

The Legality Principle Dilemma and Substantive Justice: An Analysis of the Recognition of Living Law in Indonesia's New Criminal Code (Law No. 1 of 2023)

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ABSTRACT

The enactment of Law No. 1 of 2023 (the New Criminal Code) represents a paradigm shift in Indonesia's penal policy, transitioning from a colonial-legacy system to one rooted in national legal values. This study scrutinizes the integration of "living law" (*hukum yang hidup*) as a source of criminal liability under Article 2(1), which challenges the traditional boundaries of the *nullum crimen sine lege* principle. Using a normative juridical method with conceptual and comparative approaches, this research analyzes the inherent tension between legal pluralism and the doctrine of *lex certa*. The findings demonstrate that while the recognition of living law fosters substantive justice and cultural relevance, it risks undermining legal predictability and the protection of individual rights against arbitrary enforcement. This paper argues that the transformative ambition of the Code can only be safeguarded through a robust regulatory framework, specifically a Government Regulation that establishes strict parameters for the identification and evidentiary validation of customary norms. By reconciling restorative justice with formal legality, Indonesia provides a unique model for decolonizing criminal law in pluralistic societies.

Keywords: Living Law, Legal Pluralism, Criminal Code Reform, Legality Principle, Restorative Justice.

INTRODUCTION

Indonesia's sweeping reform of its criminal justice architecture, marked by the enactment of Law No. 1 of 2023, represents one of the most significant legislative milestones in the nation's post-colonial legal development. For more than a century, Indonesia relied on the *Wetboek van Strafrecht (WvS)*, a codification imposed during Dutch colonial rule, which, despite numerous modifications, continued to structure Indonesia's penal landscape. Replacing this colonial vestige embodies not only a normative shift but also a symbolic act of legal decolonization, echoing broader movements in the Global South to reassert indigenous legal identity (Lev, 1972; Bedner & Van Huis, 2010). In this context, the new Criminal Code aims to integrate Indonesia's sociocultural particularities into the legal system, moving away from the universalistic pretensions of European codifications that inadequately reflect local realities.

Among the most transformative and controversial elements of the new Code is its formal recognition of living law, the unwritten, community-based norms known as *hukum adat* as a potential basis for criminal liability. The theoretical foundation for this recognition is grounded in the long tradition of legal pluralism, a field articulated by scholars such as Griffiths (1986), who distinguishes between "weak" (state-sanctioned) and "strong" (socially grounded) legal pluralism; Hooker (1981), who documents Southeast Asia's layered legal orders; and Merry (1988), who emphasizes that law in many societies is lived and performed outside the state's formal institutions. From this perspective, *living law* is not an anomaly but a reflection of socio-normative realities that coexist with state law, shaping everyday social order more profoundly than formal regulations.

However, extending unwritten customary norms into the realm of criminal law generates substantial doctrinal

controversy. Criminal law, particularly in modern constitutional democracies, is anchored in the principle of legality (*nullum crimen, nulla poena sine lege praevia scripta et certa*). This principle requires that crimes be formulated in writing, with clarity, predictability, and non-retroactivity features that safeguard individuals from arbitrary prosecution. By contrast, customary norms are often fluid, contextual, communal, diverse across regions, and sometimes undocumented, raising concerns about legal certainty and equality before the law (Simons, 2020; Lindsey, 2018). Critics argue that incorporating such norms into formal criminal law risks enabling subjective interpretations, inconsistent enforcement, and potential discrimination, particularly against minorities, women, or non-members of adat communities.

Despite these concerns, proponents of living law highlight the persistent dissonance between state criminal law and community dispute-resolution practices. Empirical studies in regions such as Aceh (Salim & Azra, 2003), Bali (Warren, 1993), Papua (McGibbon, 2004), and Sulawesi (Davidson & Henley, 2007) show that customary mechanisms emphasizing restoration, reconciliation, and social harmony retain high legitimacy and effectiveness in resolving conflicts. In many cases, communities prefer adat sanctions because they yield outcomes perceived as more just and socially integrative than formal court processes, which can be slow, expensive, and culturally detached. These findings suggest that excluding living law from formal criminal justice may perpetuate a normative gap between community expectations and state practices.

