976/ijjel.v3i3.1238>

³⁵ Prayoga, J. (Ed.). (2025). *Hukum Perkawinan Dan Waris Dalam Sistem Hukum Nasional Dan Syariah Di Indonesia*. Serasi Media Teknologi.

relationship between customary law and state law must be carefully managed to avoid conflicting norms in law enforcement practices.

In traditional legal systems, violations of customary norms are known as customary crimes, which are essentially acts deemed to disrupt the social balance within a customary community. Unlike the concept of crime in modern criminal law, which places greater emphasis on violations of state legal norms, customary crimes are rooted in the social values inherent in society. Therefore, the primary goal of resolving customary crimes is not merely to punish the perpetrator, but rather to restore the social balance disturbed by the violation of norms. Sanctions imposed under customary law are typically restorative in nature, such as the payment of customary fines, the performance of reparation rituals, or other forms of social responsibility. This approach demonstrates that customary law has a different orientation than modern criminal law systems, which place greater emphasis on retributive aspects. Thus, the concept of customary crimes reflects a legal approach that places greater emphasis on social harmony in community life.

The recognition of living law within the Indonesian criminal law system is explicitly accommodated in Law Number 1 of 2023 concerning the Criminal Code, which is the result of reforms to the national criminal law. This provision demonstrates a paradigm shift in the formation of national criminal law, from a prior focus on legal positivism to a more contextual and responsive approach to the social realities of society. In the National Criminal Code, the concept of living law is recognized as a source of law that can be considered in criminal law enforcement, particularly those related to customary norms that are still alive in society.³⁶ This recognition reflects the state's efforts to accommodate the plurality of legal systems developing within Indonesian society. Normatively, this policy aims to strengthen the legitimacy of criminal law by incorporating prevailing social values. Thus, the regulation of living law in the National Criminal Code represents a form of integration between state law and social norms that have developed in reality within society.

The recognition of living law in the National Criminal Code also opens up space for customary crimes to exist as part of the national criminal law system. Customary crimes are understood as acts deemed to violate living customary norms recognized by a particular community.³⁷ Within this framework, the state allows customary norms to play a role in determining whether an act qualifies as deserving of criminal sanctions. This policy demonstrates that the national criminal law system does not completely preclude the recognition of unwritten norms as part of the legal system. This reflects an effort to accommodate local values that have long existed within indigenous communities. However, this recognition continues to generate debate regarding the limits and mechanisms of its application in law enforcement practices.

The integration of customary law into national criminal law reform essentially aims to create a legal system that is more responsive to societal needs. This approach is based on the premise that criminal law serves not only as a repressive instrument of the state

³⁶ Ari, E. A., Sugiarto, A., Sudrajad, Y., Rasiwan, I., & Triestanto, J. (2026). Pengaturan Living Law Dalam Kuhp Nasional: Antara Pengakuan Hukum Adat Dan Kepastian Hukum. *Jurnal Kolaboratif Sains*, 9(1). <https://doi.org/10.56338/jks.v9i1.10124>

³⁷ Frans, H. Y., Hutahaena, A., & Sitanggang, D. (2025). Kajian Penerapan Hukum Pidana Adat Dibanding dengan Hukum Pidana Nasional dalam Perkara Perzinaan. *Jurnal sosial dan sains*, 5(6), 1923-1933. <https://doi.org/10.59188/jurnalsosains.v5i6.32076>

but also as a means to maintain social balance within society. Recognition of customary crimes is expected to strengthen the values of substantive justice, which are often not fully reflected in formal positive law. Furthermore, the integration of customary law also aims to strengthen the social legitimacy of national criminal law. Laws that align with societal values tend to be more easily accepted and complied with. Therefore, the recognition of customary law in the National Criminal Code is seen as part of criminal law reform efforts that are more oriented toward societal values.

The normative implications of recognizing living law in the National Criminal Code have significant consequences for the Indonesian criminal justice system. Recognizing customary norms as part of the criminal law system has the potential to expand the sources of criminal law, which were previously limited to written regulations. This situation could change the perspective on the principle of legality, which has been strictly understood within the framework of modern criminal law. With the recognition of customary norms, the national criminal law system is beginning to accommodate unwritten legal sources. This change demonstrates an effort to adapt the criminal law system to the pluralistic character of Indonesian society. However, this change also poses new challenges in maintaining the consistency of basic criminal law principles.

