

Living Law-Based Legal Through Harmonizing Customary Justice and the Indonesian Criminal Code: Evidence Education From Kasepekang Sanctions In Bali

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Abstract

The recognition of living law under Article 2 of the Indonesian Criminal Code marks a significant shift toward legal pluralism in Indonesia's criminal justice system. This study aims to analyze the implications of recognizing living law for the development of legal education in Indonesia. Using a normative legal research approach with a literature-based design, the study examines primary, secondary, and tertiary legal materials collected through systematic database searches and analyzed using thematic analysis. The findings indicate that, first, Article 2 establishes a conditional framework that accommodates customary law within the national criminal law system while maintaining consistency with the principle of legality. Second, analysis of the *Kasepekang* customary sanction in Bali demonstrates that tensions between state law and customary law do not arise from an inherent incompatibility between the two systems, but rather from the absence of implementation mechanisms that ensure proportionality, due process, and human rights protection in accordance with Pancasila and the 1945 Constitution. Third, effective implementation of the new Criminal Code requires law enforcement officials to adopt intercultural competence, contextual legal reasoning, and restorative justice approaches to strengthen legal legitimacy and protect indigenous communities. Based on these findings, this study proposes the Practice-Oriented Living Law-Based Legal Education Model (PHBLL), which integrates legal pluralism, interdisciplinary learning, cultural competence, restorative justice, indigenous legal studies, and experiential learning into legal education. The study concludes that the successful implementation of Article 2 depends not only on regulatory reform but also on transforming legal education to prepare future legal professionals capable of reconciling state law and living law within Indonesia's plural legal system.

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Introduction

Legal pluralism has become a central concern of contemporary legal reform in multicultural and postcolonial societies because state law rarely operates as the only normative order governing social conduct. Indigenous law, religious norms, community-based dispute resolution, and informal institutions frequently coexist with formal legislation and courts, producing overlapping claims to authority, legitimacy, and justice. Recent scholarship has therefore shifted the debate from the mere existence of plural normative orders to the more difficult question of how state and non-state legal systems can interact without reproducing colonial hierarchies, eroding legal certainty, or reducing Indigenous law to cultural evidence subordinate to state categories (McKerracher, 2023; Upton, 2022; von Benda-Beckmann, 2022). In Southeast Asia, such interaction is historically embedded in long trajectories of entanglement among customary, religious, colonial, and postcolonial state laws, meaning that contemporary pluralism cannot be understood as a recent institutional anomaly (von

Benda-Beckmann, 2022; van Engelenhoven, 2021; Manse, 2024). Indonesia is a particularly significant setting because *adat* continues to function as a normative reference in many communities while national law simultaneously seeks legal unity, constitutional supremacy, and equal protection. Empirical studies of customary rights in West Sumatra and customary governance elsewhere in Indonesia further demonstrate that state recognition can create opportunities for local legitimacy while simultaneously generating uncertainty when institutional authority, legal status, and enforcement mechanisms remain contested (Nurdin, 2022; Bakker, 2023; Trialfhianty et al., 2025). Thus, the contemporary challenge is not whether legal pluralism should be acknowledged, but how plural normative orders can be accommodated within a constitutional system without extinguishing their social legitimacy or weakening fundamental legal safeguards.

The theoretical foundation of the present study combines the classical concept of living law with contemporary legal-pluralist and socio-legal approaches. Ehrlich's notion of living law locates a substantial part of legal order in norms actually observed in social life rather than exclusively in formally enacted rules, while Griffiths, Merry, and Tamanaha conceptualize legal pluralism as the coexistence and interaction of multiple normative orders within a shared social field. Contemporary scholarship, however, complicates the assumption that formal recognition necessarily empowers customary law. Utama (2021) warns that state incorporation can freeze the dynamic character of *adat* by redefining it through state legal categories; Isra and Tegan (2021) propose legal syncretism as an alternative way of understanding the interaction of normative traditions in Indonesia; and McKerracher (2023) develops a relational account in which state and Indigenous legal orders require reciprocal rather than unilateral recognition. Historical research likewise demonstrates that *adat* has never constituted a static and internally homogeneous body of rules but has continuously been shaped through colonial classification, local contestation, social transformation, and postcolonial reappropriation (van Engelenhoven, 2021; Manse, 2024; von Benda-Beckmann, 2022). These perspectives refine earlier conceptions of legal pluralism by drawing attention to unequal relations of power among normative systems and to the institutional processes through which particular forms of knowledge are recognized as "law." Accordingly, living law in this study is not treated as an untouched pre-state normative system. Rather, it is understood as a socially grounded but institutionally negotiated legal order whose authority develops through community practice, historical power relations, and continuing interaction with state institutions.

This theoretical tension has acquired particular urgency through the enactment of Law No. 1 of 2023 on the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* [KUHP]), which provides a statutory framework for accommodating law that lives in society within the national criminal-law system. Enacted on 2 January 2023 with a three-year *vacatio legis*, the new Criminal Code represents a historically significant attempt to replace the colonial-era penal framework with a national criminal-law system grounded in Indonesian constitutional and social values. Nevertheless, the recognition of living law remains normatively contested. Butt (2023) questions celebratory claims that the new Criminal Code straightforwardly decolonizes and democratizes Indonesian criminal law, noting that substantial continuities and rights-related concerns remain. Utama (2021), from a legal-pluralist perspective, similarly argues that constructing *adat* as "living law" for the purpose of criminal conviction may paradoxically reproduce state dominance by allowing state institutions to determine which customary norms qualify as legally recognizable. Yoserwan (2024) further concludes that incorporating *adat* criminal law into the new Code may subordinate it to the

state criminal justice system and potentially marginalize customary justice institutions. Conversely, scholarship emphasizing the pluralistic orientation of Indonesian legal reform interprets the recognition of living law as an opportunity to reconnect criminal justice with socially embedded norms and substantive justice (Budiarta, 2020; Faisal et al., 2024; Hariri & Babussalam, 2024). These competing interpretations demonstrate that Article 2 cannot adequately be understood through a binary opposition between progressive recognition and legal uncertainty; rather, its legitimacy will depend substantially on how living law is identified, interpreted, limited, and institutionally coordinated with national criminal law.

The central doctrinal difficulty concerns the relationship between this recognition of living law and the principle of legality. Criminal legality traditionally protects individuals from arbitrary punishment by requiring prior, knowable, and sufficiently determinate norms, whereas living law derives a substantial part of its legitimacy from continued social recognition and practice rather than exclusively from formal legislative enactment. Consequently, Article 2 places two important values in potential tension: the predictability expected of criminal law and the sociological legitimacy associated with community-based normative orders. A strictly positivistic response risks excluding legal systems that continue to organize community life, whereas unqualified recognition of unwritten criminal norms risks generating unequal application, uncertainty, and inadequate procedural protection (Utama, 2021; Yoserwan, 2024; McKerracher, 2023). Comparative scholarship demonstrates that this dilemma extends beyond Indonesia. Studies of Indigenous and customary justice in Taiwan, Canada, and Ethiopia indicate that legal pluralism becomes particularly difficult when relationships among state jurisdiction, Indigenous authority, procedural safeguards, and community legitimacy remain institutionally unresolved (Upton, 2022; McKerracher, 2023; Yazew & Kassa, 2023). Indonesian studies similarly indicate that formal recognition of customary rights does not automatically eliminate normative conflict when authority and substantive protection remain fragmented (Nurdin, 2022; Bakker, 2023; Trialfhianty et al., 2025). The present study therefore approaches harmonization through a bounded conception of legal pluralism: living law may retain meaningful normative authority, but the criminal-law consequences of its application must remain compatible with constitutional rights, proportionality, procedural fairness, and the rule of law.

