




## Bali's Customary Criminal Justice System and the Draft Criminal Procedure Code in the Context of National Legal Harmonization in Indonesia



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### Abstract

Customary criminal justice in Bali is a form of dispute resolution based on local values that has long existed in society, but its existence faces serious challenges in the process of harmonization with the national legal system, particularly in the context of the Draft Criminal Procedure Code (RKUHAP). This study aims to examine the position and role of Balinese customary justice within the framework of the RKUHAP and to assess the extent to which customary justice can be integrated without eliminating local legal identity. The method used is a juridical-normative with a conceptual and legislative approach, and is complemented by a juridical-comparative analysis of the provisions in the Balinese Customary Court, the National Criminal Code and the RKUHAP. The results of the study indicate that although there is recognition of customary law in legislation, the position of customary justice is still subordinate and has not received strong institutional guarantees in the RKUHAP. Legal harmonization requires more affirmative regulations for customary justice so that its existence is not merely symbolic. Therefore, a legal formulation is needed that can accommodate customary justice as an integral part of the national criminal justice system, based on the principles of restorative justice and legal diversity. This study recommends that the Criminal Procedure Code (RKUHAP) explicitly regulate the mechanisms and limits of customary justice authority, as well as provide equal formal recognition for its role in resolving community-based criminal cases.

**Keywords:** Balinese Customary Court; RKUHAP; New Criminal Code; Legal Harmonization

## I. Introduction

The transformation of Indonesia's criminal justice system faces significant complexities in integrating customary law values with the national statutory legal framework. The phenomenon of legal pluralism in Indonesia poses a fundamental challenge in achieving harmony between the formal judicial system and traditional dispute resolution mechanisms that are deeply rooted in indigenous communities. The implementation of legal pluralism in Indonesia faces a central dilemma between formal recognition of the diversity of legal systems and the need to maintain legal certainty and the unity of national law. Article 18B (2) of the 1945 Constitution does indeed provide constitutional legitimacy for the protection of customary law communities and their traditional rights. However, in practice, this pluralism is often weak

because the existence and effectiveness of customary law are highly dependent on state recognition; indeed, it is not uncommon for decisions by customary institutions to be set aside by formal courts, so that the recognition of legal pluralism remains limited and conditional<sup>1</sup>.

The Balinese customary criminal justice system, as one of the strongest manifestations of *living law* in Indonesia, faces an existential dilemma in the context of the modernization of the national judicial system, particularly with the enactment of Law No. 1 of 2023 on the Criminal Code and the ongoing process of drafting the Criminal Procedure Code. The Balinese customary justice system, centered on *the kerta desa adat*, possesses unique characteristics in resolving criminal offenses that prioritize restorative principles and social harmony. Barda Nawawi Arief emphasizes that the development of the national legal system must be rooted in the values and aspirations alive within society. Therefore, Indonesia's legal identity is not merely normative but emerges from the exploration of customary law, customs, and principles that have evolved within social reality<sup>2</sup>.

Keebet von Benda-Beckmann views legal pluralism not merely as the coexistence of state, customary, and religious legal systems, but as a dynamic interaction that shapes the legal order in society. Studies in Indonesia show that formal law can only function effectively if it is integrated with the norms of local communities and involves community participation. The successful implementation of legal policies stems from a blend of official rules and living local practices, not merely the replication of procedures. Through this perspective, Benda-Beckmann highlights the reciprocal influence and potential tensions between state law, customary law, and Islamic law in a pluralistic society<sup>3</sup>.

According to Beckmann, legal pluralism in Indonesia has always been intertwined with identity politics (the three dimensions of national law, customary law, and Islamic law), which interact in a dynamic of mutual influence and complementarity, yet also compete and co-opt one another. In Minangkabau, he demonstrates how state legal instruments can be used to legitimize discrimination and suppress religious freedom through sectarian-tinged local regulations. This lesson is crucial for the Balinese customary criminal justice system as it undertakes the process of harmonization with national law; it must remain vigilant against instrumentalization that reduces local complexity and wisdom to mere procedural trappings<sup>4</sup>.

Sally Falk Moore, through her theory of "*semi-autonomous social fields*" (SASF), offers a comprehensive legal analytical framework for understanding the operationalization of norms in the context of a pluralistic society. SASF is defined as a social entity possessing a certain degree of autonomy, enabling the formation of rules, customs, and legal symbols originating from within the community, and possessing internal coercive power. However, this autonomy is relative because the field remains within the scope of influence of regulations, policies, and external forces originating from the national legal system or surrounding power structures<sup>5</sup>. This concept is highly applicable in mapping the position of the Balinese customary criminal justice system, which substantively possesses the authority to formulate and enforce norms and sanctions based on *awig-awig* and the *Tri Hita Karana* principle, yet remains subject to supervision and limitations from the national legal system. The application of SASF in dispute resolution at the local level demonstrates that recognition of legal pluralism, if managed proportionally and through

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<sup>1</sup> Muhammad Mujab Nabil et al., "Analisis Ketiadaan Kepastian Hukum Bagi Masyarakat Adat Dalam Proyek Strategis Nasional Guna Mendorong Revisi Kebijakan Pembangunan Nasional Berdasarkan Prinsip Pluralisme Hukum," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 2, no. 3 (2025): 194-205, <https://doi.org/https://doi.org/10.62383/amandemen.v2i3.1060>.

<sup>2</sup> Marli Candra and Rizky Abrian, "Penerapan Asas *Ultimum Remedium* Dalam Pengaturan Kekerasan Seksual: Analisis Overlapping Crime Antara UU TPKS Dan KUHP Nasional," *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 28, no. 1 (2025).

<sup>3</sup> Yugi Arti; Dewi, "Pakar Law and Multiculturalism FH UNAIR Paparkan Konsep Menski's Kite Model of Legal Pluralism Pada Webinar Pluralisme Hukum Di Indonesia," Fakultas Hukum Universitas Airlangga, 2022.

<sup>4</sup> Imam Kuswahyono et al., "Exploring Keebet van Benda-Beckmann's Legal Pluralism in Slum Transformation: An Ethnographic Study of Urban Revitalization in Indonesia," *Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2024), <https://doi.org/10.54828/ijsls.2024v4n1.3>.

<sup>5</sup> Dewa Krisna Prasada et al., "Sacred Justice : The Autonomy of Traditional Villages in Resolving Customary Disputes in Bali," *JUSTISI* 11, no. 3 (2025): 796-814.

dialogue, can foster justice, strengthen the protection of indigenous peoples' rights, and promote harmonization between community norms and formal law, thereby preventing one-sided subordination or domination between the two intersecting legal systems <sup>6</sup>.

Customary criminal law is considered effective because it is close to the community, easily accessible, and does not involve the bureaucratic processes found in the National Criminal Code. Cases are resolved through customary deliberation, resulting in decisions based on consensus that are more readily accepted. The sanctions imposed are also flexible – such as fines, ritual obligations, or community service – which not only serve as a deterrent but also help restore social relationships. This mechanism prevents social stigma, facilitates the reintegration of offenders, and reduces the burden on the formal judicial system <sup>7</sup>. The effectiveness of Bali's customary criminal law mechanism is also evident in its ability to resolve disputes quickly, simply, and inexpensively, as the process takes place at the community level. The sanctions imposed typically consist of customary fines (*denda ayahan*), ritual obligations, or restorative community service that are accepted by all community members. This approach aligns with the spirit of restorative justice, which is now beginning to be adopted in the reform of national criminal law. Meanwhile, under the Criminal Code (KUHP) system, even minor criminal offenses must still go through formal judicial mechanisms that are time-consuming, costly, and have the potential to worsen social relations <sup>8</sup>.

The success of this mechanism is not merely conceptual; it has also been validated in a study conducted by Wayan Sugianta, I Nyoman Surata, and Ni Ny. Mariadi (2022), which demonstrated that the implementation of the traditional village-based security system (*Sipandu Beradat*) is an effective strategy for preventing criminal acts in Buleleng Regency. This mechanism directly involves the community through customary forums, enabling the early detection of potential disturbances and the resolution of conflicts through preventive and proactive approaches. Although the study also noted challenges such as funding and coordination, the results demonstrate that Balinese customary law retains strong social legitimacy and can coexist with the national legal system <sup>9</sup>.

The effectiveness of this mechanism is also evident in the resolution of various local criminal cases, with an emphasis on restoring interpersonal relationships and maintaining cosmic balance within the *Tri Hita Karana* concept. However, the existence of the Balinese customary court system faces serious challenges in the context of national legal unification, which tends to prioritize the standardization of criminal procedural law <sup>10</sup>.

The draft Criminal Procedure Code, currently under discussion, presents both opportunities and challenges for the sustainability of customary justice. On the one hand, there are efforts to accommodate customary legal values through the concepts of *alternative dispute resolution* and diversion mechanisms. On the other hand, the formalization of criminal procedural law procedures has the potential to erode the autonomy and flexibility that are the main strengths of the customary justice system. This tension creates an urgent need to formulate a harmonization model that can bridge the interests of national legal unification with the preservation of customary legal values that have proven effective in maintaining social stability at the community level. The complexity of harmonization increases further when considering the constitutional dimension of the recognition of customary law in the 1945 Constitution, particularly Article 18B(2), which mandates the state to recognize and respect customary law communities. Implementing this constitutional mandate within the context of the criminal justice system

<sup>6</sup> Khoiru Turmuzi, "Penerapan Konsep Pluralisme Hukum Sally Falk Moore Dalam Penyelesaian Konflik Di Tingkat Pemerintahan Daerah," *Jurnal Hukum Caraka Justitia* 5, no. 1 (2025): 29–42, <https://doi.org/10.30588/jhcj.v5i1.2066>.

<sup>7</sup> Elisabeth Nurhaini Butarbutar, "Efektivitas Peradilan Adat Dalam Menyelesaikan Sengketa Secara Cepat Dan Sederhana," *Jurnal Profile Hukum* 2, no. 2 (2024): 127–41.

<sup>8</sup> Achmad Surya and Suhartini Suhartini, "Efektivitas Penyelesaian Tindak Pidana Ringan Melalui Lembaga Adat (Sarak Opat)," *Jurnal Hukum Ius Quia Iustum* 26, no. 1 (2019): 91–112, <https://doi.org/10.20885/iustum.vol26.iss1.art5>.

<sup>9</sup> Wayan Sugianta, I Nyoman Surata, and Ni Ny Mariadi, "Efektivitas Sistem Pengamanan Terpadu Berbasis Desa Adat (Sipandu Beradat) Sebagai Upaya Pencegahan Tindak Pidana Di Wilayah Hukum Kepolisian Resor Buleleng," *Kertha Widya* 10, no. 1 (2022): 18–44, <https://doi.org/10.37637/kw.v10i1.1033>.

<sup>10</sup> Rancangan and Undang-Undang Republik Indonesia, "Nomor ... Tahun ... Tentang Hukum Acara Pidana," *Synthesis* 19, no. 2 (1981): 305–8.

requires a sophisticated approach to avoid normative conflicts while simultaneously realizing substantive justice that is acceptable to all segments of society.

In this context, the relevance of the theory of legal transplantation becomes crucial to analyze. The integration of customary law into the national criminal justice system is, in essence, a form of legal transplantation, in which the state's formal legal framework seeks to adopt local practices that are deeply rooted in society. Without a careful harmonization strategy, this effort risks creating disharmony, as the values, procedures, and social dynamics inherent in customary law do not always align with the logic of state law. Robert Seidman's perspective on legal transplantation provides a critical framework for understanding this problem, particularly regarding the limited effectiveness of laws transplanted without adaptation to local social and cultural structures <sup>11</sup>.