One of the fundamental problems in the regulation of customary crimes in the National Criminal Code is the potential for normative ambiguity in determining the boundaries of customary norms that can be used as a basis for criminal punishment. Customary norms are generally not systematically codified as are laws and regulations, so the boundaries of actions considered to be customary violations are often not clearly formulated. This condition can create uncertainty in determining whether a customary norm is truly alive and recognized by the community. Furthermore, not all customary communities have a formally documented system of norms. As a result, law enforcement officials may experience difficulty in assessing the applicability of customary norms in a criminal case. This situation has the potential to create legal uncertainty in criminal law enforcement practices.

The unclear parameters for determining the applicability of customary norms also opens up the possibility of differing interpretations among law enforcement officials. Judges, prosecutors, and investigators may have differing views on whether a customary norm still applies in a particular community.³⁸ These differences in interpretation can lead to inconsistencies in the application of criminal law. Under certain circumstances, the same customary norms may be treated differently by different law enforcement officials. This has the potential to lead to injustice in the criminal law enforcement process. Therefore, the lack of clarity in the norms governing customary crimes can be a source of problems in the practical application of national criminal law.

The recognition of customary crimes in the criminal law system also has serious implications for the application of the principle of legality, a fundamental principle in modern criminal law. The principle of legality asserts that no act can be punished without a pre-existing legal rule. This principle is known as the doctrine of *nullum crimen sine lege*, which emphasizes the importance of legal certainty in determining an act as a crime. Recognition of unwritten customary norms has the potential to create tension with the

³⁸ Faradila, A. (2025). Implikasi KUHP Nasional terhadap Transformasi Peran Jaksa dalam Penegakan Hukum Pidana Berbasis Hukum Adat. *Proceedings Series on Social Sciences & Humanities*, 27, 215-232. <https://conferenceproceedings.ump.ac.id/pssh/article/view/1844>

principle of *lex scripta*, which requires criminal law to be formulated in writing. Furthermore, the ambiguity of customary norms can also conflict with the principle of *lex certa*, which demands the formulation of criminal norms clearly and unequivocally. This situation indicates a potential conceptual conflict between the principle of legality and the recognition of living law.

To address the tension between the principle of legality and the recognition of customary crimes, a conceptual reconstruction is needed that can systematically harmonize both principles. This reconstruction can be achieved by formulating clear criteria regarding customary norms that can serve as the basis for criminalization. The state needs to establish objective parameters that can be used to determine whether a customary norm is still alive and recognized by society. Furthermore, the integration of customary crimes into the national criminal law system must adhere to the basic principles of legality to avoid legal uncertainty. A comprehensive harmonization model between state law and customary law also needs to be formulated so that both legal systems can operate in a balanced manner. Therefore, clearer and more systematic regulatory reform is a crucial step to ensure that recognition of living law does not compromise the principle of legal certainty within the national criminal law system.

CONCLUSIONS

Customary offenses and the principle of legality in the National Criminal Code demonstrate that the recognition of existing laws within society is a progressive step in reforming Indonesian criminal law, but it also raises complex normative issues. The principle of legality classically requires that every criminal act be clearly defined in written legislation to ensure legal certainty and protect individual freedom from arbitrary state action. The recognition of customary offenses in Law Number 1 of 2023 concerning the Criminal Code expands the sources of criminal law by incorporating existing norms within society, thus demonstrating a paradigm shift from a positivistic approach to a more contextual and pluralistic one. While conceptually, these provisions attempt to accommodate Indonesia's social and cultural diversity, they also have the potential to create legal uncertainty due to the lack of clear parameters regarding the criteria for customary norms that can be used as a basis for criminalization. This situation opens up room for differing interpretations among law enforcement officials and has the potential to lead to criminalization based on norms that are not clearly written. A conceptual reconstruction of the relationship between customary crimes and the principle of legality is urgently needed to ensure that the integration of customary law remains in line with the principles of *lex scripta*, *lex certa*, and the protection of human rights. The formulation of objective criteria, a verification mechanism for customary norms, and harmonization between state law and customary law are essential prerequisites to ensuring that the recognition of living law in the National Criminal Code does not diminish the primary function of the principle of legality as a guarantee of legal certainty and justice in the criminal justice system.