Such a bounded approach is also consistent with contemporary debates concerning restorative and community-based justice. Customary mechanisms frequently emphasize restoration of social relationships, collective responsibility, deliberation, reconciliation, and reintegration, thereby operating through a normative vocabulary that differs from the individualized and predominantly punitive orientation of conventional criminal justice. In Indonesia, Hamzani et al. (2025) demonstrate that deliberative and restorative practices have substantial roots in community-based traditions, while research conducted in other legally plural settings shows that customary institutions can provide socially legitimate mechanisms for preventing wrongdoing, restoring relationships, and resolving conflicts (Yazew & Kassa, 2023; Upton, 2022). Nevertheless, cultural legitimacy should not be equated with unlimited authority. Contemporary legal-pluralist scholarship cautions that customary institutions can themselves contain unequal relations of power, contested interpretations of tradition, or insufficient procedural protection, particularly when it is unclear who possesses the authority to define and enforce custom (McKerracher, 2023; Chimbwanda, 2024; Manse, 2024). Consequently, the analytically relevant question is not whether customary justice is inherently compatible or incompatible with human rights. A more productive inquiry concerns the

procedural, constitutional, and institutional conditions under which its restorative functions can operate while safeguarding individuals against disproportionate or arbitrary treatment.

The Balinese customary sanction of *Kasepekan* provides a particularly instructive context in which to examine this issue. Within Balinese customary governance, sanctions operate within the normative authority of *desa adat* and the obligations articulated through customary instruments such as *awig-awig* and *pararem*. The literature already incorporated into this manuscript identifies *Kasepekan* as a customary social sanction whose legitimacy and implementation generate questions concerning community cohesion, social control, individual rights, and the relationship between customary and state law (Wibawa et al., 2020; Budiarta, 2020; Hariri & Babussalam, 2024). Recent Indonesian scholarship beyond the specific *Kasepekan* context reinforces the same structural dilemma. Nurdin (2022) demonstrates that customary rights continue to interact with state law through complex relations of legal recognition and community authority; Bakker (2023) illustrates how formally recognized *adat* claims can nevertheless remain institutionally weak and generate prolonged conflict; and Trialfhianty et al. (2025) show empirically that customary rules can support effective local governance while integration with formal regulatory systems becomes difficult when the two rely on different principles for determining policy and imposing sanctions. Accordingly, *Kasepekan* should not be approached through a binary choice between preserving *adat* and enforcing national law. Instead, it provides a concrete analytical site for examining whether customary sanctions can retain social legitimacy while being subjected to proportionality, due process, constitutional rights, and transparent mechanisms for resolving jurisdictional conflict.

The implications of this transformation extend beyond criminal-law doctrine to the education and professional formation of those responsible for administering the legal system. If judges, prosecutors, police officers, advocates, and policymakers are educated principally through doctrinal models that portray enacted state law as the exclusive source of legitimate legal reasoning, they may be insufficiently prepared to address disputes in which multiple normative orders claim authority. Contemporary legal-education scholarship increasingly argues that decolonizing professional formation requires substantive engagement with Indigenous epistemologies, colonial histories, cultural capability, and alternative normative traditions rather than merely inserting isolated customary-law topics into otherwise unchanged curricula (Moore, 2020; Rigney, 2020; Harrison & Clarke, 2022). Burgess et al. (2022) similarly demonstrate that culturally responsive education requires changes in how professionals understand relationships with Indigenous communities, rather than simply increasing factual knowledge about them, while Owens et al. (2025) emphasize the importance of centring First Nations knowledges in the construction of law curricula. Chimbwanda (2024) further shows that engagement with customary law requires distinctive forms of legal knowledge and professional skill that conventional law-school training may inadequately cultivate. These arguments resonate with Indonesian scholarship that criticizes an excessively positivistic approach to legal education and advocates a more socially responsive understanding of law (Budiarta, 2020; Mohamad & Rideng, 2021; Hariri & Babussalam, 2024). Article 2 therefore creates not merely an interpretive problem for criminal law but a competency challenge for the institutions that educate those who will eventually implement it.

Pedagogically, this transformation requires more than theoretical exposure to the concepts of living law and legal pluralism. Students and practicing legal professionals require structured opportunities to interpret contested facts, communicate across normative traditions, evaluate

procedural fairness, and reason through conflicts among state law, customary authority, restorative objectives, and constitutional rights. Clinical and experiential approaches are especially relevant because they position law as a situated professional practice rather than an exclusively textual discipline. Pandey and Moti (2024), for example, demonstrate that community-oriented clinical legal education can expose law students to the distance between formal legal frameworks and lived experiences of rural governance. Rigney (2020) shows the pedagogical value of transforming the law school into a space where different epistemological traditions can encounter one another critically, while Chimbwanda (2024) emphasizes that professional engagement with customary law demands context-sensitive competencies capable of negotiating competing sources of authority. Decolonizing higher-education scholarship similarly emphasizes reflexivity, cultural capability, and participation by Indigenous knowledge holders as integral components of curriculum transformation rather than supplementary multicultural content (Harrison & Clarke, 2022; Burgess et al., 2022; Owens et al., 2025). For Indonesian legal education, these findings imply that preparing graduates for Article 2 requires learning experiences through which students can determine not only what positive law formally prescribes, but also how living norms are established, whose interpretations possess legitimacy, how competing normative claims should be evaluated, and where constitutional limits must be imposed.

Despite the expanding scholarship across these areas, the literature remains analytically fragmented. Research on Indonesia's new Criminal Code has concentrated predominantly on the incorporation of *adat* criminal law, the principle of legality, decolonization, constitutional compatibility, and the danger that state recognition may subordinate customary institutions (Butt, 2023; Utama, 2021; Yoserwan, 2024; Faisal et al., 2024). Studies of customary governance in Indonesia have examined recognition, community authority, natural-resource management, and the continuing entanglement of *adat* with formal state institutions (Nurdin, 2022; Bakker, 2023; Trialfhianty et al., 2025; von Benda-Beckmann, 2022). Meanwhile, contemporary legal-education scholarship has addressed decolonization, Indigenous epistemologies, cultural capability, customary-law skills, and experiential pedagogy largely as separate curricular questions (Moore, 2020; Rigney, 2020; Harrison & Clarke, 2022; Chimbwanda, 2024; Pandey & Moti, 2024; Owens et al., 2025). What remains insufficiently developed is an integrated analytical account linking three levels simultaneously: the doctrinal recognition of living law under Article 2, the concrete operation and constitutional limits of a customary sanction such as *Kasepekan*, and the professional competencies required to implement legal pluralism responsibly. The original manuscript correctly identifies the separation among Article 2, legality, *Kasepekan*, and legal education as its central research problem; the recent international and Indonesian scholarship strengthens rather than displaces this gap. To address this gap, the present study develops a practice-oriented living law-based legal education perspective in which legal pluralism is treated not only as a constitutional and doctrinal problem but also as a problem of professional formation. Its novelty lies in employing *Kasepekan* as an analytical bridge between abstract debates concerning Article 2 and the competencies required for culturally responsive, procedurally fair, and rights-conscious legal practice. Rather than treating legal education as a downstream implication of criminal-law reform, the study positions professional legal education as one of the institutional conditions through which the recognition of living law can either acquire substantive legitimacy or reproduce the tensions associated with state-centred legal pluralism.