Conflicts between customary (inheritance) law and national law frequently arise when customary kinship principles (such as *patrilineality*) clash with more egalitarian national norms. This situation requires a harmonization mechanism that interprets community values contextually while also referencing statutory norms, so that legal certainty and justice can coexist harmoniously. In practice, this can be achieved through the authentic identification of living customary law, its integration with compatible national norms, and the systematic documentation of outcomes to prevent further disputes and facilitate verification in formal forums. This approach is also relevant to the Balinese customary criminal justice system, where socially legitimate customary forum rulings must be linked to national criminal procedural standards (including forms, documentation, and validation) to ensure integration into the formal system without eroding the values of *Tri Hita Karana* or community norms, within the framework of the idealized legal harmonization <sup>12</sup>.

Based on the complexity of the phenomena described above, this study identifies several fundamental issues that require in-depth analysis. First, what are the characteristics of the Balinese customary criminal justice system in the context of resolving criminal offenses, and how do they relate to the principles of modern criminal procedure law? Second, to what extent does the Draft Criminal Procedure Code accommodate the values and mechanisms of customary justice, particularly in the context of the Balinese customary justice system. Third, what kind of harmonization model can be developed to integrate the Balinese customary criminal justice system into the national criminal procedure system without undermining its essence and effectiveness. These issues become increasingly complex when considering various technical-legal dimensions, such as coordination mechanisms between formal courts and customary courts, the standards of proof applicable in both judicial systems, and the implications of customary court rulings on formal judicial proceedings. Furthermore, sociological and anthropological aspects also require special attention, given that the Balinese customary justice system functions not only as a dispute resolution mechanism but also as an instrument for preserving cultural values and community identity.

The sociological dimensions involved in harmonizing Bali's traditional criminal justice system with the national legal framework present complexities that require a multidisciplinary approach to understand the dynamics of interaction between traditional social structures and modern legal institutions. The social transformations occurring in contemporary Balinese society create unique challenges for the sustainability of the customary justice system, which traditionally relies on social cohesion and the homogeneity of values within the community. Modernization and urbanization have altered the social landscape of Balinese society, creating a heterogeneity that can affect the legitimacy and effectiveness of the customary justice system in resolving criminal conflicts. The shift in family structure from *the extended family* to *the nuclear family* has also impacted the traditional social control mechanisms that form the foundation of the

<sup>11</sup> O.K. Saidin, "The Choice of Foreign Legal Transplants Policy in Regulating Indonesian Copyright Law: Between Standardization and Coagulation," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 3 (2016): 504, <https://doi.org/10.22146/jmh.15874>.

<sup>12</sup> Hilman Syahril Haq, "Legal Pluralism and Inheritance Rights: Resolving Conflicts Between Local Customs and National Law in Indonesia," *Kosmik Hukum* 25, no. 1 (2025): 148-59, <https://doi.org/10.30595/kosmikhukum.v25i1.23727>.

Balinese customary justice system. Increased social and economic mobility has led to a diversification of interests within customary communities, which can affect consensus-building in decision-making through customary assemblies (*paruman adat*). These phenomena necessitate the adaptation of the customary justice system to remain relevant in the context of an increasingly complex and diverse society.

The epistemological aspects of the Balinese customary justice system present a paradigm of knowledge that is fundamentally different from the epistemology of positive law, which forms the basis of the national judicial system. The traditional Balinese knowledge system, which integrates the *sekala* and *niskala* dimensions, creates a holistic approach to understanding conflicts and their resolution that cannot be reduced to the framework of modern legal positivism. The legitimacy of knowledge within the Balinese customary system is grounded not only in empirical rationality but also in traditional wisdom accumulated over centuries through intergenerational transmission. This epistemological difference poses challenges in the validation and verification of customary court rulings by formal systems that rely on different standards of proof. The integration of these two epistemological systems requires the development of a framework capable of accommodating the plurality of knowledge sources without compromising the integrity of each system. Epistemological harmonization is key to ensuring that traditional wisdom can contribute constructively to a more inclusive national criminal justice system<sup>13</sup>.

The dynamics of globalization and the influence of international law have created external pressure on Indonesia's national criminal justice system to adopt universal standards in law enforcement and the protection of human rights. The ratification of various international legal instruments concerning human rights and judicial standards creates an obligation for Indonesia to ensure that its domestic justice system meets established international standards. The tension between the universality of human rights and the particularities of customary legal systems creates a dilemma in harmonization that requires a *sophisticated* approach to avoid cultural relativism, which could erode the protection of fundamental rights. The principle of universality in human rights should not be interpreted as uniformity in implementation, but can be realized through diverse approaches that achieve the same substantive goals. Bali's customary justice system, which emphasizes *restorative justice* and *community healing*, can serve as Indonesia's unique contribution to *the global discourse on alternative approaches to criminal justice*. Harmonization with international standards requires constructive dialogue between universal values and local wisdom to create a synthesis that enriches both legal traditions.

The challenges posed by information technology and the digitization of the judicial system present both opportunities and threats to the sustainability of Bali's customary justice system, which traditionally relies on *face-to-face* interaction and oral communication. The digital age demands that the customary justice system adapt to interface with the formal judicial system, which is increasingly integrated with information technology in documentation, communication, and decision-making. The digitization of formal judicial processes creates a technological gap that could marginalize the customary system if there are no *deliberate* efforts to facilitate the integration of *appropriate* technology. Digital documentation of the outcomes of customary justice is essential to ensure *accessibility* and *accountability* in an information age that demands transparency and *traceability*. The development of *user-friendly* digital platforms for indigenous communities can serve as a bridge to integrate the customary system with the technological infrastructure of the formal system. Balancing the preservation of the characteristics of oral traditions with the requirements of digital documentation is key to successful integration without eliminating essential elements of the customary justice system.

Demographic changes and the increasingly heterogeneous composition of Balinese society, resulting from migration and intermarriage, have created new complexities in the application of customary judicial jurisdiction, which is traditionally based on membership in a homogeneous customary community. The growth of the non-Hindu population within Bali's customary territories raises questions regarding *the scope* and *applicability* of the customary

<sup>13</sup> Undang-Undang Republik Indonesia, "Naskah Sesuai Lembaran Negara Republik Indonesia, No. 75, 1959" 105, no. 3 (1945): 129–33.

judicial system in resolving conflicts involving individuals from different religious and cultural backgrounds. Ethnic and religious pluralism within the context of traditional villages necessitates the development of *inclusive* mechanisms without compromising *the integrity* of the value system that forms the foundation of Bali's customary justice. The interaction between customary law and the laws of other religions requires a framework for *respectful* and constructive dialogue to avoid normative conflicts that could undermine social harmony. *Demographic transition* also affects the transmission of customary values to younger generations, who may have different attachments to the traditions and value systems of the community. Adapting the customary judicial system to new demographic realities requires flexibility without eroding *the core values* that constitute *the distinctive character* of Bali's customary system.

The economic implications of harmonizing the customary criminal justice system with the formal system encompass not only a cost-benefit analysis of the integration process but also distributional effects on the various stakeholders involved in both systems. The economic efficiency of the customary justice system – which traditionally relies on *voluntary participation* and *community resources* – can provide a *cost-effective alternative* to alleviate the financial burden on the increasingly overloaded formal justice system. The formalization of the customary justice system requires *investment* in *capacity building*, *infrastructure development*, and *institutional strengthening*, which must be considered in the fiscal planning of local and central governments. *Economic incentives* and *disincentives* related to *the choice of forum* can influence *community behavior patterns* in conflict resolution and need to be analyzed to avoid *unintended consequences*. *The monetization aspects* of customary sanctions in the form of fines and compensation require *standardization* that can ensure *fairness* and *proportionality* without eliminating the flexibility that is the strength of the customary system. *A sustainable financing model* to support *the integration process* is a critical factor in ensuring the long-term viability of harmonization between the two judicial systems.

The generational perspective on continuity and change within Bali's customary justice system presents a complex dynamic between the preservation of traditional values and adaptation to the expectations and needs of younger generations, who possess a different worldview. *The "digital natives" generation* has expectations regarding speed, efficiency, and transparency that may differ from the pace and processes of traditional dispute resolution within the customary system. Educational background and exposure to global values can influence the younger generation's acceptance of and participation in the customary justice system, which requires a commitment to community engagement and traditional values. Intergenerational dialogue is essential for ensuring a smooth transition and continuity of the customary justice system while accommodating the legitimate concerns and suggestions of the younger generation. Innovation in the presentation and delivery of the customary justice system – without altering its substance – can serve as a strategy for maintaining relevance and appeal across different generational cohorts. The leadership transition from the elder generation to the younger generation within the customary justice structure requires careful planning and mentoring to ensure the preservation of the knowledge and skills essential for the effective functioning of the customary system.

This study aims to comprehensively analyze the dynamics of the relationship between the Balinese customary criminal justice system and the Draft Criminal Procedure Code within the framework of national legal harmonization. Specifically, the research objectives include: first, identifying and analyzing the fundamental characteristics of the Balinese customary criminal justice system, including procedural mechanisms, types of sanctions, and the underlying principles. Second, evaluating the extent to which the Draft Criminal Procedure Code accommodates the existence and operational mechanisms of customary justice within the national criminal procedure legal system. Third, formulating a theoretical and practical model for the harmonization of the Balinese customary criminal justice system with the national criminal procedure law system that can ensure the effectiveness of law enforcement while preserving customary legal values. Achieving these objectives is expected to make a significant contribution to the development of legal science, particularly in the fields of criminal procedure law and customary law. Furthermore, the results of this study are also expected to serve as constructive

input for policymakers in the finalization process of the Draft Criminal Procedure Code, so that the resulting legal product can be more responsive to the diversity of legal systems existing within Indonesian society. In their study on legislative policies regarding the reform of criminal penalties under the Criminal Code (KUHP), Faisal et al. identified that the incorporation of customary criminal law into the national Criminal Code faces complex technical and legal challenges, particularly regarding the standardization of norms and procedures for sentencing<sup>14</sup>.

In this context, legal harmonization serves as a relevant conceptual framework for bridging the relationship between customary law and national law. Integration efforts not only require normative recognition of the existence of customary law but also necessitate an approach capable of aligning diverse norms to prevent overlap or disharmony in law enforcement practices. Legal harmonization, first introduced in German legal scholarship in 1992, aims to organize the diversity of policies and norms so as not to cause disharmony. According to L. M. Gandhi, harmonization involves aligning regulations, government decisions, judicial rulings, systems, and legal principles to ensure unity, certainty, justice, and clarity without eliminating pluralism. Similarly, the National Legal Development Agency defines it as a scientific process grounded in philosophical, sociological, economic, and legal values. Thus, harmonization is understood as an effort to unify legal principles and systems to achieve coherence, certainty, and justice in legislation<sup>15</sup>. Based on this conceptual foundation, legal harmonization does not stop at the level of definition alone, but also requires further elaboration on exactly which aspects need to be harmonized. Understanding the scope of harmonization is crucial so that this concept is not merely normative but also operational in addressing the diversity of legal systems in society.

The scope of legal harmonization encompasses the alignment of norms, institutions, and procedures so that the legal system operates consistently, fairly, and effectively without negating the diversity that exists within society. This scope includes, first, vertical and horizontal alignment across regulatory hierarchies and across sectors to prevent conflicts of norms and overlapping jurisdictions; second, the integration of legal systems (customary and statutory) in licensing, land affairs, and public services based on participation, transparency, accountability, justice, and responsiveness; third, the alignment of substantive provisions in criminal, civil, administrative, and sectoral domains (e.g., inheritance, land, and morality) to harmonize with local values while ensuring national legal certainty; fourth, harmonizing procedures and dispute resolution mechanisms—including *due process of law*, diversion, restorative justice, and ADR (*Alternative Dispute Resolution*)—so that customary rulings are recognized and enforceable in formal courts; fifth, institutional strengthening through formal customary joint committees, along with case referral protocols and standards for validating rulings; sixth, synchronizing authorities (central, regional, and customary villages) along with strengthening the legal basis for customary villages; seventh, harmonizing international obligations with national law without disregarding local wisdom; eighth, standardizing documentation and digitization (recording, electronic registration, data interoperability, and traceability) for transparency and accountability; ninth, the development of performance indicators (monitoring, evaluation, and feedback) for policies to ensure consistent implementation; tenth, and participatory governance through the involvement of indigenous communities, public consultation, and legal education as prerequisites for social legitimacy<sup>16</sup>.