REFERENCE

- Abdulloh, U. (2022). Relevansi Penerapan Asas Legalitas dalam Penjatuhan Sanksi pada Masyarakat Hukum Adat. *Al-Qadlaha: Jurnal Hukum Keluarga Islam*, 2(1), 8-18. <https://doi.org/10.55120/qadlaha.v2i1.928>

- Amalia, M., Judijanto, L., Sepriano, S., & Kastama, I. M. (2025). *Hukum Pidana: Dalam Dinamika Asas, Teori, dan Pendapat Ahli Pidana*. PT. Sonpedia Publishing Indonesia.
- Ari, E. A., Sugiarto, A., Sudrajad, Y., Rasiwan, I., & Triestanto, J. (2026). *Pengaturan Living Law Dalam Kuhp Nasional: Antara Pengakuan Hukum Adat Dan Kepastian Hukum*. *Jurnal Kolaboratif Sains*, 9(1). <https://doi.org/10.56338/jks.v9i1.10124>
- Djauzie, M. Z. (2025). *Pancasila Sebagai Grundnorm Menurut Teori Hukum Murni Hans Kelsen Dan Teori Hukum Responsif Oleh Philippe Nonet Dan Philip Selznick*. *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 11(1), 239-252. <https://doi.org/10.55809/tora.v11i1.456>
- Dwiyanti, A., Citranu, C., Sari, O. N., Budiyanto, B., Muntazar, A., Girsang, H., ... & Amalia, M. (2024). *Pengantar hukum pidana: Teori, prinsip, dan implementasi*. PT. Green Pustaka Indonesia.
- Faradila, A. (2025). *Implikasi KUHP Nasional terhadap Transformasi Peran Jaksa dalam Penegakan Hukum Pidana Berbasis Hukum Adat*. *Proceedings Series on Social Sciences & Humanities*, 27, 215-232. <https://conferenceproceedings.ump.ac.id/pssh/article/view/1844>
- Fitri, F. A., Muftia, N., Trilia, I., Munthe, A. H., & Ramlan, R. (2024). *Tinjauan teoritis tentang asas legalitas dalam hukum pidana Indonesia*. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(2), 202-209. <https://doi.org/10.71153/jimmi.v1i2.134>
- Frans, H. Y., Hutahaena, A., & Sitanggang, D. (2025). *Kajian Penerapan Hukum Pidana Adat Dibanding dengan Hukum Pidana Nasional dalam Perkara Perzinaan*. *Jurnal sosial dan sains*, 5(6), 1923-1933. <https://doi.org/10.59188/jurnalsosains.v5i6.32076>
- Gustriani, W. S., Aswata, I., Arifin, F., & Rifqi, S. M. (2025). *Perkembangan Ilmu Hukum Tata Negara Dalam Perspektif Demokrasi dan Rule of Law di Indonesia*. *Jurnal Sosial dan Sains (SOSAINS)*, 5(9).
- Hutapea, T., Koto, Z., & Syafruddin, S. (2024). *Kebijakan Polri dalam Upaya Mengefektifkan Penerapan Konsep Hukum Pidana Baru Dalam UU RI Nomor 1 Tahun 2023 Tentang KUHP*. *Jurnal Ilmu Kepolisian*, 18(1). <https://doi.org/10.35879/jik.v18i1.445>
- Kurniawan, M. R., & Setyawan, F. (2025). *Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia*. *KUNKUN: Journal of Multidisciplinary Research*, 2(1), 55-63. <https://ejournal.mediakunkun.com/index.php/kunkun/article/view/244>
- Kusumawarni, B. A. (2022). *Pluralisme Hukum Dalam Praktik Penerapan Hukum Internasional Di Indonesia: Kajian Terhadap Hubungan Hukum Internasional Dan Hukum Nasional*. *Unizar Recht Journal (URJ)*, 1(4). <https://urj.unizar.ac.id/urj/article/view/21>
- Listyowati, M. Y. E., Prabowo, P. H., Wisuda, S., Fitriansyah, R., & Hetaria, F. G. (2025). *Dinamika Living Law: Peran Hukum Adat Bersih Desa dalam Menjaga Kohesi Sosial Masyarakat Lokal Ponorogo: Hukum Adat*. *SOSMANIORA: Jurnal Ilmu Sosial dan Humaniora*, 4(4), 961-968. <https://doi.org/10.55123/sosmaniora.v4i4.5455>
- Martini Idris, S. H., Saputra, J. A., SHI, M., Novrianto, M., & SH, M. (2025). *Kriminologi*. Prenada Media.
- Musdalifah, D. A., Masyhar, A., & Wulandari, C. (2025). *Eksistensi dan Perluasan Asas Legalitas dalam Undang-Undang No. 1 Tahun 1946 dan Undang-Undang No. 1 Tahun 2023*. *JISPENDIORA Jurnal Ilmu Sosial Pendidikan Dan Humaniora*, 4(1), 590-602. <https://doi.org/10.56910/jispendiora.v4i1.2485>