Accordingly, this study pursues three interrelated objectives. First, it analyzes the position and limits of living law under Article 2 of Law No. 1 of 2023 and its relationship with the principle of legality. Second, it examines *Kasepekang* as a case through which tensions among customary authority, proportionality, due process, human rights, and national criminal law can be evaluated. Third, it formulates a Practice-Oriented Living Law-Based Legal Education Model (PHBLL) that integrates legal pluralism, customary and Indigenous legal studies, restorative justice, cultural competence, human-rights reasoning, and experiential learning. By connecting doctrinal reform, customary justice, and legal education within a single analytical framework, the study seeks to explain not only how Indonesia may recognize living law, but also what forms of legal knowledge and professional competence are necessary for such recognition to operate legitimately within a plural constitutional order.

Method

This paper is a legal study focusing on the coordination between Indonesia's customary law and national criminal law. Its core analysis explores, in the context of Bali's *Kasepekang* customary sanction, the coordination of customary law and national criminal law under the framework of Article 2 of Indonesia's Criminal Code (KUHP), as well as the impact of this issue on the development of living law-oriented legal education. This study adopts a doctrinal legal research approach paired with a literature-based research design. This method is selected because it aligns with the study's core orientation, which centers on the analysis of legal norms, principles, concepts, and doctrines. This study is grounded in the context of the ongoing criminal law reform currently advanced in Indonesia. It aims to sort out the connections between Article 2 of the Criminal Code, the principle of the rule of law, legal pluralism, and the continued existence of customary law. This study is a pure literature-based research, and no fieldwork data was collected. The materials used fall into three categories: Primary legal sources include the 1945 Constitution of Indonesia, the 2023 Draft Criminal Code (Bill No. 1 of 2023), and regulations related to customary law communities. Secondary academic sources include relevant authoritative domestic and international academic works and prior studies. Tertiary auxiliary sources include reference materials such as legal dictionaries. This study will center academic literature to build a systematic legal argument that conforms to academic norms.

This study conducts interdisciplinary legal research centered on the connection between the customary *Kasepekang* sanction in Bali, Indonesia, and the country's national criminal law. The full process of the normative literature research adopted for this study is outlined below: First, we carried out literature retrieval, with data sources covering four major international databases (Scopus, Web of Science, HeinOnline, Google Scholar), two leading local Indonesian databases (Garuda, Neliti), and the official Indonesian government legal regulation portal. The search keywords were set as: living law, Article 2 of the Criminal Code, customary law, *nullum crimen sine lege*, legal pluralism, legal education, among others. Next, we completed literature screening based on four criteria: relevance, authority, novelty, and suitability for the core research questions. All qualified literature was then categorized and archived into four groups: the status of the national legal system, the principle of legality in criminal law, the practice of *Kasepekang* in Bali, and legal pluralism-oriented legal education. Finally, we completed rigorous quality verification through critical analysis that compares expert opinions, statutory provisions, and prior academic research. To guarantee the validity of the study, we adopted a document triangulation method that draws on first-tier, second-tier, and third-tier legal materials. All procedures serve to clarify the relationship between the two

systems, and to develop solid academic arguments that align with the theoretical and practical development of Indonesia's legal field.

This study uses thematic analysis to conduct all data analysis work. The core goal of this method is to identify, categorize, and interpret core themes from all included literature, to systematically respond to the core research questions predefined for this study. Specific implementation proceeds according to the following workflow: First, we read through all literature to fully grasp the core content of each source text. Next, we carry out open coding for five categories of core research information: perceptions of living law related to Article 2 of the Criminal Code, the application of the principle of legality, the characteristics of the customary sanction Kasepe kang, coordination between customary law and national criminal law, and the concept of living law-oriented legal education. We then group scattered codes into broader analytical categories, before integrating and refining the study's core themes. After that, we conduct in-depth analysis of these core themes by combining legal norms, legal theories, and findings from previous studies, to sort out the dynamic coordination between customary law and national criminal law. Finally, by interpreting the inherent connections between the themes, we build a conceptual model of legal education based on living law. This model integrates multi-field perspectives, and the recommendations it produces not only advance the development of the legal discipline, but also provide direction for updating legal education curricula adapted to Indonesia's pluralistic legal system. The application of thematic analysis further allows this study to break through the limitations of pure descriptive literature research, generating an integrated research outcome that combines legal norms, customary law practices, and legal education development.

Results and Discussion

Living Law under Article 2 of the Indonesian Criminal Code: Legal Position, Constitutional Limits, and Harmonization with Customary Law

We begin with the classical sociological theory of legal origins put forward by Eugen Ehrlich in 1936. This theory divides law into adjudicative norms and living law, arguing that positive law enacted by the state makes up only a tiny portion of the overall normative order that underpins social governance. The core source of order has always been the practices, customs and daily social relations generated by society itself, and this framework provides the core foundation for the analysis that follows. We apply this theory to the local context of Indonesia: Article 18B Paragraph 2 of Indonesia's 1945 Constitution explicitly recognizes and respects customary law communities and their traditional rights, which transforms living law, originally a purely sociological concept, into a tangible real-world issue in the fields of constitutional and criminal law. Yet constitutional recognition alone cannot resolve the tensions between the two sets of norms. There are fundamental differences between the legitimacy logics of customary norms and state criminal norms: the former is rooted in community consensus, while the latter relies on state authority. This core contradiction is exactly the central starting point for the subsequent analysis of this article.

To sort out the academic lineage of the debate over the recognition of Indonesia's adat law, one can trace the origin back to the foundational research of three core legal scholars: in 1918, during the Dutch East Indies period, Van Vollenhoven mapped 19 adat law circles, laying the academic foundation for the recognition of legal pluralism; in 1939, Ter Haar strengthened this framework, defining adat law as a living, enforceable law enacted by authorized legal functionaries that can be implemented immediately, and drew a clear line between it and general folk customs; in 1958,

Soepomo carried forward this tradition, pointing out the communal-magical-religious attributes of adat law, which centers on the core orientation of maintaining cosmic balance, distinguishing it from the Western legal logic focused on individual rights and obligations. After sorting through these studies, this paper extracts the core consensus shared by the three scholars: adat law is an autonomous legal system with an independent basis of legitimacy, and is by no means subordinate to national law (Griffiths, 1986). It is further derived from this that when a modern state integrates adat law into its domestic criminal law system, this practice represents a dialectical interaction between two legal systems that hold equal epistemological status and differ only in their institutional coercive force, rather than a one-way process of absorbing a subordinate legal order.

This study first establishes its basic analytical framework using the dual classification of weak and strong legal pluralism proposed by John Griffiths in 1986. In this classification, weak legal pluralism holds that recognition of non-state law must be mediated through state authority, while strong legal pluralism argues that non-state legal systems can be fully autonomous and require no state validation. Based on this framework, the study determines that Article 2 of Indonesia's 2023 National Criminal Code (Law No. 1 of 2023) is essentially rooted in weak legal pluralism. Although the customary law incorporated in this code receives recognition, its legal validity is ultimately bounded by the overarching framework of the state's criminal law. The study then introduces the extended research published by Sally Engle Merry in 1988. Merry frames legal pluralism as a research field focused on power relations between different normative systems, and proposes that all norms constantly exist in a state of intersection, mutual borrowing, and negotiation of legitimacy. The aforementioned Indonesian legal provision precisely formalizes and institutionalizes this kind of legitimacy negotiation, requiring that all spontaneously formed social norms must conform to the Pancasila values and Indonesia's 1945 Constitution.