Mufidah et al. explore customary justice as a framework for *restorative justice* in the resolution of criminal cases in Indonesia. This study highlights the effectiveness of the restorative approach, which is a key characteristic of customary justice in resolving social conflicts<sup>17</sup>. The

<sup>14</sup> Faisal et al., "Kebijakan Legislasi Pembaruan Pidana Kitab Undang-Undang Hukum Pidana," 2022.

<sup>15</sup> Gatot Irfan Wibisono, "Harmonisasi Hukum Dalam Perjanjian Sewa Menyewa Barang Milik Daerah Kota Bekasi," *Reformasi Hukum* 23, no. 2 (2020): 206–33, <https://doi.org/10.46257/jrh.v23i2.96>.

<sup>16</sup> Ahmad Daim, Suwarno Abadi, and M Syaiful Aris, "Harmonisasi Norma Hukum Adat Dan Hukum Positif Dalam Penyelenggaraan Pelayanan Izin Berusaha Harmonization of Customary Law Norms and Positive Law in the Implementation of Business Permit Services Abstrak Jurnal Magister Hukum ' Law and Humanity ' 97-122," *Law and Humanity* 3, no. 2 (2025): 97–122, <https://doi.org/https://doi.org/10.37504/lh.v3i2.740>.

<sup>17</sup> Mufidah, Rizal Maulana, and Lia Fauziyyah Ahmad, "Peradilan Adat Sebagai Kerangka Restorative Justice Dalam Penyelesaian Perkara Pidana Di Indonesia," *Journal of Islamic Law* 6, no. 1 (2022): 12–16.

findings indicate that the principles of *restorative justice* inherent in the customary justice system are highly compatible with the modern criminal law reform paradigm, which increasingly prioritizes rehabilitative and reintegrative aspects. Nevertheless, this study has not yet analyzed in depth the procedural aspects and coordination mechanisms between customary courts and the formal judicial system. Watkat & Budiman, in their analysis of customary criminal law “between existence and nonexistence,” identify the existential paradox faced by customary criminal law in the context of the modernization of the national legal system<sup>18</sup>. This study offers a critical perspective on the process of formalizing customary law, which has the potential to alter the essence and authentic character of the customary legal system. A key contribution of this study is the identification of the risks of *legal transplantation* that could erode indigenous values within the customary legal system. However, this study has not yet provided constructive solutions to address this paradox within the context of legal system harmonization.

Hidayat analyzes the existence of customary criminal law within the scope of Indonesian criminal law, focusing on aspects of legitimacy and formal recognition<sup>19</sup>. This study identifies that the recognition of customary criminal law in the national Criminal Code is a progressive step, but its implementation requires a more comprehensive regulatory framework to avoid normative conflicts. This study makes an important contribution to understanding the legal-formal dimensions of customary law recognition, but has not yet explored the operational aspects and practical mechanisms of implementation within the judicial system. Saravistha et al. conducted a case study on the optimization of customary sanctions in efforts to implement the principles of *restorative justice* in the traditional village of Penyarangan, Jembrana Regency, Bali<sup>20</sup>. This research provides a concrete picture of the effectiveness of the Balinese customary sanctions system in resolving social conflicts at the community level. The research findings indicate that customary sanctions possess strong social legitimacy and high effectiveness in preventing the recurrence of criminal acts. A key contribution of this research is the documentation of *best practices* in the implementation of customary sanctions at the community level. However, this study has not analyzed the implications of its integration with the national criminal procedural law system.

Khairul Riza et al. analyzed the legal certainty of Aceh customary court rulings in the resolution of theft offenses<sup>21</sup>. Although focused on the context of Aceh, this study provides important insights into the challenges of legal certainty faced by customary court rulings within the national legal system. This study identifies that the legitimacy of customary court rulings depends on formal recognition by the positive legal system, creating a complex structural dependency. The contribution of this research lies in identifying mechanisms for validating customary court rulings within the formal legal system; however, it has not yet developed a comprehensive harmonization model. Rado & Alputila analyze the relevance of the Kei *Larvul Ngabal* customary law in the reform of national criminal law<sup>22</sup>. This study explores the compatibility of customary legal values with modern criminal law principles, particularly regarding the proportionality of sanctions and the protection of human rights. The findings indicate that the customary law system possesses effective social control mechanisms that are compatible with the modern criminal law paradigm. However, this study has not specifically analyzed the procedural aspects of criminal law and the mechanisms for their implementation within the judicial system.

<sup>18</sup> Fransiscus X Watkat and Eren Arif Budiman, “Hukum Pidana Adat ‘Antara Ada Dan Tiada,’” 2022.

<sup>19</sup> Iman Hidayat, “Keberadaan Hukum Pidana Adat Dalam Ruang Lingkup Hukum Pidana Indonesia,” *Wajah Hukum* 6, no. 2 (2022): 358, <https://doi.org/10.33087/wjh.v6i2.1095>.

<sup>20</sup> Deli Bunga Saravistha, I Ketut Sukadana, and Kadek Dedy Suryana, “Optimalisasi Penerapan Sanksi Adat Dalam Upaya Pengejawantahan Asas Restoratif Justice Di Desa Adat (Studi Kasus Di Desa Adat Penyarangan, Kabupaten Jembrana),” *Jurnal Impresi Indonesia* 1, no. 3 (2022): 201–10, <https://doi.org/10.58344/jii.v1i3.32>.

<sup>21</sup> Khairul Riza, Irpan Husein Lubis, and Nicha Suwalla, “Kepastian Hukum Terhadap Putusan Peradilan Adat Aceh Dalam Penyelesaian Tindak Pidana Pencurian,” *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 2, no. 1 (2022): 39–47, <https://doi.org/10.35912/jihham.v2i1.1580>.

<sup>22</sup> Rudini Hasyim Rado and Marlyn Jane Alputila, “Relevansi Hukum Adat Kei Larvul Ngabal Dalam Pembaharuan Hukum Pidana Nasional,” *Jurnal Hukum Ius Quia Iustum* 29, no. 3 (2022): 591–610, <https://doi.org/10.20885/iustum.vol29.iss3.art6>.

Based on the literature review presented, there are several significant research gaps that require academic attention. First, most previous studies have focused on substantive criminal law, while the procedural aspects of criminal law in the context of harmonization with the customary justice system have not yet received adequate attention. In fact, procedural law plays a crucial role in determining the effectiveness of the implementation of the harmonization of customary law with the national legal system. Second, previous studies tend to be generic in their analysis of Indonesian customary law, without paying special attention to the uniqueness of the Balinese customary justice system, which has distinctive characteristics compared to the customary legal systems of other regions. The Balinese customary judicial system possesses its own distinct complexity, featuring a well-established institutional structure, sophisticated procedural mechanisms, and a diverse system of sanctions. These unique features require a more specific and in-depth analysis. Third, the majority of previous research was conducted prior to the enactment of the new Criminal Code in 2023 and has not yet accounted for the current dynamics in the drafting process of the Draft Criminal Procedure Code.

This situation creates an urgent need for an updated study that can address recent legislative developments and analyze their implications for the customary justice system. Fourth, the operational aspects of harmonization remain an under-explored area in academic literature. Most previous research has focused on theoretical and normative aspects, while the practical dimensions of harmonization implementation—such as coordination mechanisms, standards of proof, and appeal procedures—have not received adequate attention. The urgency of this research is further heightened by several contextual factors. First, the process of finalizing the Draft Criminal Procedure Code is currently underway intensively, making academic input regarding harmonization with the customary justice system highly relevant and timely. Second, the global trend toward the recognition and strengthening of indigenous legal systems creates positive momentum to optimize the role of customary justice within the national legal system. Third, growing awareness of the importance of *restorative justice* in modern criminal justice systems provides both academic and practical legitimacy for integrating restorative approaches, which are a defining characteristic of customary justice.

This study makes a significant novel contribution in several dimensions. First, this study represents a pioneering effort to comprehensively analyze the harmonization of the Balinese customary criminal justice system with the Draft Criminal Procedure Code, taking into account the latest legislative developments following the enactment of the new Criminal Code in 2023. This novelty lies not only in the temporal aspect but also in the analytical approach that simultaneously integrates normative, sociological, and operational dimensions. Second, this study develops a novel theoretical framework by combining theories of legal harmonization, legal systems, *legal pluralism*, and *restorative justice* into a coherent analytical framework. This interdisciplinary approach enables a more holistic understanding of the complexity of harmonizing legal systems with different paradigms that must operate within a single national legal system. Third, the methodological dimension of this study introduces novelty through an empirical-normative approach that combines doctrinal analysis with field studies on the practices of the Balinese customary court system.

This combination allows for the validation of theory through empirical practice, resulting in findings that are not only theoretically sound but also practically relevant. Fourth, this study produces an applicable harmonization model that is not only descriptive-analytical but also prescriptive, offering concrete recommendations for implementing harmonization. The developed model considers the balance between legal certainty, cultural sensitivity, and operational effectiveness. With this approach, the model can serve as a reference in efforts to harmonize legal systems in other regions with similar characteristics. This novel contribution strengthens the research's position as a scholarly contribution that not only fills the identified literature gap but also provides a theoretical and practical foundation for the development of a more inclusive criminal procedural legal system that is responsive to the diversity of legal systems existing within Indonesian society. Thus, this research holds strategic value in the context of nation-building through legal system harmonization that respects diversity while maintaining unity in diversity.

Thus, the novelty of this study lies in its analytical focus on the Balinese customary criminal justice system within the framework of harmonization with the Draft Criminal Procedure Code following the enactment of the 2023 Criminal Code, the use of a more comprehensive legal-normative approach, and the proposal of a practical harmonization model. This contribution simultaneously fills a gap in the existing literature, which has generally been limited to substantive criminal law aspects and has not yet addressed procedural dimensions or operationalization in practice.

## II. Research Methods

### Type of Research

This study employs a normative legal research approach to analyze the harmonization of the Balinese customary criminal justice system with the Draft Criminal Procedure Code (RKUHAP) within the national legal framework, by examining norms ranging from the 1945 Constitution to implementing regulations pertaining to criminal justice and the recognition of customary law. This approach was chosen because it focuses on consistency, coherence, and synchronization among different levels of norms, while also assessing the interrelationships between norms to establish a harmonious legal framework for the implementation of customary justice within the national system. The study not only maps the existence of norms separately but also analyzes their interrelationships and interdependencies to ensure effective integration between the paradigms of customary law and positive law<sup>23</sup>.

### Approach Method

This study employs several complementary research methods to produce a comprehensive analysis. First, *the statutory approach* is used to examine all regulations relevant to the criminal justice system and the recognition of customary law, ranging from the constitutional level down to technical operational regulations. This approach allows for the identification and analysis of both vertical and horizontal consistency among various laws and regulations related to the research subject. Second, *the conceptual approach* is applied to analyze the fundamental legal concepts underpinning the harmonization of judicial systems, such as the concepts of legal pluralism, restorative justice, legal certainty, and the harmonization of legal systems. This approach provides a solid theoretical framework for understanding the complexity of integrating legal systems with different epistemological and ontological characteristics.