- Nugraha, R. S., & Silalahi, C. F. (2024). Pembaharuan Berlakunya Asas Legalitas Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana. *PALAR (Pakuan Law Review)*, 10(1), 73-81. <https://journal.unpak.ac.id/index.php/palar/article/view/10164>
- Nursaidah, F., & Rusdiana, E. (2025). Analisis Frasa “Penguasa Umum” dalam Pasal 160 KUHP dikaitkan dengan Prinsip Lex Certa (Studi Putusan PN Bondowoso No. 26/Pid. B/2025/PN Bdw). *Ekspose: Jurnal Penelitian Hukum dan Pendidikan*, 24(2), 377-391. <https://doi.org/10.30863/ekspose.v24i2.10615>
- Omar, A. K. (2026). HUKUM SEBAGAI FENOMENA SOSIAL: ANALISIS SOSIOLOGIS TERHADAP REGULASI. *Jurnal Sosial dan Humaniora*, 2(1), 26-33. <http://ypmsc.org/index.php/jshu/article/view/63>
- Prayoga, J. (Ed.). (2025). *Hukum Perkawinan Dan Waris Dalam Sistem Hukum Nasional Dan Syariah Di Indonesia*. Serasi Media Teknologi.
- Putranto, A. C., & Triadi, I. (2025). Konsep Hukum Pidana Adat Pasca Pemberlakuan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Perspektif Living Law. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(5), 7317-7338. <https://doi.org/10.61104/alz.v3i5.2372>
- Putri, K. A., Alqarina, S. A., Sibarani, N. Q., & Wulandari, S. R. (2025). SUMBER-SUMBER HUKUM PERAN SUMBER-SUMBER HUKUM DALAM PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA: PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN DI INDONESIA. *Jurnal Multidisiplin Ilmu Akademik*, 2(6), 778-788. <https://doi.org/10.61722/jmia.v2i6.7305>
- Sabrina, G., & Musyarri, F. A. (2023). Urgensi Penerapan Pidana Pengawasan Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP. *Jurnal Yudisial*, 16(1), 65-82. <https://doi.org/10.29123/jy.v16i1.586>
- Saravistha, D. B., Sukadana, I. K., & Suryana, K. D. (2022). Optimalisasi Penerapan Sanksi Adat Dalam Upaya Pengejawantahan Asas Restoratif Justice Di Desa Adat (Studi Kasus Di Desa Adat Penyaringan, Kabupaten Jembrana). *Jurnal Impresi Indonesia*, 1(3), 201-210. <https://doi.org/10.58344/jii.v1i3.32>
- Saraya, S., Plaikoil, M. V., Mulya, J. F., Muhni, A., Maramba, R. S. M., Saputra, E., & Layungasri, R. G. R. (2025). *Hukum Pidana Indonesia: Literasi & Wawasan Komprehensif Hukum Pidana di Indonesia*. PT. Star Digital Publishing, Yogyakarta-Indonesia.
- Sukmawan, Y. A., & Damayanti, D. (2025). Metode Penelitian Hukum Normatif dan Empiris sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum. *Notary Law Journal*, 4(3), 114-128. <https://doi.org/10.32801/nolaj.v4i3.116>
- Tahali, A., Alhabsyi, M. S., Massi, R. A. R., & Almahdali, A. A. (2025). EFEKTIVITAS SANKSI HUKUM ADAT DI DESA BINANGGA KECAMATAN MARAWOLA KABUPATEN SIGI. *Comparativa: Jurnal Ilmiah Perbandingan Mazhab dan Hukum*, 6(1), 1-26. <https://doi.org/10.24239/comparativa.v6i1.200>
- Triadi, I., & Heradika, D. (2025). ASAS LEGALITAS DALAM DINAMIKA PENEMUAN HUKUM PIDANA: KAJIAN NORMATIF TERHADAP BATASAN KEWENANGAN HAKIM. *Jurnal Analisis Hukum dan Kebijakan*, 6(4). <https://ejournals.com/ojs/index.php/jahk/article/view/4120>
- Wanggai, F. R. M., Hartono, M. S., & Parwati, N. P. E. (2026). Penerapan Living Law Dalam Kuhp Baru Dan Pengaruhnya Terhadap Asas Legalitas Serta Kepastian Hukum Di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4(1), 6993-6999. <https://doi.org/10.61104/alz.v4i1.4517>
- Wicaksono, Y. P., & Mahipal, M. (2025). Eksistensi Hukum Islam Dalam Sistem Hukum Nasional Indonesia: Peluang Dan Tantangan. *Indonesian Journal of Islamic*