The formulation of Article 2 of the Criminal Code conceptually places the living law as an exception to the principle of legality formulated in Article 1 paragraph (1). This is where the most fundamental tension lies, since the principle of legality—*nullum delictum, nulla poena sine praevia lege poenali*—in Von Feuerbach's classical thought and which was later deepened through the Hart-Fuller debate on the relationship between law and morality, was intended precisely to limit the arbitrariness of power by requiring written certainty before an act can be punished. Hart emphasizes the importance of a conceptual separation between law *as it is* and law *as it ought to be* to maintain the certainty of the legal system, while Fuller instead emphasizes that a law that loses its internal morality—including the requirement of clarity and predictability—will lose its validity as a law. This Hart-Fuller tension is relevant to read Article 2 of the Criminal Code: if read positively, Hart, the existence of the living law as a basis for criminalization has the potential to threaten legal certainty because opening a crime is not written; However, if read through the lens of the internal morality of Fuller's law, living law can be seen as meeting the requirements of *publicity* and *congruence* when the customary norms have been widely known, consistently enforced, and understood by the community as a binding law.

Hans Kelsen with his *Grundnorm* theory provides a different point of view that actually strengthens the argument of prudence: the validity of a norm can only be traced hierarchically to a higher basic norm, so that customary law norms that are not written in the hierarchy of formal laws and regulations actually require a validation bridge so as not to stand outside the system. Article 2 of the Criminal Code can be understood as a bridge to validation—it functions as a channeling norm

that links the legitimacy of living law into the national Grundnorm hierarchy, with the condition that it conforms to the values of Pancasila and the 1945 Constitution as a constitutional filter. This argument is important as an analytical contribution to this research: Article 2 of the Criminal Code should not be read as an absolute recognition of customary law, but rather as *a conditional recognition mechanism* that requires three cumulative elements—the sociological existence of norms (still alive), axiological conformity (Pancasila values), and constitutional conformity (1945 Constitution)—before an customary norm can function as a basis for punishment.

Brian Z. Tamanaha provides an important correction to the romanticism of legal pluralism by reminding that not all social norms deserve to be called "law," and that the equalization of all normative orders as laws actually obscures the function of state law as a guarantor of predictability and protection of rights. On the contrary, Werner Menski, through the *legal pluralism triangle framework*, offers a more accommodating model, in which state law, religious/customary law, and social-moral values interact with each other in a dynamic legal space without having to eliminate each other. This combination of Tamanaha's criticism and Menski's accommodating offer is the basis of this new argument: the harmonization of customary law and national criminal law through Article 2 of the Criminal Code should not be understood as a full handover of criminal authority to indigenous communities (who are at risk of arbitrariness as Tamanaha fears), but also should not be reduced to an empty formality that subjects all living law to a purely positivistic legality test (which denies the spirit of pluralism Menski). The meeting point is *bounded legal pluralism*—legal pluralism that is limited by the corridors of human rights and constitutional supremacy, but still provides a space for normative autonomy for indigenous communities.

When interpreting the local attributes of Article 2 of the Indonesian Criminal Code, this paper first cites the core arguments of four leading Indonesian local legal authorities to advance its reasoning: Satjipto Rahardjo's concept of progressive law, which holds that law should serve people rather than force the general public to comply with rigid logic, supports interpreting the said Article as a tool for substantive justice rather than a mere formal procedure; Mahfud MD's legal-political proposition that responds to the realities of a pluralistic society, which requires state law to accommodate local wisdom while upholding the rule of law; Barda Nawawi Arief's observation that the living law in the new draft criminal code is a component of criminal policy that integrates social justice and the country's legal culture, and is by no means a loophole open to abuse; Sudarto's proposition that criminal policy must cover the three stages of legislation, application, and enforcement, to ensure the entire process aligns with the goal of humane punishment. Ultimately, this paper concludes that the said Article is never a mere product of political compromise, but a long-term epistemological outcome that requires criminal law to be rooted in local culture.

After completing a critical integration of all existing relevant discussions, this study advances its core research argument: the living law status of Article 2 of Indonesia's Criminal Code is not merely a technical exception norm to the principle of legality in criminal law. Instead, it functions as an epistemological node that can converge four long-separate traditions of legal thought. These four traditions are: legal positivism represented by H.L.A. Hart and Hans Kelsen; procedural naturalism proposed by Lon Fuller; legal pluralism developed by scholars including Eugen Ehrlich, John Griffiths, and Sally Merry; and restorative justice advocated by scholars such as John Braithwaite and Howard Zehr. If this legal provision is operationalized as a constrained condition mechanism, the four traditions can complement rather than exclude one another, making coordinated application

possible. However, this study also clarifies key potential challenges: without clear technical guidelines that align with Pancasila values and the standards of Indonesia's 1945 Constitution, the application of this provision will trigger three distinct problems: inconsistencies between customary legal jurisdictions, expanded room for subjective law enforcement, and unequal outcomes that generate gaps in judicial justice. Beyond strengthening the cognitive capacity of law enforcement personnel, core reform of legal education will be the central focus of the next phase of this study's argumentation.

Kasepekang Customary Sanctions: Legality, Proportionality, Due Process, and Human Rights Protection

Kasepekang is a customary social sanction applied within Balinese *desa adat* to individuals who are considered to have violated obligations established through *awig-awig* and *pararem*. Its normative foundation is embedded in the communal structure of Balinese customary society, in which individual membership is closely connected to collective religious, social, and territorial responsibilities. Within this framework, customary sanctions are not directed exclusively toward punishment in the retributive sense, but also toward restoring social equilibrium and reinforcing communal responsibility. This orientation is closely associated with the philosophy of *Tri Hita Karana*, which emphasizes harmony between humans and the divine (*parhyangan*), among members of society (*pawongan*), and between humans and their environment (*palemahan*). Accordingly, Kasepekang should initially be understood as a community-based mechanism of social regulation whose legitimacy derives from shared normative expectations and the authority of customary institutions rather than solely from state legislation. Previous studies of Balinese customary governance similarly demonstrate that *awig-awig* and related customary mechanisms continue to perform significant regulatory functions within *desa adat*, although their operation increasingly intersects with national legal standards (Wibawa et al., 2020; Budiarta, 2020; Hariri & Babussalam, 2024).

The principal legal issue, however, concerns the extent to which Kasepekang can operate consistently with the principle of legality under Indonesia's national criminal law. Under a strict positivistic interpretation of *nullum delictum, nulla poena sine praevia lege poenali*, punishment should be based on a norm that existed prior to the prohibited act and was sufficiently ascertainable by those subject to it. Kasepekang complicates this principle because the relevant obligations are not necessarily contained in national statutory law but arise from norms recognized within particular customary communities. Article 2 of Law No. 1 of 2023 on the Indonesian Criminal Code provides the normative space for resolving this tension by recognizing law that lives in society, subject to constitutional and normative limitations. Consequently, the existence of a customary norm may contribute to determining the unlawfulness of an act within a community, but such recognition cannot reasonably be interpreted as granting unlimited authority to impose any form or degree of customary sanction. The recognition of living law must therefore be distinguished from unrestricted recognition of customary punishment.