Third, *the historical approach* is used to understand the development of customary law regulations within the Indonesian legal system, particularly the transformation from the colonial era to contemporary criminal law reform. This historical understanding is crucial for identifying the factors influencing the dynamics of the recognition and integration of customary law into the national legal system. Fourth, *the comparative approach* is applied to compare the mechanisms of the Balinese customary criminal justice system with the formal criminal justice system, as well as to compare experiences with the harmonization of customary law in various other regions of Indonesia. This comparative approach provides a broader perspective on the various models of harmonization that have been implemented and their potential for development.

### Sources of Law

The sources of legal materials in this study are classified into three categories according to their hierarchy and level of authority within the Indonesian legal system. First, primary legal sources include all laws and regulations that have binding legal force and are relevant to the research subject. The 1945 Constitution of the Republic of Indonesia serves as the primary source, particularly Article 18B(2), which governs the recognition of the unity of customary law communities, Article 28D(1) on the right to fair legal certainty, Article 24(1) regarding an independent judiciary, and Article 28I(3) on respect for cultural identity and the rights of traditional communities. Law No. 1 of 2023 on the Criminal Code serves as a highly significant primary legal source, particularly Article 2, which recognizes the validity of living law within communities as the basis for criminal punishment. This regulation provides a positive legal

<sup>23</sup> Sidi Ahyar Wiraguna, "Metode Normatif Dan Empiris Dalam Penelitian Hukum : Studi Eksploratif Di Indonesia" 3, no. 3 (2024), <https://doi.org/10.59818/jps.v3i3.1390>.

foundation for the recognition of customary offenses within the national criminal law system, while also opening the door for the integration of customary criminal resolution mechanisms into the formal judicial system. The 2025 Draft Code of Criminal Procedure is the primary focus of this analysis, given that this regulation will determine the procedural framework for the implementation of the harmonization of customary criminal justice with the national judicial system.

Various provisions in the draft, particularly those related to restorative justice mechanisms and alternative dispute resolution, will be thoroughly examined to identify opportunities and challenges for the accommodation of customary criminal justice. Second, secondary legal materials consist of academic literature that provides interpretations, analyses, and elaborations on primary legal materials. This category includes legal textbooks, scholarly journal articles, academic research findings, and other scholarly works relevant to the harmonization of customary law and the criminal justice system. Faisal et al., who analyzed legislative policies on sentencing reform in the Criminal Code (KUHP), and Mufidah et al., who explored customary justice as a framework for *restorative justice*, serve as key references in understanding the contemporary dynamics of integrating customary law into the national criminal justice system<sup>24</sup>. Third, tertiary legal materials include legal dictionaries, encyclopedias, and other reference materials that provide definitions and explanations of legal concepts used in the research. These materials serve as supporting materials to ensure terminological and conceptual consistency in the analysis.

#### **Techniques for Collecting Legal Materials**

The collection of legal materials for this study was conducted through a systematic literature review, beginning with an inventory of regulations ranging from the 1945 Constitution to technical regulations, followed by verification of authenticity and currency, and classification based on hierarchy, authority, and relevance of the issues. Primary materials were accessed through official regulatory databases and included the latest version of the RKUHAP along with academic manuscripts, while secondary materials were sourced from journal databases, university repositories, and digital libraries, with selection based on relevance, methodological quality, publisher reputation, and updates from the past five years. This process is supported by search trail logging, reference management, and cross-source triangulation to ensure the traceability and reliability of the analyzed normative corpus. The final outputs consist of a list of themed and tiered regulations, an annotated bibliography, and a regulatory mapping matrix to capture consistency, overlap, and regulatory gaps as the basis for harmonization analysis<sup>25</sup>.

#### **Techniques for Analyzing Legal Materials**

The analysis of legal materials was conducted qualitatively using a descriptive-analytical approach, beginning with a systematic mapping of all collected materials through the identification of normative substance, classification according to hierarchy, and mapping of interrelationships among provisions. The next step involved an interpretive analysis to explore the meaning of norms in the context of harmonizing customary criminal justice with the national system through grammatical, systematic, historical, and teleological interpretations, supplemented by a comparative analysis to assess consistency, identify inconsistencies, and pinpoint normative gaps and opportunities for alignment. These findings are then synthesized into a harmonization model that integrates normative, theoretical, and practical dimensions so that the resulting recommendations are both theoretically sound and applicable in practice. Validation is conducted through triangulation across sources and internal consistency testing to ensure that the conclusions reached are logical, coherent, and reliable to support the development of legal policies that are inclusive and responsive to the plurality of legal systems<sup>26</sup>.

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<sup>24</sup> Mufidah, Maulana, and Ahmad, "Peradilan Adat Sebagai Kerangka Restorative Justice Dalam Penyelesaian Perkara Pidana Di Indonesia"; Faisal et al., "Kebijakan Legislasi Pembaruan Pemidanaan Kitab Undang-Undang Hukum Pidana."

<sup>25</sup> Slamet Widodo, Ladyani Festy, and Asrianto La Ode, *Buku Ajar Metodologi Penelitian*, Cv Science Techno Direct, 2023.

<sup>26</sup> Sugioyo and Puji Lestari, *Metode Penelitian Komunikasi (Kuantitatif, Kualitatif, Dan Cara Mudah Menulis Artikel Pada Jurnal Internasional)*, ed. Sunarto, ALFABETA, Cv (Bandung, 2021).

### III. Result and Discussion

#### 1. Characteristics of the Balinese Customary Criminal Justice System and Its Relevance to Modern Criminal Procedure Principles

##### a. Institutional Structure of the Balinese Customary Criminal Justice System

The Balinese customary criminal justice system has a distinct and sophisticated institutional structure that has evolved over centuries as a manifestation of the indigenous legal system that exists within the community. Based on the research findings of Marvelia Silalahi et al., the institutional structure of the Balinese customary justice system is centered on the *desa pakraman* institution, the terminology of which was subsequently changed to *desa adat* through Bali Provincial Regulation No. 3 of 2003 on Customary Villages<sup>27</sup>. This terminological transformation reflects efforts to formalize and strengthen the institutional position of customary justice within a modern regulatory framework without losing its traditional essence. *The kerta desa adat* serves as the executive body within the traditional village government structure and holds special authority in handling traditional criminal cases. The role of *the kerta desa adat* is not merely that of an administrator but also that of a mediator in the process of resolving conflicts within the traditional community. This authority is supported by strong social legitimacy, as the *kerta* is elected through traditional democratic mechanisms involving all members of the traditional community. This institutional structure reflects the principle of community participation, which is a fundamental characteristic of the traditional judicial system, in contrast to the formal judicial system, which tends to be top-down and bureaucratic.

The decision-making mechanism in the Balinese customary court system is based on *the paruman adat*, a deliberative forum where all community members have the opportunity to participate in the case resolution process. Widiadnyani explains that *the paruman adat* functions as a democratic forum that enables consensus to be reached through intensive dialogue among community members. This process emphasizes inclusivity and transparency, where every voice is heard and considered in decision-making<sup>28</sup>. This mechanism demonstrates compatibility with the principles of *due process* in modern criminal procedural law, albeit with a more communal and participatory approach.

The recognition and legal status of traditional villages in Bali are supported by provisions in Law No. 6 of 2014 on Villages and Law No. 15 of 2023 on the Province of Bali, which affirm the existence of traditional villages as customary law communities with traditional authority. At the regional level, Bali Regional Regulation No. 4 of 2019 and Bali Governor Regulation No. 4 of 2020 govern the institutional framework, authority, and mechanisms for resolving customary-based disputes, replacing Bali Regional Regulation No. 6 of 1986 to align with legal developments. This normative regulatory framework provides a strong foundation not only for the existence of traditional villages but also for the distribution of authority within them. The hierarchy of authority in resolving customary criminal offenses follows the organizational structure of the traditional village, which consists of various levels corresponding to the complexity and scope of the impact of the violation committed. Yulianingsih identifies that this hierarchical system enables efficient and proportional case handling, where minor cases can be resolved at the *banjar* level or the smallest group, while more serious and complex cases are handled by customary institutions at the village level or even across villages<sup>29</sup>. This hierarchical structure demonstrates a sophisticated understanding of proportionality in case handling that aligns with the principle of subsidiarity in modern legal systems.

The mechanisms for selecting and legitimizing leadership within the institutional structure of the Balinese customary court system exhibit democratic-traditional characteristics that reflect a synthesis of democratic participatory values and the wisdom of a hierarchical

<sup>27</sup> Allena Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali," *Jurnal Multilingual* 3, no. 4 (2023): 1412-82.

<sup>28</sup> I Gusti Ayu Widiadnyani, "Pengaturan Pewarisan Awig-Awig Desa Adat Di Bali Dalam Perspektif Kesetaraan Dan Keadilan Gender," *Jurnal Aktual Justice* 7, no. 2 (2022): 88-105, <https://doi.org/10.70358/aktualjustice.v7i2.945>.

<sup>29</sup> Wiwin Yulianingsih, "Perlindungan Represif Dalam Awig-Awig Di Bali Pada Penyelesaian Sengketa," *Unnes Law Review* 6, no. 4 (2024): 9889-97.

authority system that has been tested in the practices of indigenous communities for centuries. The process of electing traditional leaders through consensus-building in the *paruman* demonstrates the application of democratic governance principles consistent with modern concepts of legitimacy and accountability in institutional leadership. Rotational leadership and term-based service within the traditional institutional structure create a dynamic balance that prevents the concentration of power while ensuring continuity in the institution's memory and expertise. A dual accountability mechanism linking leaders to both the indigenous community and higher traditional authorities creates sophisticated checks and balances to prevent the abuse of power. Gender representation and inclusive participation in leadership selection processes demonstrate the customary system's adaptability to contemporary values of equality and non-discrimination. The integration of traditional legitimacy with modern democratic principles in leadership elections reflects the evolutionary capacity of the customary justice system to remain relevant in a changing social context.

The spatial and territorial dimensions of traditional Balinese commerce create a complex geographical framework for the exercise of institutional authority in handling criminal cases that occur within the boundaries of traditional communities. The concept of *ayahan desa*, which defines territorial jurisdiction, reflects a sophisticated understanding of the relationship between spatial authority and social responsibility in maintaining order and harmony within the community. Overlapping jurisdictions among several traditional villages in cases involving inter-community conflicts require effective coordination mechanisms to prevent jurisdictional disputes and ensure the selection of the appropriate forum. Patterns of mobility and cross-boundary activities among community members create complexities in determining the applicable jurisdiction, particularly for offenses occurring outside the boundaries of traditional territories. Territorial markers and symbolic boundaries that delineate the spatial limits of customary jurisdiction reflect the integration of physical geography with social organization within traditional governance systems. Adapting to urban expansion and changes in land-use patterns requires flexibility in interpreting traditional territorial concepts to maintain the relevance of the customary jurisdictional system.

The ritual and ceremonial dimensions within the institutional structure of the Balinese customary court system demonstrate a profound integration of sacred and secular elements in the exercise of judicial authority, lending spiritual legitimacy to decisions and processes. The opening ceremonies and ritual purifications that precede customary hearings create a sacred space that fosters truth, reflection, and spiritual connection within the dispute resolution process. The integration of Hindu cosmology with judicial procedures reflects a holistic worldview that connects legal decisions to cosmic harmony and divine justice within a comprehensive framework. The symbolic representations and ritual objects used in court proceedings create visual and sensory reminders of the sacred responsibility and moral weight of the judicial decisions made within the traditional forum. The selection of seasonal timing and astrological considerations in scheduling important hearings demonstrate sensitivity to cosmic rhythms and spiritual appropriateness in the timing of judicial activities. Sacred texts and customary formulations used in administering oaths and pronouncing decisions reflect the connection between judicial authority and divine sanction and ancestral wisdom.