- Jurisprudence, Economic and Legal Theory, 3(3), 2138-2151.
<https://doi.org/10.62976/ijjel.v3i3.1238>
- Willis, R. P., & Hanifah, M. (2026). TINJAUAN KOMPREHENSIF TERHADAP PERKEMBANGAN SISTEM HUKUM DI DUNIA. *Journal Orchestration*, 1(1).
<https://istilahhukum17.com/jih/index.php/journalorchestration/article/view/17>
- Wirawan, A., Sembiring, M. S. A., & Saragih, H. (2025). Asas Legalitas dalam Perkembangan Politik Hukum Pidana di Indonesia. *Almufi Jurnal Sosial dan Humaniora*, 2(3), 477-482. <https://doi.org/10.63821/ash.v2i3.564>
- Wirawan, A., Sembiring, M. S. A., & Saragih, H. (2025). Asas Legalitas dalam Perkembangan Politik Hukum Pidana di Indonesia. *Almufi Jurnal Sosial dan Humaniora*, 2(3), 477-482. <https://doi.org/10.63821/ash.v2i3.564>
- Yamin, B., & Rachman, M. T. (2025). Problematik Yuridis Pasal 2 KUHP Baru Dalam Perspektif Prinsip-Prinsip Dasar Asas Legalitas. *Unizar Law Review*, 8(2), 170-180.
<https://doi.org/10.36679/ulr.v8i2.106>
- Yani, M. S. A., & Sulchan, A. (2025). PERAN KEPOLISIAN DALAM MENCEGAH KRIMINALISASI PROSES HUKUM DI SISTEM PERADILAN PIDANA. *Jurnal Media Akademik (JMA)*, 3(11). <https://doi.org/10.62281/v5xen071>
- Zainuddin, M., & Karina, A. D. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. *Smart Law Journal*, 2(2), 114-123.
<https://e-journal.unkaha.ac.id/index.php/slj/article/view/26>
- Zakiya, W. (2025). Peran Hukum Adat dalam Penyelesaian Sengketa Tanah. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(6), 8794-8801.
<https://doi.org/10.61104/alz.v3i6.2664>
- Zarianto, A. A. A., & Adityarani, N. W. (2025). Eksistensi Sosiologi Hukum pada Masyarakat Indonesia (Literature Review atas Teori Living Law Eugen Ehrlich). *Juridische: Jurnal Penelitian Hukum*, 2(3), 203-219.
<https://jurnal.bisakonsul.com/index.php/juridische/article/view/89>