Yet even with strong sociological justification, the practical challenge remains: Can living law be harmonized with the demands of a modern criminal justice system without compromising constitutional safeguards? Existing scholarship has yet to offer a conclusive answer. Much of the literature celebrates the cultural legitimacy of customary norms but insufficiently addresses the implications for constitutional legality, procedural fairness, judicial discretion, and human rights compliance. Meanwhile, debates in Indonesia have often been polarized, focusing on political or symbolic aspects rather than examining the deeper structural tensions between pluralism and modern penal rationality.

Although many studies explore the sociocultural legitimacy of living law, very few provide a comprehensive doctrinal and analytical assessment of *how* and *to what extent* living law can coexist with the constitutional principle of legality in Indonesia's reformed criminal law system.

Moreover, limited research has evaluated the potential mechanisms, safeguards, or regulatory designs needed to operationalize living law without undermining legal certainty and equal protection.

This article addresses that gap by offering an in-depth examination of the philosophical, doctrinal, and practical tensions inherent in integrating living law into the national criminal justice framework. It critically evaluates the compatibility of customary norms with constitutional legality, explores the implications for modern criminal justice administration, and identifies pathways for reconciling pluralism with legal certainty. In doing so, the article contributes to ongoing debates on legal pluralism, constitutionalism, and penal reform in Indonesia and comparable pluralistic jurisdictions.

Research Problems (Expanded)

The integration of *living law* into Indonesia's new Criminal Code introduces foundational shifts in the structure, philosophy, and functioning of the national criminal justice system. These changes raise a series of complex and interrelated research problems that require deeper scholarly interrogation.

First, this study seeks to identify what philosophical and historical foundations justify the recognition of living law within a modern codified criminal system. Indonesia's legal genealogy is characterized by layers of colonial influence, indigenous normative orders, and post-independence attempts at decolonization. The revival of living law in national codification must therefore be contextualized within broader debates on legal pluralism, nation-building, and the legacy of customary jurisprudence. Understanding the theoretical trajectory from the colonial *receptie* doctrine to the post-independence affirmation of *receptie existentie* is essential for explaining why the state now seeks to realign formal criminal norms with indigenous socio-legal realities.

Second, this study examines how the adoption of the material legality principle in the new Criminal Code interacts

with the classical formal legality principle, which has long served as a constitutional safeguard against arbitrariness. The tension between these two concepts is not merely textual but structural: a material legality approach allows unwritten norms to define criminal conduct, while formal legality requires strict, written, and prospective formulations of offenses. This friction raises critical doctrinal questions regarding legal certainty, equality, and judicial discretion. The challenge is to determine whether these two approaches can coexist constructively or whether their interaction risks eroding foundational protections that underpin modern criminal law.

Third, this research evaluates what normative and institutional models can effectively harmonize legal pluralism with the demands of predictability, human rights protection, and efficient criminal justice administration. The operationalization of living law requires clear procedural standards, safeguards against discriminatory application, and mechanisms for ensuring compatibility with constitutional and international human rights norms. Without this architecture, the integration of living law risks generating fragmented enforcement, inconsistent judicial outcomes, and potential violations of protected rights.

Collectively, these research problems are not merely academic abstractions. They carry profound implications for legislators, judges, prosecutors, law enforcement officers, traditional authorities, and local communities navigating the transition into Indonesia's new penal era. The success or failure of integrating living law into the criminal justice system will shape the country's broader trajectory of legal modernization and pluralism.

Research Objectives

Building on the research problems identified above, this study pursues the following objectives:

- a) To analyze the philosophical, historical, and socio-legal foundations that underpin the recognition of living law in Indonesia's reformed Criminal Code, situating this development within broader debates on legal pluralism and decolonization.
- b) To critically assess the conceptual interaction between material legality and formal legality, identifying points of convergence, structural friction, and their implications for legal certainty, constitutionalism, and human rights safeguards.
- c) To formulate a normative and institutional model that enables the operationalization of living law while preserving the integrity of criminal law principles, ensuring predictability in enforcement, and safeguarding individual rights.

These objectives collectively frame the study's attempt to provide a holistic, doctrinally coherent, and practically grounded assessment of Indonesia's legal reform.