The system of knowledge management and transmission within the institutional framework of the Balinese customary judiciary demonstrates a sophisticated approach to preserving, renewing, and transferring judicial wisdom across generations without formal written codes or institutional archives. Oral traditions and narrative storytelling in conveying legal precedents and moral lessons create a living repository of judicial knowledge that is accessible to and remembered by community members. Mentorship patterns and apprenticeship systems in developing judicial expertise enable the gradual transfer of complex decision-making skills and cultural sensitivity essential for effective traditional leadership. Community memory and collective recollection in documenting past cases and their outcomes create an informal case-law system that guides contemporary decision making while providing flexibility for contextual adaptation. The integration of formal education with traditional knowledge systems prepares future leaders who demonstrate the adaptive capacity to combine modern analytical skills with

traditional wisdom. Innovative documentation and modern recording techniques that respect traditional preferences for oral transmission can enhance knowledge preservation without disrupting the essential characteristics of traditional learning systems.

#### **b. Procedures and Mechanisms for Resolving Customary Criminal Cases**

The procedure for resolving criminal cases under Balinese customary law follows systematic and structured stages known as *nyomia*, *nangkil*, and *nepakin*. The *nyomia* stage is the initial investigative phase in which the customary institution conducts an inquiry into alleged violations that have been reported or identified by the community. This process involves gathering information and evidence relevant to the case, both through the testimony of community members and direct observation of the impact caused by the violation. Investigations within the customary system emphasize restorative rather than punitive aspects, so the primary focus is on understanding the root causes of the problem and its impact on community harmony. The *nangkil* stage is the process of summoning the parties involved in the case to attend a customary hearing. This summons process is conducted using traditional communication mechanisms that involve all community members, thereby fostering transparency and public accountability. Marvelia Silalah et al. explain that this summons mechanism also serves as an early warning system for other community members regarding the consequences of violating customary norms. The *nangkil* process demonstrates compatibility with the principle of the right to be heard (*audi alteram partem*) in modern criminal procedural law systems, albeit with a more communal and informal approach<sup>30</sup>.

The *nepakin* process is a decision-making process carried out through intensive deliberation in a *traditional community* forum. Kurdi & Mazjah argue that the *nepakin* process reflects the implementation of restorative justice principles, which emphasize the restoration of relationships between individuals and communities rather than retributive punishment<sup>31</sup>. Decisions reached through the *nepakin* process typically encompass not only sanctions for the offender but also mechanisms for restoration and reintegration into the community. This process demonstrates a sophisticated understanding of the function of law as an instrument of social healing rather than merely social control. The evidentiary system in Balinese customary law possesses unique characteristics that blend empirical and spiritual aspects. Dewi et al. explain that the customary evidentiary system does not rely solely on physical evidence or testimony but also considers spiritual and cosmic aspects believed to influence the community's balance<sup>32</sup>. This concept of evidence includes an evaluation of the impact of violations on the harmony of *the sekala* (the physical world) and *the niskala* (the spiritual world), making the evidentiary process more holistic and comprehensive compared to formal evidentiary systems, which tend to be positivistic.

The *Tri Hita Karana* principle, which serves as the fundamental philosophy of Balinese culture, also forms the primary foundation for resolving customary criminal conflicts. This principle emphasizes the balance of relationships between humans and God (*parahyangan*), humans and other humans (*pawongan*), and humans and the environment (*palemahan*). Marvelia Silalahi et al. analyze that the implementation of the *Tri Hita Karana* principle in conflict resolution creates a holistic approach that considers not only the direct impact of the offense but also the long-term impact on the cosmic and social balance of the community<sup>33</sup>. This approach demonstrates compatibility with the restorative justice paradigm, which is increasingly being adopted in modern criminal justice systems.

#### **c. Types of Sanctions and the Principles of Restorative Justice**

This study employs the legal system theory proposed by Lawrence M. Friedman as the central framework for examining the challenges of harmonizing the Balinese customary criminal justice system with the national criminal procedure system. Friedman's theory emphasizes that

<sup>30</sup> Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali."

<sup>31</sup> Kurdi Kurdi and Ibnu Mazjah, "Kesesuaian Sistem Hukum Asli Dengan Reformasi Pidana: Studi Kasus Penerapan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *UNES Law Review* 7, no. 2 (2024): 721-31.

<sup>32</sup> Nyoman Tri Antika Dewi, I Wayan Landrawan, and Ni Ketut Sari Adnyani, "Kajian Hukum Pewarisan Harta Benda Terhadap Anak Perempuan Yang Sudah Kawin Dalam Masyarakat Hukum Adat Bali" 4, no. 2 (2024).

<sup>33</sup> Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali."

the success of law enforcement is largely determined by the integration of legal structural elements (namely formal judicial institutions and customary institutions), legal substance (in the form of norms and rules applicable within the context of national and local " "), and legal culture (which encompasses the values, attitudes, and perceptions of society toward the law) <sup>34</sup>. In the reality of the Balinese customary criminal justice system, a dynamic integration can be observed between the customary village institutions as the structural element, *the awig-awig* (customary laws) along with customary sanctions as the substantive element, and a living legal culture grounded in the *Tri Hita Karana* philosophy; thus, these three elements form a system that is adaptive yet remains firmly rooted in traditional legitimacy <sup>35</sup>.

Within Friedman's theoretical framework, the integration of legal structure, substance, and culture finds concrete expression in the practice of Balinese customary justice, particularly through the imposition of customary sanctions. The imposition of sanctions serves not merely as an instrument for enforcing norms, but also as a manifestation of the integration between the institutional structures of traditional villages, local regulations such as *awig-awig*, and the cultural and spiritual values deeply rooted in the community.

The classification of sanctions in the Balinese customary criminal justice system encompasses various types tailored to the nature and impact of the offense committed. Yulianingsih identifies three main categories of customary sanctions: *customary fines*, *caru*, and *prayascitta* <sup>36</sup>. A *customary fine* is a material sanction imposed on the offender in the form of compensation paid to the community or the direct victim. The amount of the customary fine is determined based on the severity of the offense and the resulting impact, taking into account the offender's economic capacity to ensure that the sanction does not create new social injustices. The *caru* sanction is a form of purification ritual that must be performed by the offender to restore the spiritual balance disrupted by the violation. Kurdi & Mazjah explain that the concept of *caru* reflects a holistic understanding of the impact of violations, which is not only social but also spiritual and cosmic <sup>37</sup>. The implementation of the *caru* sanction demonstrates the integration of legal and religious aspects within the Balinese customary justice system, creating a comprehensive approach to addressing violations of community norms.

*Prayascitta* is a sanction that emphasizes the aspects of atonement and spiritual reconciliation between the offender and the community and the universe. Dewi et al. analyze that the concept of *prayascitta* reflects a deep understanding of the rehabilitative function of legal sanctions, where the primary goal is not punishment but the restoration and reintegration of the offender into the community <sup>38</sup>. This sanction demonstrates high compatibility with the restorative justice paradigm, which emphasizes healing and reconciliation rather than retribution. The concept of restoring cosmic harmony (*sekala-niskala*) serves as a fundamental orientation within the Balinese customary legal sanctions system. Marvelia Silalahi et al. explain that every offense is viewed as a disruption to cosmic balance, encompassing both the physical (*sekala*) and spiritual (*niskala*) dimensions <sup>39</sup>. Restoring this harmony requires a comprehensive intervention that not only addresses the direct consequences of the offense but also restores the disrupted spiritual and cosmic balance. This approach demonstrates a sophisticated understanding of the interconnectedness between individuals, communities, and the universe in maintaining social order. The compatibility of the Balinese customary sanctions system with the modern restorative justice paradigm highlights its high relevance for developing a more effective and humane criminal justice system. Widiadnyani analyzes that the restorative orientation within

<sup>34</sup> Suyatno, "Kelemahan Teori Sistem Hukum Menurut Lawrence M. Friedman Dalam Hukum Indonesia," *Ius Facti: Jurnal Berkala Fakultas Hukum Universitas Bung Karno* 2, no. 1 (2019): 197-206.

<sup>35</sup> Izzy Al Kautsar and Danang Wahyu Muhammad, "Sistem Hukum Modern Lawrence M. Friedman: Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital," *Sapientia Et Virtus* 7, no. 2 (2022): 84-99, <https://doi.org/10.37477/sev.v7i2.358>.

<sup>36</sup> Yulianingsih, "Perlindungan Represif Dalam Awig-Awig Di Bali Pada Penyelesaian Sengketa."

<sup>37</sup> Kurdi and Mazjah, "Kesesuaian Sistem Hukum Asli Dengan Reformasi Pidana: Studi Kasus Penerapan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP."

<sup>38</sup> Dewi, Landrawan, and Adnyani, "Kajian Hukum Pewarisan Harta Benda Terhadap Anak Perempuan Yang Sudah Kawin Dalam Masyarakat Hukum Adat Bali."

<sup>39</sup> Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali."

the Balinese customary justice system can serve as a model for the development of a national criminal justice system that is more responsive to community needs and more effective in preventing recidivism<sup>40</sup>. An integrated approach combining restorative justice principles from the customary system with formal mechanisms within the Criminal Procedure Code (RKUHAP) can create a more comprehensive and sustainable justice system.

The implementation of restorative justice principles in the resolution of customary offenses can be seen concretely in formal court rulings that recognize *lokika sanggraha* as a customary criminal offense. Ruling No. 997/Pid.Sus/2019/PN.Dps provides concrete evidence of the harmonization of Balinese customary criminal law with national law in the resolution of *lokika sanggraha* offenses. The defendant, I Dewa Gede Ardana, was found to have engaged in sexual relations with Ni Putu Dwik Supartini since March 2015, promising to marry her if she became pregnant, but reneged on his promise after DNA test results proved he was the biological father of the victim's child. The Panel of Judges at the Denpasar District Court found the defendant guilty of committing the criminal offense of *lokika sanggraha* under Article 5(3)(b) of Emergency Law No. 1 of 1951 in conjunction with Article 359 of the Adhigama Code, and sentenced him to 1 month and 15 days' imprisonment. This case demonstrates the national legal system's recognition of customary offenses through the application of the principle of material legality, wherein although "*lokika sanggraha*" is not codified in the Criminal Code, the act remains punishable as it violates the sense of justice of the indigenous community and is regulated under living law. This ruling demonstrates that the integration of the customary justice system with the framework of the Draft Criminal Procedure Code (RKUHAP) allows restorative justice values to coexist with formal judicial processes without undermining legal protection for victims<sup>41,42</sup>.

Case No. 997/Pid.Sus/2019/PN.Dps provides empirical evidence of how the formal judicial system (Denpasar District Court) adopts customary law values (*lokika sanggraha*) through the principle of substantive legality, which aligns with discussions on restorative sanctions and the recognition of customary law.

## **2. Accommodation of Customary Judicial Values in the Draft Criminal Procedure Code**

### **a. Analysis of the Draft Criminal Procedure Code Provisions on Restorative Justice**

The Draft Criminal Procedure Code introduces the concept of "Restorative Justice Mechanisms" in Article 1, point 18, defining it as an approach to handling criminal cases that involves victims, perpetrators, families, and other relevant parties to restore the original state of affairs. This definition demonstrates significant alignment with the fundamental characteristics of the Balinese customary criminal justice system, which has been practiced for centuries. Yulianingsih analyzes that the conceptualization of restorative justice in the Draft Criminal Procedure Code reflects recognition of the traditional wisdom embedded in Indonesia's indigenous legal systems, particularly the Balinese customary justice system, which has consistently applied the principles of restorative justice<sup>43</sup>. The implications of the provisions of Chapter IV on Restorative Justice Mechanisms, Articles 74–83 of the RKUHAP, for the Balinese customary justice system are highly significant because they provide formal legitimacy to conflict resolution mechanisms that have become established practices within indigenous communities.