This distinction is especially important because Kasepekang can vary substantially in its practical consequences. In its less restrictive form, the sanction may involve limitations on participation in certain customary activities or communal facilities. In more severe applications, however, social exclusion may affect an individual's participation in religious ceremonies, access to customary burial arrangements, and relationships with other members of the community. Such

consequences transform the legal question from one concerning only recognition of customary authority into one involving constitutional rights, individual dignity, and proportionality. The mere fact that a sanction originates from a recognized living norm does not automatically render every manifestation of that sanction constitutionally acceptable. Article 2 should therefore be understood as legitimizing the normative relevance of living law while simultaneously requiring scrutiny of the consequences produced by its enforcement.

The principle of proportionality provides the first substantive safeguard for evaluating such consequences. A customary sanction must maintain a reasonable relationship between the seriousness of the violation, the legitimate social objective pursued, and the burden imposed on the sanctioned individual. This requirement is compatible with the idea of graduated sanctions, according to which disciplinary consequences should increase according to the seriousness, repetition, and circumstances of the violation rather than move immediately to the most restrictive form of punishment. From this perspective, the problem with Kasepekang does not necessarily lie in the existence of a community sanction itself, but in the possibility that an excessive form of exclusion may be imposed without demonstrating why a less restrictive response would be inadequate. Proportionality therefore requires customary authorities to differentiate between violations, assess the circumstances of the offender, and ensure that sanctions do not impose burdens that clearly exceed the social harm they seek to repair.

The proportionality requirement becomes even more significant when customary sanctions generate consequences for individuals who were not personally responsible for the original violation. Martha Minow's "dilemma of difference" is relevant in this respect because the recognition of collective identity and group autonomy can, under certain circumstances, create tensions with the rights of individuals situated within the group. Where the consequences of Kasepekang extend to spouses, children, or other family members who did not participate in the relevant violation, the sanction shifts from individual accountability toward collective deprivation. Such an extension is difficult to reconcile with the principles of personal responsibility and constitutional rights. Therefore, the customary objective of restoring communal harmony should not be pursued through measures that impose substantial social, religious, or psychological consequences on persons who bear no direct responsibility for the underlying conduct.

Due process constitutes the second major safeguard. Customary adjudication through *paruman* possesses an important participatory dimension because decisions are embedded in communal deliberation. Nevertheless, participatory decision-making does not in itself guarantee procedural fairness. A legitimate customary process should provide the affected person with clear information concerning the alleged violation, a meaningful opportunity to present an explanation or defence, the possibility of responding to relevant allegations, and a decision based on identifiable customary norms rather than arbitrary preference. These requirements can be connected to Fuller's conception of the inner morality of law, particularly the principles of clarity, publicity, consistency, and congruence between declared rules and their actual administration. If substantially similar cases are treated differently, if the relevant customary norm is unclear, or if the accused person is excluded from meaningful participation in the decision-making process, the social legitimacy of the sanction becomes substantially weakened.

The analysis therefore distinguishes between the legitimacy of customary norms and the legality of their implementation. A customary norm may possess strong sociological legitimacy

because it is recognized, understood, and observed by the community, yet a particular enforcement decision may still fail to satisfy procedural or constitutional standards. This distinction prevents the analysis from falling into a false binary in which Kasepekang must either be accepted in its entirety because it is customary or rejected entirely because it is not derived from national legislation. The more defensible position is one of conditional recognition. Customary autonomy may be preserved, but the exercise of sanctioning authority must remain subject to safeguards that prevent arbitrary, discriminatory, or disproportionate outcomes. This approach is consistent with the bounded legal pluralism developed in the preceding section: legal pluralism is preserved, but it operates within constitutional limits.

Comparative experience supports this conditional approach. In New Zealand, the recognition of *tikanga Māori* and the development of institutions such as the Rangatahi Courts demonstrate that Indigenous values can be incorporated into formal justice processes without replacing the authority of the national legal system. In Canada, the Gladue framework requires courts to consider the circumstances of Indigenous offenders and the broader historical and social context relevant to sentencing, while still operating within the national judicial structure. Indigenous sentencing and community participation mechanisms in Australia similarly incorporate customary and cultural perspectives without treating them as exempt from general legal safeguards. The Philippines provides another relevant example through statutory recognition of Indigenous customary law, while maintaining the requirement that customary practices remain consistent with constitutional standards and fundamental rights. Although these jurisdictions differ substantially from Indonesia in historical and institutional terms, they illustrate a common principle: the legal recognition of Indigenous or customary law tends to be most sustainable when normative autonomy is combined with procedural oversight and protection of fundamental rights.

Applied to Kasepekang, these comparative insights indicate that harmonization should not be understood as the absorption of customary law into national criminal law, nor as the unrestricted delegation of coercive authority to customary institutions. Rather, harmonization requires an institutional interface through which customary norms can retain their social and restorative functions while their enforcement consequences remain constitutionally accountable. Such an interface is particularly important under Article 2 because recognition of living law creates the possibility that customary norms may influence formal criminal-law reasoning. Without identifiable procedural standards, the same recognition that is intended to strengthen legal pluralism could generate legal uncertainty, inconsistent enforcement, and unequal protection among citizens.

Based on the foregoing analysis, this study proposes four cumulative conditions for evaluating the legal acceptability of Kasepekang within Indonesia's plural legal order. First, normative validity requires evidence that the relevant rule genuinely constitutes living law: it must remain recognized, sufficiently identifiable, and socially binding within the customary community. Second, procedural fairness requires transparent decision-making, prior notice of the alleged violation, an opportunity to be heard, and a reasoned determination by the competent customary institution. Third, proportionality requires the severity and consequences of the sanction to correspond to the seriousness of the violation, while avoiding collective consequences for individuals who did not participate in the wrongdoing. Fourth, constitutional compatibility requires the sanction and its implementation to remain consistent with Pancasila, the 1945 Constitution, human rights protection, and the fundamental rights of affected individuals. Failure to satisfy any of these conditions weakens

the justification for enforcing the sanction, even where the underlying customary norm retains sociological legitimacy.

Accordingly, the second objective of this study is answered by demonstrating that Kasepekan is not inherently incompatible with the principle of legality, human rights protection, or Indonesia's national criminal law; rather, its legal acceptability is conditional upon the normative basis, procedure, proportionality, and constitutional consequences of its implementation. Its community-based and restorative functions may remain legitimate where the relevant norm is genuinely living, the process is fair, the sanction is proportionate, and fundamental rights are protected. Conversely, Kasepekan becomes legally problematic where sanctions are imposed arbitrarily, where affected persons are denied meaningful opportunities for defence, where consequences extend disproportionately to uninvolved family members, or where fundamental constitutional rights are substantially restricted. The principal tension between customary and national law therefore does not arise solely from the existence of Kasepekan as a customary institution, but from the absence of sufficiently clear mechanisms governing how its authority should be exercised and reviewed. The findings consequently support a model of conditional integration in which customary autonomy is preserved while proportionality, due process, individual responsibility, and constitutional protection operate as non-negotiable safeguards. This conclusion provides the analytical bridge to the following section: if living law is to operate through such a complex framework, judges, prosecutors, police officers, lawyers, and future legal professionals require competencies that extend beyond conventional statutory interpretation toward intercultural reasoning, legal pluralism, restorative justice, and rights-sensitive decision-making.