Research Significance

This study offers several significant contributions to legal scholarship, policy development, and practical implementation:

- a) **Theoretical Contribution:** The research deepens academic discourse on legal pluralism by demonstrating how non-state normative orders can be formally incorporated into codified criminal law without compromising constitutional safeguards. It advances the theoretical understanding of the relationship between legality, community norms, and state authority in plural societies.
- b) **Normative and Doctrinal Contribution:** The study proposes a structured analytical framework for reconciling material and formal legality, clarifying the conditions under which living law may legitimately influence criminal liability. This contributes to doctrinal clarity in an area where existing scholarship remains fragmented.
- c) **Policy and Legislative Contribution:** The findings provide concrete guidance for policymakers in designing regulations, derivative legislation, and institutional mechanisms necessary to implement living law responsibly. This includes recommendations for cataloging customary norms, procedural safeguards, and supervisory structures.

- d) Judicial and Institutional Contribution: By offering interpretive guidance and criteria for judicial assessment of customary norms, the study supports judges, prosecutors, and law enforcement officers in avoiding arbitrariness and ensuring uniformity in the application of living law.
- e) Societal and Community Impact: The research strengthens public understanding of the role of customary norms in shaping a culturally grounded yet rights-respecting criminal justice system. It empowers local communities by clarifying how their normative traditions can interact constructively with national law.
- f) In sum, this study provides a comprehensive foundation for navigating Indonesia's transition toward a criminal justice system that acknowledges legal diversity while upholding constitutional and human rights standards.

RESEARCH METHODOLOGY

Research Type

This study adopts a normative juridical research method, which is traditionally used to examine legal norms as a coherent system of rules, principles, and doctrines. The core relevance of the normative juridical approach lies in its ability to evaluate the internal logic and constitutional legitimacy of legal provisions, making it particularly suitable for analyzing Article 2 of the 2023 Criminal Code. Because the provision involves an attempt to integrate unwritten customary norms into the highly structured framework of criminal law, a method that emphasizes textual interpretation and conceptual clarification is essential.

Moreover, normative juridical research enables scholars to scrutinize the philosophical foundations of legal change. In the context of Indonesia's criminal law reform, the recognition of living law cannot be understood merely as a statutory innovation; it reflects deeper ideological shifts concerning national identity, pluralism, and postcolonial legal transformation. The normative approach allows the researcher to explore these shifts by situating statutory norms within their broader historical and theoretical landscapes.

Finally, normative juridical inquiry provides a systematic basis for analyzing potential conflicts between living law and established legal principles, particularly the formal legality principle that demands clarity, written formulation, and non-retroactivity. Through doctrinal critique and theoretical reconstruction, this research type supports the development of recommendations capable of harmonizing pluralistic normative sources with the rule of law.

Research Approaches

a. Statutory (Legislation) Approach

The statutory approach is central to this study because the debate over living law is fundamentally a debate over the meaning, scope, and legal consequences of Article 2 of the new Criminal Code. This approach involves a close reading of the provision and its relationship with other legal norms, particularly the Constitution. Article 18B(2) of the 1945 Constitution is a key reference point, as it explicitly declares that the state recognizes and respects customary law communities, provided that their existence is in accordance with national development and human rights principles. This constitutional clause forms the hierarchical foundation for integrating living law into the national legal system.

Additionally, the statutory approach evaluates the vertical and horizontal consistency of the Criminal Code. Vertically, the research examines whether Article 2 aligns with constitutional protections of legal certainty, equality before the law, and the prohibition of retroactive criminal punishment. Horizontally, it analyzes the coherence between Article 2 and other provisions of the Criminal Code, especially those concerning legality, judicial discretion, and the classification of criminal acts.

This approach also assesses obligations imposed on the executive branch. The Criminal Code itself mandates the issuance of a Government Regulation (Peraturan Pemerintah) as a prerequisite for the operationalization of living law. Without such regulation, the provision remains normatively incomplete. Therefore, the statutory approach is used not only to interpret existing norms but to identify regulatory gaps that may impede implementation.

b. Conceptual Approach

The conceptual approach provides the theoretical framework necessary for understanding why living law is recognized, how it differs from codified norms, and what risks arise from its incorporation into criminal legislation. The study draws on the extensive literature on legal pluralism, where scholars such as Griffiths (1986), Hooker (1975), and Merry (1988) argue that plural legal orders form the lived normative environment of many societies, including Indonesia. These theories help contextualize living law as a legitimate and historically grounded source of social regulation, rather than a deviation from state law.