Kurdi & Mazjah explain that the formalization of the concept of restorative justice in the Draft Criminal Procedure Code (RKUHAP) opens opportunities for the integration of the customary justice system into the national criminal procedure framework without eliminating the essential characteristics that constitute the strength of the customary system. The implementation of these provisions allows customary court decisions based on the principles of

<sup>40</sup> Widiadnyani, "Pengaturan Pewarisan Awig-Awig Desa Adat Di Bali Dalam Perspektif Kesetaraan Dan Keadilan Gender."

<sup>41</sup> Dhestiani Amara Putri, Mutiara Aghata, and Riska Andi Ftriono, "Lokika Sanggraha Berdasarkan Putusan Nomor 997/Pid.Sus/2019/PN Dps Menurut Teori Kriminologi," *Gema Keadilan* 8, no. 3 (2021): 175–96, <https://doi.org/10.14710/gk.2021.12499>.

<sup>42</sup> Siva Nawang Wulan and Ani Triwati, "Pemidanaan Terhadap Pelaku Tindak Pidana Lokika Sanggraha Dalam Putusan No.997/Pid.Sus/2019/Pn.Dps," *Semarang Law Review (SLR)* 4, no. 2 (2023): 50–63, <https://doi.org/10.26623/slr.v4i2.7623>.

<sup>43</sup> Yulianingsih, "Perlindungan Represif Dalam Awig-Awig Di Bali Pada Penyelesaian Sengketa."

restorative justice to receive recognition and enforcement within the formal judicial system<sup>44</sup>. However, there is a significant gap between the conceptualization of restorative justice in the RKUHAP and the practical implementation required to optimally accommodate the Balinese customary justice system. Dewi et al. identify that the definition of restorative justice in the RKUHAP remains general and does not provide specific guidance on how customary justice mechanisms can be integrated into the formal procedural framework<sup>45</sup>. This gap creates uncertainty regarding the standards and procedures that the traditional justice system must meet to gain recognition within the formal system.

**b. Alternative Dispute Resolution Mechanisms in the Draft Criminal Procedure Code**

Article 7(1)(k) of the Draft Criminal Procedure Code grants investigators the authority to resolve cases outside of court, which opens up significant opportunities for the formalization of customary court rulings as a form of alternative dispute resolution within the national criminal justice system. Marvelia Silalahi et al. analyze that this provision represents an important breakthrough in accommodating the diversity of dispute resolution systems existing within Indonesian society, particularly the customary justice system, which has proven effective in resolving conflicts at the community level<sup>46</sup>. The opportunity to formalize customary court rulings through out-of-court settlement mechanisms creates a pathway for integrating customary systems into the formal legal framework without requiring a radical transformation of established structures and procedures. Widiadnyani explains that this formalization can be achieved through the development of protocols and standard operating procedures that allow the outcomes of customary settlements to be validated and enforced within the formal system<sup>47</sup>.

This approach allows for the preservation of the essential characteristics of the customary justice system while ensuring compatibility with the formal requirements of the national legal system. The diversion procedures stipulated in the RKUHAP demonstrate a high degree of relevance to conflict resolution mechanisms within the Balinese customary justice system. Yulianingsih analyzes that the principle of diversion, which emphasizes conflict resolution through alternative means outside formal judicial processes, aligns with the fundamental philosophy of the customary justice system, which prioritizes reconciliation and restoration over punishment<sup>48</sup>. Implementing diversion procedures by integrating customary justice mechanisms can create a more effective and efficient system for resolving criminal conflicts, particularly for cases involving members of indigenous communities.

The development of the Draft Criminal Procedure Code presents an opportunity to articulate local values within restorative justice mechanisms, but simultaneously poses the challenge of a potential decline in the flexibility and autonomy of established customary systems. Therefore, in line with Friedman's framework, the ideal of harmonization is realized only when the structure and substance of the law can operate and evolve in harmony with the cultural values of the community's legal system. Consequently, dialogue, alignment, and the strengthening of coordination mechanisms between the formal judicial system and the customary judicial system are necessary. Thus, the harmonization model proposed in this study aims to bridge the dichotomy between the aspiration for procedural certainty—a hallmark of national law—and efforts to preserve and accommodate local wisdom that has effectively maintained harmony within the community's social order. Therefore, an understanding of Friedman's theory encourages a multidisciplinary approach (which proportionally considers formal legal, sociological, and anthropological aspects) so that the integration of traditional wisdom and

<sup>44</sup> Kurdi and Mazjah, "Kesesuaian Sistem Hukum Asli Dengan Reformasi Pidana: Studi Kasus Penerapan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP."

<sup>45</sup> Dewi, Landrawan, and Adnyani, "Kajian Hukum Pewarisan Harta Benda Terhadap Anak Perempuan Yang Sudah Kawin Dalam Masyarakat Hukum Adat Bali."

<sup>46</sup> Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali."

<sup>47</sup> Widiadnyani, "Pengaturan Pewarisan Awig-Awig Desa Adat Di Bali Dalam Perspektif Kesetaraan Dan Keadilan Gender."

<sup>48</sup> Yulianingsih, "Perlindungan Represif Dalam Awig-Awig Di Bali Pada Penyelesaian Sengketa."

modern legal standards can constructively and inclusively address the challenges of Indonesia's legal pluralism in the current era of transition and change <sup>49</sup>.

### c. Coordination Between the Formal Judicial System and the Customary Judicial System

The mechanism for submitting case files, as stipulated in Articles 8–10 of the Draft Criminal Procedure Code (RKUHAP), creates an opportunity to integrate the results of customary resolutions into the formal documentation of the criminal justice process. Kurdi & Mazjah explain that this provision allows investigators to include the minutes of customary resolutions as an integral part of the case file submitted to the public prosecutor <sup>50</sup>. This integration not only provides the public prosecutor with comprehensive information regarding the resolution efforts that have been undertaken but also allows for consideration of potential diversion or more appropriate alternative sentencing. The recognition of customary resolution outcomes in the case file establishes a mechanism to ensure that the wisdom and effectiveness of the customary justice system receive proper consideration within the formal judicial process. Dewi et al. analyze that the documentation of customary resolution outcomes in case files can serve as a mitigating factor in the sentencing process or as a basis for recommendations regarding diversion or alternative dispute resolution <sup>51</sup>. This approach allows judges and prosecutors to consider the specific cultural and social context when making decisions that are more appropriate and effective.

Standards for the validation of customary rulings are a crucial aspect that requires further development to ensure the quality and consistency of the integration of customary systems into the formal framework. Marvelia Silalahi et al. note that validation standards must take into account the unique characteristics of customary justice systems while ensuring compliance with fundamental principles of due process and human rights <sup>52</sup>. These standards must include requirements regarding process transparency, participation of all relevant parties, proportionality of sanctions, and appeal or review mechanisms to ensure justice and accountability. Mechanisms for effective coordination between the formal judiciary and the customary judiciary require a sophisticated approach that can accommodate the diversity of legal systems while maintaining the coherence and consistency of the national legal system as a whole. Yulianingsih explains that coordination mechanisms must be designed to facilitate productive communication and collaboration between the two systems while respecting the autonomy and integrity of each system <sup>53</sup>. This approach enables the creation of a truly integrated judicial system that can leverage the strengths of each system to achieve more comprehensive and sustainable justice.

## 3. A Model for Harmonizing the Balinese Customary Criminal Justice System with the National Criminal Procedure System

### a. Constitutional Framework for Harmonization

The Constitution of Social Justice (as a manifestation of the Social Constitution) contains two main dimensions: fundamental norms that guide social policy and ethical guidelines among citizens that shape social behavior. Within this framework, the state is required to be actively present to realize concrete social justice, not stopping at normative declarations but articulated in measurable programs and regulations. In line with Satjipto Rahardjo's ideas, the Indonesian rule of law is ideally progressive: proactively fulfilling citizens' basic rights without waiting for

<sup>49</sup> Priyo Hutomo Puslemasmi and Markus Marselinus Soge, "Prespektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 52–54.

<sup>50</sup> Kurdi and Mazjah, "Kesesuaian Sistem Hukum Asli Dengan Reformasi Pidana: Studi Kasus Penerapan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP."

<sup>51</sup> Dewi, Landrawan, and Adnyani, "Kajian Hukum Pewarisan Harta Benda Terhadap Anak Perempuan Yang Sudah Kawin Dalam Masyarakat Hukum Adat Bali."

<sup>52</sup> Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali."

<sup>53</sup> Yulianingsih, "Perlindungan Represif Dalam Awig-Awig Di Bali Pada Penyelesaian Sengketa."

demands, and promoting a humane and responsive enforcement of the law. The ultimate goal is to create a just and happy way of life for all elements of society<sup>54</sup>.

The implementation of Article 18B(2) of the 1945 Constitution in the context of harmonizing Bali's customary criminal justice system with the national criminal procedural law system requires a comprehensive and progressive interpretation capable of bridging the tension between recognition of customary law and the requirements for unifying the national legal system. Irawan analyzes that the position of indigenous communities in Indonesia has fundamentally been recognized through the constitution, yet the practical implementation of this recognition still faces various structural and procedural challenges<sup>55</sup>. This constitutional provision provides a clear mandate to the state not only to recognize the existence of indigenous legal communities but also to respect their traditional rights, including the customary judicial system that has become an integral part of the community's identity and way of life. Constitutional recognition of indigenous communities and their traditional rights creates a positive obligation for the state to develop a legal framework that enables the operationalization of the customary justice system within the national legal system. Ardiansyah et al. explain that the constitutional rights of indigenous communities are still frequently violated because they are protected by a hierarchy of norms that fall below the constitutional level<sup>56</sup>. The implementation of Article 18B(2) of the 1945 Constitution requires the development of implementing regulations capable of translating constitutional principles into concrete operational mechanisms that can be applied within the context of the Balinese customary criminal justice system.

In Indonesia, *living law* and legal pluralism have gained constitutional legitimacy through Article 18B(2) of the 1945 Constitution, which recognizes and respects indigenous customary law communities and their traditional rights. The practice of living law in Indonesia is implemented in various forms, such as the customary justice system in Bali with its *awig-awig* and customary sanctions, dispute resolution systems based on local wisdom in various regions, and the integration of religious values into community legal practices. This recognition aligns with the views of Mochtar Kusumaatmadja, who stated that the applicable national law is a reflection of the values alive in society, making the harmonization of formal law and living law an urgent necessity<sup>57</sup>.

The requirement "*as long as it remains in force and is consistent with societal development and the principles of the Unitary State of the Republic of Indonesia*" in Article 18B(2) of the 1945 Constitution requires a balanced interpretation capable of accommodating the dynamic nature of customary law systems while maintaining consistency with the foundational principles of the rule of law. Romodon et al. analyze that this requirement must not be interpreted restrictively in a way that erodes the essential character of customary law, but must be understood as a framework to ensure compatibility and complementarity between the customary law system and the national legal system as a whole<sup>58</sup>.

Synchronizing the implementation of Article 18B(2) with Article 28D(1) of the 1945 Constitution regarding the right to fair legal certainty creates complex challenges in harmonizing the design of the judicial system. Aptina et al. explain that the principle of implementing legal certainty within the context of the customary judicial system requires a delicate balance between maintaining the flexibility and responsive nature of the customary system while ensuring the

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<sup>54</sup> Muhamad Sofian and Fuad Fuad, "Peran Mahkamah Konstitusi Dalam Menegakkan Prinsip Negara Hukum Untuk Mewujudkan Keadilan Sosial Berdasarkan Uud 1945.," *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 3, no. 2 (2024): 12-23, <https://doi.org/10.37631/jrkhm.v3i2.43>.