Legal Professional Competence and the Practice-Oriented Living Law-Based Legal Education Model (PHBLL)

Based on the findings presented in the previous section, this study argues that the Kasepekan case demonstrates a fundamental challenge in the Indonesian criminal justice system: that the coexistence of state criminal law and customary law requires not only normative harmonization but also a transformation in the way law enforcement officials interpret, assess, and apply the law. The tension/dualism between the two legal systems reflects a paradigm incompatibility. The positivistic orientation that still dominates police, prosecutorial, and judicial practices tends to view customary law as an exception to be controlled, rather than as a legitimate legal system that contributes to social justice and conflict resolution. Thus, legal certainty/legal certainty, legal utility, and legal justice cannot be achieved solely through the interpretation of statutory regulations, but also depends on the ability of law enforcement officials to recognize the social legitimacy, cultural context, and restorative values inherent in the customary justice system, which aims to restore balance. Therefore, the implementation of the new Criminal Code needs to be accompanied by a systematic capacity-building program for police, prosecutors, judges, and other criminal justice actors through an integration of Paulo Freire's concept of critical consciousness and Martha Nussbaum's humanistic legal reasoning approach. This program is expected to equip law enforcement officers with cross-cultural competence, the ability to conduct contextual legal interpretations, and the ability to assess customary sanctions based on broader goals of justice, proportionality, and social harmony. Through this approach, living law is no longer positioned as a competing legal source with state law, but becomes an integral consideration in the criminal justice decision-making process, thereby

strengthening legal legitimacy, protecting the rights of indigenous peoples, and creating a more culturally responsive and inclusive criminal justice system.

To operationalize these implications, this study proposes the Living Law-Based Legal Education Model (PHBLL) as a comprehensive framework to strengthen the competency of prospective law enforcement officers and officers serving in the Indonesian criminal justice system. This model is designed not only as a curriculum for higher legal education, but also as a capacity-building framework that can be implemented in law schools, judicial education and training centers, police academies, prosecutorial training institutions, and continuing professional education programs for judges, prosecutors, police officers, lawyers, and other legal practitioners. The pedagogical foundation of this model integrates Paulo Freire's concept of critical consciousness, Martha Nussbaum's humanistic approach, David Kolb's experiential learning cycle, which emphasizes concrete experience, reflective observation, abstract conceptualization, and active experimentation, and Donald Schön's concept of reflective practitioner, which equips legal professionals with contextual decision-making skills in complex legal environments. To translate these principles into learning practice, the model integrates two complementary pedagogical approaches: clinical legal education, which allows participants to directly engage in resolving real-life cases through community support, and culturally responsive legal education, which views law as a social practice that continually interacts with local cultural values, rather than as a culturally neutral system.

Based on this theoretical and pedagogical foundation, the PHBLL Model is structured into four interrelated components: Input, Process, Output, and Outcome, which collectively form a continuous cycle of legal professional development. The Input component emphasizes the competencies every law enforcement officer must possess, including mastery of positive criminal law, an epistemological understanding of customary law as an autonomous legal system, the ability to reconcile normative conflicts through the principles of restorative justice and human rights, and the cross-cultural communication skills necessary for dispute resolution in societies living within legal pluralism. These competencies are supported by learning materials that integrate criminal law, constitutional law, legal anthropology, legal pluralism, indigenous peoples' law, and human rights into a comprehensive curriculum for both legal education and professional training.

The Process component implements these competencies through reflective and experiential learning strategies. Participants study various real-life cases concerning the interaction between state law and living law, including the Kasepekang sanctions, the focus of this research. This Socratic dialogue is used to assess legal issues from the perspectives of victims, perpetrators, indigenous communities, and state institutions. Experiential learning is reinforced through customary law moot court simulations, which complement conventional judicial simulations by placing participants in the roles of customary leaders, judges, prosecutors, police officers, and affected community members, allowing them to experience firsthand the legal, ethical, and human rights dilemmas that arise in the application of customary sanctions. This model also integrates community-based clinical legal education through internships in indigenous communities, traditional villages, legal aid institutions, and restorative justice programs. In these activities, participants collaborate with academics, customary leaders, and local stakeholders while practicing Donald Schön's concept of reflection-in-action in authentic legal situations.

The Output component measures the model's effectiveness through authentic assessments

that do not rely solely on doctrinal exams. Evaluation is conducted through a reflective portfolio documenting participants' reasoning processes in resolving conflicts between state law and living law. Performance assessments based on simulations and field practice measure the accuracy of the application of legal doctrine, cultural sensitivity, orientation toward restorative justice, and respect for human rights. Furthermore, this model utilizes a professional ethics portfolio assessed collaboratively by lecturers, traditional leaders, community partners, and fellow participants. This ensures that legal professionalism is measured not only by academic ability but also through recognition from the traditional community as a legitimate partner in assessing legal competence.

Ultimately, the Outcome component is aimed at generating sustainable transformation in Indonesia's criminal justice system through the creation of law enforcement officers capable of applying criminal law in a culturally responsive manner and possessing strong social legitimacy. The relationship between these four components is cyclical, not linear, as graduates and practitioners who have participated in the training will contribute to curriculum refinement, the development of judicial reasoning, prosecution guidelines, police practices, and legal policy reform. These experiences then become a source of new learning that continues to enrich subsequent education and training programs. Thus, the Living Law-Based Legal Education Model (PHBLL) not only functions as an academic curriculum, but also as an adaptive ecosystem that integrates living law into the legal education and law enforcement system in Indonesia, thereby strengthening legal legitimacy, protecting the rights of indigenous peoples, and developing a criminal justice system that is restorative, inclusive, and responsive to cultural diversity.

This study focuses on the coordination between customary law and Indonesia's national criminal law, and advances the core proposition of shifting the research focus in this field from the traditional normative dimension to the cognitive dimension, which serves as the fundamental premise underlying all analyses carried out in this study. Most existing research on the implementation of Article 2 of Indonesia's Criminal Code centers on debates over conflicts among three frameworks: the principle of legality, legal pluralism, and human rights protection, which has long been the dominant research orientation in this field (Butt, 2023). This study finds that no inherent contradictions exist among the three aforementioned dimensions.

The root of the observed conflicts is that future legal practitioners and law enforcement officials are trained under a legal education paradigm dominated by legal positivism, which leads to customary law being misinterpreted as an exception to the national legal system, rather than an inherent component explicitly recognized by Indonesia's constitution (Faisal et.al, 2024). This study expands the scope of prior legal pluralism research discourse that only discussed the relationship between the two systems at the regulatory level. It proposes that the core of legal coordination lies in transforming the legal education paradigm, shifting the focus of reform from normative revisions to a cognitive shift, and fills the research gap of this cognitive perspective in existing literature related to Article 2 of the Criminal Code.

The second core innovation of this study is the reinterpretation of the customary sanctions tied to Kasepe kang. Previous mainstream studies have uniformly defined this set of customary sanctions as a norm that violates the principles of the rule of law and human rights. By contrast, this study argues that the conflict between these frameworks does not stem from the customary sanctions themselves, but from the absence of mechanisms to safeguard the principle of proportionality, due process, and constitutional rights during their implementation. The core

contradiction is a governance defect in the enforcement of living law, rather than an inherent problem of customary norms. This judgment is supported by the [2026](#) study of Udytama and other scholars. This perspective breaks through the binary opposition framework that pits customary law against state law, and proposes advancing complementarity between the two systems via constitutional oversight mechanisms. This study's original approach of "bounded legal pluralism" both recognizes the autonomy of customary law and requires it to be bound by human rights, constitutional standards, and procedural justice. It aligns with Benda Beckman's [2021](#) study, and enriches traditional legal pluralism theory.