In addition, the conceptual approach examines the colonial and postcolonial jurisprudential theories of *Receptie* and *Receptie Exsistensie*. Van Vollenhoven's recognition of indigenous legal circles and Soepomo's subsequent advocacy for the autonomy of adat law highlight Indonesia's long struggle to reposition customary norms within national law. These concepts are necessary to understand the ideological motivations behind restoring living law as part of criminal doctrine.

Equally important is the analysis of the distinction between formal legality and material legality. Drawing on Hart (1961), Fuller (1964), and Ashworth (2013), this study evaluates how the shift toward material legality, under which unwritten norms may become a basis for criminal liability, impacts constitutional guarantees such as clarity, predictability, and non-retroactivity. This conceptual lens is critical for identifying doctrinal tensions that living law may introduce into the criminal justice system.

Finally, the conceptual approach incorporates principles of restorative justice, drawing from the works of Braithwaite (2002) and Zehr (2008). Customary law often emphasizes reconciliation, compensation, and community harmony values that resonate with global restorative justice trends. Thus, this approach helps clarify how living law can contribute positively to contemporary penal reform.

c. Case Approach

The case approach serves to ground theoretical analysis in real-world examples, demonstrating the practical stakes of recognizing or failing to recognize living law. Indonesia has experienced numerous legal conflicts involving adat communities, many of which arise in contexts such as land disputes, environmental conservation, and the prosecution of ritual practices. These cases reveal systemic gaps between statutory criminal law and community norms.

For example, after the Constitutional Court's landmark Decision No. 35/PUU-X/2012, which defined customary forests as separate from state forests, indigenous communities engaged in traditional forest activities continued to face criminalization. These conflicts illustrate how normative mismatches between state law and customary practices can lead to the unjust prosecution of vulnerable groups. Such cases highlight the importance of clarifying the legal status of living law and the mechanisms for validating its application.

Similarly, cases involving ritual animal sacrifices, initiation ceremonies, or culturally embedded sanctions reflect the tension between local customs and national criminal provisions. Courts have struggled to assess whether such practices constitute criminal acts or legitimate expressions of cultural identity. These examples show that the absence of clear legal guidance on living law generates inconsistent judicial outcomes.

Thus, the case approach not only illustrates the urgency of regulatory reform but also provides empirical grounding for evaluating the risks and opportunities associated with the Criminal Code's recognition of living law.

Legal Materials

Legal materials for this research are divided into primary and secondary sources.

Primary legal materials include the 2023 Criminal Code, which is the focal text for analysis; the 1945 Constitution, which provides the normative hierarchy for evaluating the legitimacy of Article 2; and

Constitutional Court decisions, which clarify constitutional protection of customary communities. Relevant regional regulations (Peraturan Daerah) recognizing specific adat communities are also examined where applicable, as they may serve as precedents for future derivative regulations.

Secondary legal materials include doctrinal writings on adat law, both classical and contemporary; scholarly insights on legal pluralism; comparative criminal law studies; and literature on restorative justice and indigenous rights. In addition, reports by NGOs, international bodies, and academic research centers serve as supplementary sources for understanding how customary communities experience legal marginalization under the existing system. Together, these materials form a rich base for analyzing doctrinal, philosophical, and practical dimensions of living law.

Techniques of Analysis

The study utilizes two analytical techniques: content analysis and legal construction.

Content analysis is used to interpret Article 2 by examining the language of the statute, its normative structure, and its legislative intent. This technique allows the researcher to identify ambiguities, potential constitutional conflicts, and the intended scope of discretion for judges and law-enforcement authorities. By analyzing legislative records, explanatory memoranda, and scholarly commentary, content analysis provides a deep understanding of how living law is conceptualized within the statute.