<sup>55</sup> Trio Rizki Irawan, "Analisis Penyelesaian Permasalahan Dalam Peradilan Adat Di Bali Perspektif Siyasa Qadhaiyyah" 2, no. 11 (2024): 1432-42.

<sup>56</sup> Deri Ardiansyah, Rayhan Dwi Kurnia, and Rika Rahayu, "Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum," *Wicarana* 3, no. 1 (2024): 11-22, <https://doi.org/10.57123/wicarana.v3i1.64>.

<sup>57</sup> Marzellina Hardiyanti and Sugiyanto Sugiyanto, "Relevansi Living Law Theorie Dalam RUU Masyarakat Adat Pada Sistem Negara Hukum Prismatic," *Progressive Law and Society* 1, no. 1 (2023): 42-53, <https://doi.org/10.14710/pls.20870>.

<sup>58</sup> S Romodon, R A Vareza, and ..., "Implementasi Hukum Adat Dalam Sistem Peradilan Indonesia," *Jurnal Review ...* 7, no. 3 (2024): 9632-40.

predictability and consistency required in modern legal systems<sup>59</sup>. This synchronization necessitates the development of standards and procedures that can guarantee legal certainty without undermining the adaptability that constitutes the primary strength of the customary judicial system. The principle of legal certainty in the context of harmonization should not be interpreted mechanistically to require procedural uniformity, but must be understood as a guarantee that every individual can predict the consequences of their actions and has equal access to mechanisms of justice. Irawan analyzes that the concept of legal certainty in the Balinese customary justice system has been implemented through *awig-awig*, which provide clear guidance on applicable norms and the consequences of violating those norms<sup>60</sup>. The integration of legal concepts from the customary system with the requirements of the formal national legal system can create a more comprehensive and responsive framework.

The guarantee of independence under Article 24(1) of the 1945 Constitution, in the context of harmonizing customary criminal justice, requires a reconceptualization of the meaning of independence within a pluralistic and diverse judicial system. Ardiansyah et al. explain that independence within the customary judicial system has a distinct character compared to independence in the formal judicial system, as the legitimacy of customary systems stems from community consensus and cultural authority rather than state appointment<sup>61</sup>. Guarantees of independence for customary courts require protection against external interference while maintaining accountability to the communities they serve. Guarantees for the implementation of independence within a harmonization framework require institutional mechanisms that protect the autonomy of the customary judicial system in making decisions based on customary values and norms while ensuring compliance with human rights principles and the rule of law. Romodon et al. analyze that independent customary justice can be strengthened through formal recognition of the authority and jurisdictional systems of customary law in handling certain categories of criminal cases, accompanied by appropriate oversight mechanisms to ensure the quality and fairness of the process and outcomes<sup>62</sup>.

#### **b. Operational Integration Model**

The institutional coordination mechanism between Bali's customary criminal justice system and the formal court system requires a sophisticated design that can facilitate effective communication and collaboration without creating a hierarchy that could undermine the system's customary authority and legitimacy. Aptina et al. argue that coordination mechanisms must be built on the principles of mutual respect and complementarity, where each system has distinct areas of competence yet supports one another in achieving the shared goals of justice and social harmony<sup>63</sup>. The development of coordination mechanisms requires the establishment of a joint institution or liaison mechanism capable of facilitating the interface between the two systems in handling cases with implications for both systems. Irawan explains that coordination mechanisms can be developed through the formation of a coordination committee comprising representatives from both systems, with a mandate to develop protocols and procedures for case referrals, information exchange, and joint decision-making under specific circumstances<sup>64</sup>. This committee can serve as a bridge facilitating dialogue and understanding between the two systems.

In line with this conceptual framework, the implementation of coordination can be strengthened through an operational design that emphasizes the formation of a joint committee as a connecting instrument between customary courts and the formal system. Inter-institutional coordination can be realized through the formation of a joint committee between customary and

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<sup>59</sup> I Putu Angga Aptina, Anak Agung Istri Agung, and Desak Gde Dwi Arini, "Pembagian Hak Atas Tanah Waris Dalam Hukum Adat Bali," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 84-89, <https://doi.org/10.22225/juinhum.1.2.2440.84-89>.

<sup>60</sup> Irawan, "Analisis Penyelesaian Permasalahan Dalam Peradilan Adat Di Bali Perspektif Siyash Qadhaiyyah."

<sup>61</sup> Ardiansyah, Dwi Kurnia, and Rahayu, "Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum."

<sup>62</sup> Romodon, Vareza, and ..., "Implementasi Hukum Adat Dalam Sistem Peradilan Indonesia."

<sup>63</sup> Aptina, Agung, and Arini, "Pembagian Hak Atas Tanah Waris Dalam Hukum Adat Bali."

<sup>64</sup> Irawan, "Analisis Penyelesaian Permasalahan Dalam Peradilan Adat Di Bali Perspektif Siyash Qadhaiyyah."

formal courts, with the authority to draft referral protocols, information exchange formats, and mechanisms for validating outcomes. This approach aligns with policy analysis frameworks that integrate norms, institutional structures, and operational standards, ensuring its application extends beyond theoretical principles. In criminal law enforcement, integrating restorative approaches from the initial investigation stage through the inquiry allows for systematically documented community decisions to be recognized within the legal process. Thus, the coordination established is not merely administrative but also substantive, particularly in handling repeat offenses or cases involving recidivists<sup>65</sup>.

Coordination protocols must clearly stipulate the circumstances under which a case may occur or must be referred from one system to another, as well as procedures to ensure that such referrals are made while respecting the rights of all parties involved. Ardiansyah et al. identified that the absence of clear coordination protocols can lead to confusion and potential violations of the *ne bis in idem* principle, where a case may be tried by both systems sequentially without proper coordination<sup>66</sup>. Clear development protocols can prevent double jeopardy while providing flexibility to choose the most appropriate forum based on the nature of the issue and the characteristics of the parties involved. Procedural standards acceptable to both systems are a crucial aspect in ensuring effective integration without sacrificing the essential characteristics of each system. Romodon et al. analyze that the development of common standards must be based on principles acceptable to both systems, such as transparency, fairness, participation, and accountability, while acknowledging that the implementation of these principles may differ according to the cultural and institutional contexts of each system<sup>67</sup>.

General standards must, however, include minimum requirements regarding legal processes, the protection of the rights of the parties involved, process transparency, and the accountability of decision-makers, while allowing for flexibility in implementation that enables each system to retain its distinctive characteristics. Aptina et al. explain that these standards can be developed through a collaborative process involving practitioners and experts from both systems, with the aim of creating a practical framework that can be applied in diverse contexts<sup>68</sup>. Quality assurance mechanisms for development that can ensure the consistency and reliability of outcomes from both systems without imposing uniformity that could reduce the effectiveness of the customary system. Irawan analyzes that quality control within traditional customary justice systems has existed through community oversight and cultural sanctions; however, in the context of integration with the formal system, additional mechanisms may be necessary to ensure compatibility with the standards of the formal national legal system<sup>69</sup>. Quality control and oversight systems should be designed to enhance rather than replace existing accountability mechanisms within the customary system, with a focus on ensuring that outcomes meet standards of justice and effectiveness acceptable to both systems. Ardiansyah et al. explain that oversight mechanisms may include periodic review processes, feedback systems from the community and stakeholders, and ongoing training programs for decision-makers in both systems to ensure continuous improvement in the quality and consistency of outcomes<sup>70</sup>.

To clarify the stages of system integration, the following flowchart illustrates the harmonization of Bali's customary justice mechanisms and the national criminal justice system: "Flowchart of Bali's Customary Dispute Resolution Mechanism"

<sup>65</sup> Dewi Sulistianingsih, Ahmad Habib Al Fikry, and Andry Setiawan, "Intellectual Property Based Financing: Juridical Review of Government Regulation Number 24 of 2022 And Relevance of Establishing Intellectual Property Rights Appraisal Institution," *Kosmik Hukum* 23, no. 3 (2023): 302, <https://doi.org/10.30595/kosmikhukum.v23i3.17108>.

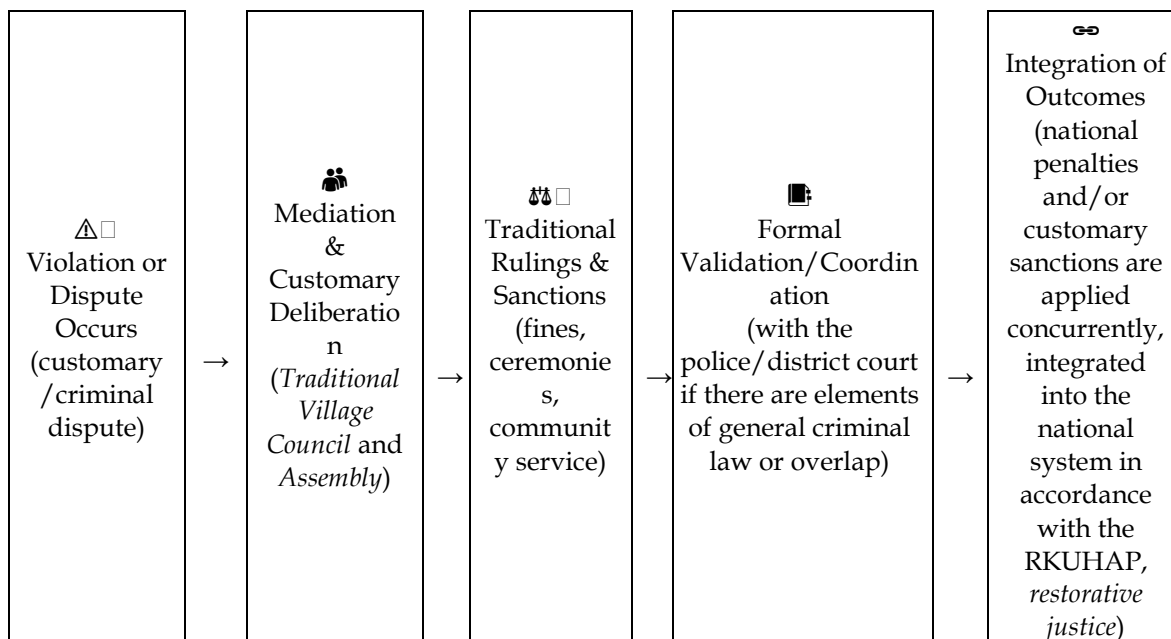
<sup>66</sup> Ardiansyah, Dwi Kurnia, and Rahayu, "Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum."

<sup>67</sup> Romodon, Vareza, and ..., "Implementasi Hukum Adat Dalam Sistem Peradilan Indonesia."

<sup>68</sup> Aptina, Agung, and Arini, "Pembagian Hak Atas Tanah Waris Dalam Hukum Adat Bali."

<sup>69</sup> Irawan, "Analisis Penyelesaian Permasalahan Dalam Peradilan Adat Di Bali Perspektif Siyasah Qadhaiyyah."

<sup>70</sup> Ardiansyah, Dwi Kurnia, and Rahayu, "Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum."



The harmonization of legal systems within Bali’s customary criminal justice faces a fundamental challenge stemming from epistemological differences between customary law – rooted in the spiritual and material realms – and secular positive law, thereby creating tension in the integration of the two systems. Social transformation, which has produced a heterogeneity of values, weakens the legitimacy of customary law, while the implementation gap between the principles of restorative justice and formal legal practices exacerbates legal uncertainty. Digitalization in the modern era adds to these challenges, forcing the customary system to adapt so that documentation and accountability can meet the state’s legal transparency standards. This complexity implies that harmonization is not merely a technical matter but requires a multi-layered approach that simultaneously connects the reconstruction of legal knowledge, structures, and culture. Harmonizing the law between the Balinese customary criminal justice system and the national system demands normative recognition coupled with gradual integration through simplified conversion and legal channels for the outcomes of customary resolutions, without eroding the local values that form the basis of the community’s legitimacy. This effort must be supported by institutional coordination through a joint committee to formulate protocols for case referrals, standards for validating customary rulings, information exchange, and oversight mechanisms to ensure procedural coherence is consistently achieved. Furthermore, comprehensive yet adaptive operational technical guidelines – covering case classification, standards of proof and proportionality of sanctions, procedures for documentation and digitization of files, as well as integrated enforcement and monitoring–evaluation schemes – are intended to unify legal certainty, cultural sensitivity, and operational efficiency within a single national procedural framework compatible with customary restorative justice <sup>71</sup>.