This study builds on the core findings of two prior preliminary studies to introduce an original legal education model, the PHBLL Living Law model. By benchmarking this new model against two traditional legal education paradigms—the conventional model centered on mastery of positive legal dogmatics, and the clinical education model that focuses exclusively on practical experience—this paper highlights the framework advantages of the PHBLL model, which integrates five dimensions: legal pluralism learning, experiential learning, reflective practice, restorative justice, and a human rights perspective. Drawing on the [2016](#) study by Von Benda et al. to support the positioning that cross-legal-system conflict coordination is a core competency for law students, this study proposes that legal coordination be incorporated into the core agenda of both legislative reform and higher legal education reform.

Drawing on the core findings of this study, the authors of this paper put forward three implementable policy recommendations for Indonesia's legal system reform, all tailored to the country's local institutions, culture, and practical on-the-ground pain points: First, law enforcement agencies and professional legal organizations should lead the development of a national policy that integrates legal pluralism and living law into the competency standards for legal education (Nicholson-Crotty & O'Toole Jr, [2004](#)). Second, official implementation guidelines should be issued for Article 2 of the Indonesian Criminal Code, to incorporate indicators reflecting the objective existence of living law, alignment parameters for Pancasila values, human rights protection requirements, the principle of proportionality, and due process mechanisms for the application of customary sanctions (Wolitz, [2013](#)). Third, legal education institutions should be supported to develop experience-oriented curricula, and build experience in resolving conflicts between the two types of law through initiatives including clinical legal education, customary law moot courts, and internship programs with customary law communities.

These policies will strengthen the consistency of implementation of Article 2 of the Criminal Code, and reduce interpretive disagreements that could trigger legal uncertainty (Putra et.al, [2026](#)). This study proposes that national legal reform in the era of pluralism cannot be successfully implemented solely by adjusting the substantive content of laws and regulations. It is necessary to advance institutional reform and the development of legal practitioners' cognitive capacities in tandem. Accordingly, a national reference document titled National Framework for Living Law and Legal Pluralism Education must be introduced. This document will cover law schools, legal vocational education institutions, and dedicated training bodies for judges, prosecutors, police officers and lawyers, integrate content across five core areas, and build a sustainable capacity development system for legal talent.

Discussion

The findings of this study address the three research objectives through a connected sequence of doctrinal, socio-legal, and educational arguments. First, Article 2 of Law No. 1 of 2023 is interpreted not as an unrestricted authorization of customary criminal law, but as a conditional recognition mechanism in which the sociological existence of a norm, its conformity with Pancasila, and its compatibility with the 1945 Constitution operate as cumulative safeguards. This position is conceptualized as bounded legal pluralism. Second, the analysis of Kasepekang shows that customary sanctions are not inherently incompatible with legality or human rights; rather, their legal acceptability depends on four cumulative conditions: normative validity, procedural fairness, proportionality, and constitutional compatibility. Third, these findings expose a professional-competence problem because legal actors trained predominantly through positivist and doctrinal approaches may be insufficiently prepared to negotiate conflicts between state and customary normative orders. The proposed Practice-Oriented Living Law-Based Legal Education Model (PHBLL) therefore translates the preceding legal findings into an educational framework organized around input, process, output, and outcome, integrating legal pluralism, cultural competence, restorative justice, human-rights reasoning, and experiential learning.

The first two findings are consistent with contemporary global scholarship that conceptualizes legal pluralism as a negotiated relationship rather than the simple coexistence of autonomous normative systems. Sani (2020) argues that state law itself constitutes a field of political contestation and that legal pluralism cannot adequately be understood through legal centralism alone, while Demian (2021) demonstrates through Papua New Guinea that heterogeneous legal “lawscapes” emerge both within and beyond formal state institutions. The present concept of bounded legal pluralism advances these positions by specifying the safeguards required when non-state normative authority produces punitive consequences. It also converges with Harper’s (2021) caution that customary justice retains significant practical and social legitimacy but remains vulnerable to unresolved human-rights and political-economy problems. More directly in the criminal-justice domain, Salihu (2020) argues that Indigenous justice procedures can complement formal criminal justice through reconciliation, reintegration, and restoration of social relationships, whereas Salihu and Gholami (2022) demonstrate that perceptions of procedural injustice and distrust in formal institutions may contribute to renewed reliance on Indigenous restorative mechanisms. These comparative findings reinforce the central argument of the present study: legitimacy is not secured simply by locating authority in either the state or the community. Rather, legitimate plural justice requires institutional arrangements capable of reconciling social recognition, individual rights, procedural accountability, and community-based conceptions of justice.

The findings concerning PHBLL are likewise supported by recent international scholarship on legal education, although the present study extends research that has generally considered clinical, decolonial, reflective, and human-rights-oriented pedagogy as relatively separate educational agendas. McFaul (2020) argues that clinical legal education is strengthened when experiential practice remains theoretically informed rather than being treated as an alternative to theory. Madhloom and Antonopoulos (2022) similarly conceptualize law clinics as sites where human-rights values, social justice, reflective practice, and professional learning can be integrated. From a decolonial perspective, Loban (2022) cautions that Indigenous cultural competence cannot be achieved through symbolic curricular inclusion alone and requires demonstrable institutional

embedding. Balan (2024) extends this argument into the affective domain by showing that reflection, empathy, ethical judgment, and professional identity are consequential dimensions of legal formation. Bedford et al. (2024), meanwhile, demonstrate how authentic law-reform activities can simultaneously develop doctrinal knowledge, critical reasoning, advocacy, and professional skills. PHBLL integrates these pedagogical strands but applies them to a distinct problem: preparing professionals to reason between competing normative orders. Students are consequently expected not merely to “know” customary law but to identify its normative authority, evaluate procedural legitimacy, test proportionality, determine constitutional limits, and justify legal decisions to actors operating within different conceptions of law and justice.

The Indonesian evidence further supports the argument that the principal difficulty in legal pluralism frequently lies in translating formal recognition into institutionally workable practice. Dhiaulhaq and McCarthy (2020), examining forest-land conflicts in Indonesia, show that expanded legal space for *adat* rights can remain constrained by bureaucratic definitions, institutional barriers, and unequal political resources. Harada et al. (2022) similarly demonstrate that recognition of customary forests in Kerinci depended not only on formal law but also on sustained institutional mediation among communities, NGOs, and governmental actors. Haridison (2024) provides a more cautionary finding from a Dayak customary-land governance program, showing how regulatory inconsistency, conflicting interests, and the political use of Indigenous claims can distort collaborative arrangements. Marta et al. (2021) likewise found that policy networks concerning *ulayat* land in Riau may produce outcomes unfavorable to customary communities where dominant actors control policy formation. Conversely, Fisher et al. (2020) demonstrate through customary-forest recognition in South Sulawesi that participatory processes, collaborative mapping, and stakeholder consensus can help bridge formal governmental arrangements and customary claims. Collectively, these studies substantiate the distinction developed through the Kasepekang analysis between recognition of a customary norm and legitimacy of the institutional process through which that norm is operationalized.