**c. Normative Framework for Implementation**

The concept of “living law” – law that exists within society – was introduced by Eugen Ehrlich through his masterpiece *Fundamental Principles of the Sociology of Law* in 1913 as a forceful rebuttal to the dominance of legal positivism, which positions the state as the sole source of law. Ehrlich argued that the center of gravity of legal development does not lie in legislation, jurisprudence, or legal doctrine, but in society itself; a paradigm that positions social dynamics as the driving force behind the evolution of law. Ehrlich’s definition of living law – “*das lebende Recht regelt das Leben selbst, auch wenn es nicht in Rechtssätze gefasst ist*” (living law governs life itself, even if it is not codified in legal propositions) – emphasizes that the effectiveness of law

<sup>71</sup> Middyne Simbolon; Meha and Felix Sitorus; Yosef, “Dualisme Hukum Dan Eksistensi GIRIK: Harmonisasi Hukum Adat Dan Hukum Positif DI INDONESIA LEGAL,” *Jurnal Hukum Lex Generalis* 6, no. 3 (2025): 234–50.

does not depend on formal codification, but on societal practice and compliance driven by moral consciousness rather than coercion by authority<sup>72</sup>.

Alignment with Article 2 of the 2023 Criminal Code, which acknowledges the validity of living law within society, creates a solid foundation for the integration of customary criminal justice systems into the national criminal law framework. Romodon et al. analyze that this recognition constitutes a significant breakthrough granting formal legitimacy to the customary legal system that has existed for centuries; however, its practical application is increasingly recognized as requiring the development of detailed regulations to guide the implementation of Article 2 within the specific context of Balinese customary criminal justice<sup>73</sup>.

Respecting the living law within society and providing legal certainty regarding the application of customary law itself, since currently, the substantive law in use is Law No. 1 of 2023 of the Criminal Code, which has recognized customary law; however, it remains incomplete because Article 2(2) contains the phrase stating that "*it applies in areas where such law is in force and to the extent not regulated by this Act.*" Therefore, the application of customary law, particularly in Bali, cannot be fully enforced if it conflicts with applicable national legal provisions. Although *living law* has been recognized in substance, its formal aspects have not yet been clearly regulated. This situation creates ambiguity and has the potential to create a legal vacuum<sup>74</sup>.

Integration with Article 2 of the 2023 Criminal Code requires clear criteria regarding the circumstances under which customary law may serve as the basis for criminal punishment, as well as procedures for determining the compatibility of specific provisions of customary law with the fundamental principles of the national legal system. Ardiansyah et al. explain that the absence of implementing regulations serving as a bridge between the new Criminal Code and Regional Regulations governing customary criminal law could result in confusion and inconsistency in its application, and potentially violate the *ne bis in idem* principle when cases are adjudicated by both systems sequentially<sup>75</sup>.

The emergence of the principle of substantive legality has sparked debate among criminal law experts and the public. Some support it, while others oppose it. Those in favor generally base their arguments on several points: first, the enactment of various national legislative policies post-independence that reflect this need; second, sociological studies indicating that the Indonesian public's legal perspective tends to be less formalistic and more comprehensive; third, various research findings related to customary law that strengthen the legitimacy of this principle; fourth, the existence of consensus in scientific forums and national seminars; and fifth, support from comparative studies and documents from international meetings<sup>76</sup>.

Furthermore, the emergence of objections by several experts regarding the legitimacy of living law—recognized by Article 2 of the National Criminal Code—has prompted Barda Nawawi Arief to express his views on the matter. One of these objections relates to Article 1 of the Criminal Code concerning the principle of legality, which is fundamental to the application of norms or regulations implemented in Indonesia; furthermore, the application of Article 1 of the Criminal Code fundamentally demands caution in its implementation. Without wisdom, this article could backfire and become a boomerang. It is both ironic and saddening that, in the name of Article 1 of the Criminal Code, legal values that have grown and thrived within society are marginalized or even completely rejected. This situation is all the more tragic because customary

<sup>72</sup> Rasyid Rizani, "Sosial Hukum Dalam Pandangan Eugen Ehrlich Sebuah Teori 'Living Law,'" Eugen Ehrlich, Living Law, 2020.

<sup>73</sup> Romodon, Vareza, and ..., "Implementasi Hukum Adat Dalam Sistem Peradilan Indonesia."

<sup>74</sup> Dhian Fajar Suryawa, "Rethinking Indonesia's Welfare State: A Legal Comparative Study of the Constitutional Court's Decision 64 / PUU-XVIII / 2020 with South Korea Practice," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 5, no. 1 (2025): 116–42, <https://doi.org/http://dx.doi.org/10.51825/sjp.v5i1.35157>.

<sup>75</sup> Ardiansyah, Dwi Kurnia, and Rahayu, "Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum."

<sup>76</sup> Isti Puspitasari and Irwan Triadi, "Tinjauan Yuridis Pembaharuan RUU KUHP Dalam Tindak Pidana Lingkungan Hidup Dan Sumber Daya Alam Dikaitkan Dengan Undang-Undang Lintas Sektoral," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (2024): 64–91, <https://doi.org/10.62383/amandemen.v1i3.262>.

law—as a manifestation of the nation’s wisdom—is being eliminated by colonial-era legal instruments that the nation itself now uses to abolish it <sup>77</sup>.

Technical and operational guidelines for harmonization are necessary to ensure the smooth implementation of the integration of the customary criminal justice system with the formal system. Aptina et al. argue that technical guidelines must be comprehensive enough to provide clear direction for practitioners within both systems, yet flexible enough to accommodate the diversity of practices and contexts found in various indigenous communities in Bali <sup>78</sup>. These guidelines must cover aspects such as case classification, referral procedures, standards of evidence, and law enforcement mechanisms. Operational guidelines must be developed through a participatory process involving stakeholders from both systems, including traditional leaders, legal practitioners, community representatives, and government officials. Irawan explains that a participatory approach to guideline development can ensure that the resulting framework is practical, acceptable, and effective across diverse contexts <sup>79</sup>. The guidelines should also include provisions for routine review and updates based on experience and feedback from implementation.

Technical guidelines must address practical issues such as the language and terminology to be used, documentation requirements, training needs for practitioners, and resource allocation to support implementation. Romodon et al. analyzed that attention to practical details is crucial to ensure successful implementation and prevent confusion or frustration that could undermine the effectiveness of integration efforts <sup>80</sup>. System integration success indicators are a key component for monitoring and evaluating the effectiveness of harmonization efforts and identifying areas for improvement. Ardiansyah et al. note that indicators must cover various dimensions of success, including legal certainty, public satisfaction, case resolution effectiveness, and the preservation of cultural values <sup>81</sup>. Developing a comprehensive system of indicators requires careful consideration of what constitutes success in the context of complex and multifaceted integration.

Quantitative indicators may include metrics such as the number of cases successfully resolved through customary systems, the time required for case resolution, the rate of compliance with outcomes, and a reduction in the caseload in formal courts. Qualitative indicators may focus on aspects such as public perceptions of the administration of justice, satisfaction with outcomes, levels of trust in the system, and the preservation of cultural practices and values. Aptina et al. explain that a combination of quantitative and qualitative indicators can provide a comprehensive picture of the effectiveness of integration efforts <sup>82</sup>. Routine monitoring and evaluation based on established indicators are crucial to ensuring the harmonization of the adaptation framework and continuous improvement in line with changing needs and circumstances. Irawan analyzes that the monitoring system must include mechanisms to collect feedback from various stakeholders, analyze trends and patterns in case outcomes, and identify emerging challenges or opportunities for improvement <sup>83</sup>. Periodic evaluations can inform policy adjustments and refinements in implementation strategies to ensure the long-term sustainability and effectiveness of integration efforts.

#### IV. Conclusion

This study confirms that the Balinese customary criminal justice system is compatible with the restorative justice paradigm and possesses high social legitimacy in resolving conflicts at the community level, as decisions are born from deliberation, are accepted by the parties

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<sup>77</sup> Sukirno, “Revitalisasi Dan Aktualisasi Hukum Adat Sebagai Sumber Hukum Pidana Positif,” *Diponegoro Private Law Review* 2 Nomor 1, no. September (2018): 141–53.

<sup>78</sup> Aptina, Agung, and Arini, “Pembagian Hak Atas Tanah Waris Dalam Hukum Adat Bali.”

<sup>79</sup> Irawan, “Analisis Penyelesaian Permasalahan Dalam Peradilan Adat Di Bali Perspektif Siyasah Qadhaiyyah.”

<sup>80</sup> Romodon, Vareza, and ..., “Implementasi Hukum Adat Dalam Sistem Peradilan Indonesia.”

<sup>81</sup> Ardiansyah, Dwi Kurnia, and Rahayu, “Formulasi RPP Pelaksanaan Pidana Adat Sebagai Upaya Harmonisasi Penerapan Hukum Adat Guna Mewujudkan Kepastian Hukum.”

<sup>82</sup> Aptina, Agung, and Arini, “Pembagian Hak Atas Tanah Waris Dalam Hukum Adat Bali.”

<sup>83</sup> Irawan, “Analisis Penyelesaian Permasalahan Dalam Peradilan Adat Di Bali Perspektif Siyasah Qadhaiyyah.”

involved, and restore social relations without the burden of lingering stigma. Nevertheless, integration into the RKUHAP framework still requires operational strengthening so that recognition of customary mechanisms does not remain merely symbolic but is implemented in an orderly, accountable, and evaluable manner. The complexity of harmonization encompasses epistemological (material-spiritual), structural-institutional, and procedural dimensions that must be aligned with the principles of due process, while remaining sensitive to the socio-cultural context that serves as the source of legitimacy for the customary system. Overall, the research findings indicate realistic opportunities for harmonization through procedural arrangements that bridge formal due process and consensus-based communal practices, while preserving the identity and essential values of each system.

First, the characteristics of the Balinese customary criminal justice system include the institutional structure of the traditional village, procedures (*nyomia, nangkil, nepakin*), holistic evidence, and sanctions (*finis, caru, prayascitta*) oriented toward restoration, making it relevant to modern criminal procedural law principles, particularly regarding participation, proportionality, and the restoration of social relations. Second, the Draft Criminal Procedure Code (RKUHAP) has accommodated restorative values and spaces for out-of-court case resolution as well as diversion, but it still leaves gaps in standardization and mechanisms for validating the outcomes of customary resolutions, resulting in the customary judiciary tending to be subordinate and lacking adequate institutional safeguards. Third, a suitable harmonization model is a formal-customary coordination scheme based on documenting the results of customary resolutions in case files, limited recognition of authority and minimum procedural standards consistent with due process, and the strengthening of restorative common ground without eroding the identity and essential values of the Balinese customary system.

Thus, these three conclusions directly fulfill the research objectives: identifying the fundamental characteristics of the Balinese customary criminal justice system, evaluating the level and quality of accommodation within the RKUHAP, and formulating an effective, implementable harmonization model that preserves local legal identity. These findings provide both a conceptual and operational foundation for strengthening the role of customary courts within a national criminal justice system that is more inclusive, responsive, and substantively just.

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