This interpretation is also reinforced by Indonesian research closer to the institutional and cultural dimensions examined in the present study. April et al. (2023), comparing customary-village governance in Riau and Bali, demonstrate that constitutional recognition of customary communities must be translated into governance arrangements responsive to local institutional histories. Irianto (2024) provides particularly relevant evidence from Indonesian courtroom practice, showing that judges operating within legally plural environments may develop innovative interpretations but can also remain constrained by black-letter legal reasoning. This finding closely parallels the present concern that doctrinal competence alone is insufficient for Article 2 implementation. Moreover, Suartika and Cuthbert (2022) show in the Balinese context that culture is embedded in changing political, economic, and institutional relations rather than existing as an isolated or immutable tradition. Such evidence cautions against romanticizing Kasepekang solely because it is customary. A living norm can carry significant social legitimacy while its interpretation and implementation remain open to questions of power, procedural justice, and individual rights. The present four-condition framework—normative validity, procedural fairness, proportionality, and constitutional compatibility—therefore adds a concrete evaluative structure to this broader Indonesian literature on the institutional negotiation of customary authority.

The educational implications are equally consistent with Indonesian scholarship. Arifin et al. (2021) identify the continuing influence of rote and doctrinal approaches in Indonesian legal education and show that clinical legal education can expose students to clients, advocacy, public communication, networking, and practical legal problem-solving. Abidin and Sultansyah (2023) similarly argue that professional integrity should be cultivated through an educational ecosystem connecting law schools, the legal profession, enforcement institutions, clients, and other stakeholders. The present study extends these arguments by identifying a particular competence domain created by Indonesia's new criminal-law architecture: future lawyers and law-enforcement officials must be able to determine whether a norm genuinely constitutes living law, distinguish community legitimacy from unrestricted sanctioning authority, evaluate due process and proportionality, communicate across cultural and normative boundaries, and protect constitutional rights while engaging respectfully with customary institutions. PHBLL should therefore not be interpreted as replacing doctrinal education with experiential learning; rather, it seeks to make doctrinal competence operational within the realities of a plural legal order.

Theoretically, the findings refine the conventional weak–strong legal-pluralism distinction by shifting attention from the binary question of whether the state recognizes non-state law toward the conditions under which customary normative autonomy can coexist with constitutional accountability. Bounded legal pluralism consequently conceptualizes recognition as conditional and relational: the state should neither absorb customary law into a purely positivistic hierarchy nor permit customary authority to operate beyond constitutional scrutiny. Pedagogically, PHBLL operationalizes this theoretical refinement through customary-law case analysis, customary moot courts, community-based clinical education, reflective portfolios, intercultural communication, restorative-justice reasoning, and authentic assessment. These practices can strengthen not only cognitive competence but also ethical sensitivity, empathy, professional identity, and reflective judgment, dimensions increasingly recognized as integral to professional legal formation (Balan, 2024; Madhloom & Antonopoulos, 2022). At the policy level, the findings support two complementary reforms. First, implementation guidelines for Article 2 should specify procedures for identifying living norms, establishing competent customary authority, hearing affected parties, evaluating proportionality, preventing collective punishment, protecting vulnerable individuals, and reviewing compatibility with constitutional rights. Second, national competency standards for law schools, judicial training, prosecutorial education, police academies, and continuing legal education should explicitly incorporate legal pluralism, customary-law literacy, intercultural competence, restorative justice, and experiential learning. Although the generic educational-policy literature sometimes extends such implications to digital behavior, social-media regulation, or mental-health intervention, those domains were not investigated in this study and should not be inferred from its findings. The defensible implications here concern legal literacy, professional well-being, ethical formation, cultural responsiveness, and rights-sensitive legal decision-making.

The principal novelty of this study lies in connecting domains that existing scholarship has generally examined independently. The contribution is not merely the recognition that customary law and national law coexist, nor simply the recommendation that legal education become more experiential. Instead, the study constructs an analytical sequence linking conditional recognition under Article 2 → a four-condition test for the implementation of customary sanctions → the professional competencies required to apply that test → the PHBLL educational framework designed

to cultivate those competencies. Methodologically, the combination of doctrinal analysis, thematic synthesis, comparative customary-justice scholarship, and legal-education literature enables the study to move from the conventional question of whether a customary norm is legally valid to the institutional question of how legal professionals should reason when several sources of normative authority intersect. In this respect, the four-condition framework provides an evaluative contribution for Kasepekan and potentially for comparable customary sanctions, while PHBL provides a pedagogical translation of that normative framework. The study consequently challenges the assumption that conflicts between living law and state criminal law can be resolved primarily through additional statutory clarification; sustainable harmonization also depends on the epistemological, cultural, ethical, and practical capacities of those responsible for interpreting and enforcing the law.

Several limitations qualify these contributions. The research is doctrinal and literature-based; consequently, both the four-condition test and PHBL remain conceptually derived rather than empirically validated. Kasepekan is also a culturally and institutionally specific customary practice and cannot represent the diversity of *adat* institutions across Indonesia. Moreover, comparative experiences from other jurisdictions illuminate possible institutional arrangements but cannot be transferred mechanically because constitutional histories, Indigenous–state relationships, customary authority, and procedural structures differ substantially across legal systems. The literature-based design may additionally privilege published scholarship and formally documented norms over orally transmitted customary knowledge and the perspectives of community members directly affected by customary sanctions. Future research should therefore evaluate the framework through multi-site empirical studies involving customary leaders, community members, judges, prosecutors, police officers, advocates, lecturers, and students. PHBL should be piloted through action research or mixed-method designs in law schools and professional-training institutions, with pre–post and longitudinal assessment of contextual legal reasoning, cultural competence, restorative-justice orientation, ethical judgment, and rights-sensitive decision-making. Comparative studies across multiple Indonesian *adat* communities should further determine whether the four cumulative conditions remain analytically robust when applied to different forms of customary sanction. Such research would provide the evidence required to move PHBL from a theoretically grounded conceptual model toward an empirically validated framework for implementing living law within Indonesia’s plural constitutional order.

Conclusion

This study finds that the core barrier to reconciling customary law and national criminal law—an outcome that Article 2 of Indonesia’s Criminal Code seeks to achieve through recognizing living law—is not the normative conflict that the academic community has previously assumed. Instead, this barrier stems from the fact that potential legal practitioners and law enforcement officials lack the epistemological foundation required to understand Indonesia’s legal pluralism. The conflict among the principle of legality, customary law, and human rights is essentially caused by the positivism-dominated paradigm of legal education, rather than inherent contradictions in the content of the norms themselves. An analysis of the implementation of the customary sanction of Kasepekan shows that conflict between this practice and national law is not an inherent attribute; such conflict only emerges when its implementation lacks safeguard mechanisms for the principle of proportionality, due process, and constitutional rights. Based on these findings, this study puts

forward the living law-oriented PHBLL legal education model, which integrates four perspectives legal pluralism, experiential learning, restorative justice, and human rights into the legal education system.

This study is a literature review-oriented academic construction. All arguments derived in this research to date, as well as the PHBLL model developed herein, remain only at the conceptual stage. They have not yet undergone empirical testing in legal education institutions or frontline law enforcement scenarios, so this study has clear defined research boundaries. For subsequent research, we will first adopt case studies, mixed methods, and action research to test the validity and effectiveness of this model in law schools and law enforcement agencies across multiple regions with distinct customary law characteristics. We will then conduct cross-indigenous-community and transnational comparative studies to evaluate the pathways through which this living law-based model can adapt to legal pluralism contexts. Ultimately, we aim to build a legal education model that supports the implementation of Article 2 of the Criminal Law, and advances the fair, sustainable coordination between customary laws and national criminal law.

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