Legal construction (*rechtsvinding*) is then used to propose solutions to doctrinal and institutional gaps. Through systematic logic and interpretive reconstruction, legal construction seeks to build a normative model that harmonizes living law with the formal legality principle, human rights standards, and demands for legal certainty. This method is crucial for formulating recommendations, including criteria for verifying customary norms, mechanisms for judicial review, and safeguards to prevent discriminatory enforcement.

Together, these techniques enable a comprehensive examination of both the theoretical legitimacy and the practical feasibility of the living law provision.

RESULTS AND DISCUSSION

The Philosophical Foundation of Adat Law: From Receptie Exsistensie to Modern Substantive Justice

Customary law (*adat*) has long been recognized as a dynamic and community-rooted legal system, observed by scholars such as van Vollenhoven (1901) and Ter Haar (1939). Unlike statutory law, *adat* is embedded in social practices and evolves organically with the community. Soepomo's Receptie Exsistensie theory elevated *adat* from a subordinate folk system to a legitimate expression of Indonesia's collective identity, asserting that *adat* law applies because it lives within the people.

The recognition of living law in the new Criminal Code echoes this philosophical lineage. It signifies a deliberate turn toward endogenous legal development, affirming that national law must reflect the nation's *Volksgeist*. In the context of modernization, this recognition also aligns with contemporary pluralism scholars who argue that legal systems must accommodate diverse normative orders rather than suppress them (Merry 1988; Hooker 1981).

However, the integration of *adat* into modern penal law necessitates adjustment. *Adat*'s communal orientation, restorative nature, and contextual application contrast with the standardization demanded by the modern state. Thus, the living law provision can be seen as an attempt to modernize *adat* by embedding it within a rights-based, constitutional framework while preserving its cultural essence.

The Central Conflict: Material Legality versus Formal Legality and Legal Certainty

Criminal law is traditionally bound to the principle of formal legality no crime without clear, prospective, written law (Hart 1961; Ashworth 2013). This principle ensures foreseeability and protects individuals from arbitrary

enforcement. By contrast, material legality implicitly adopted in Article 2 allows unwritten but socially condemned acts to be punished.

This shift raises significant concerns. First, the absence of codified elements of offenses challenges *lex certa*, as individuals cannot reasonably anticipate which actions are criminalized. Second, the geographical and cultural variability of customary norms introduces unequal application of criminal law. Third, the potential clash between adat norms and human rights, such as gender equality, minority protection, and the prohibition of degrading punishment, presents further complications.

Without adequate safeguards, this tension may undermine legal certainty, weaken rule-of-law standards, and open the door to discriminatory enforcement.

Restorative Justice as the Bridge Between Legal Pluralism and Penal Legality

Restorative justice provides a conceptual bridge that harmonizes customary values with the modern criminal justice system. Scholars such as Braithwaite (2002) and Zehr (2008) emphasize that restorative justice values repairing harm, community participation, reintegration mirror the foundational logic of adat dispute resolution.

In this sense, living law can strengthen a restorative orientation in Indonesia's penal policy by shifting focus from punishment to relational repair. However, this integration must be selective. Not all adat norms are restorative; some may perpetuate patriarchal or exclusionary practices. Therefore, the implementation of living law must filter norms through constitutional values to ensure alignment with human dignity and equality.

Case Studies and the Urgency of Implementing Regulations

Empirical examples illustrate the paradox of living law in practice. Cases of indigenous communities prosecuted for harvesting forest products, engaging in traditional rituals, or defending communal land demonstrate the inadequacy of a uniform state legal system to accommodate cultural realities. In these cases, the absence of formal recognition of adat norms has enabled criminalization of culturally legitimate conduct.

However, the living law provision cannot be applied directly in the absence of implementing regulations. A Government Regulation is essential to define the criteria for recognizing customary norms, establish procedures for verification, map the geographical scope of adat jurisdictions, and ensure compatibility with human rights and constitutional principles. Without these measures, living law risks misapplication by state officials unfamiliar with local customs.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

This study concludes that the formal recognition of living law (*hukum yang hidup*) within Indonesia's 2023 Criminal Code represents a profound normative and philosophical shift in the country's criminal justice paradigm. It reflects an intentional move away from the rigid formalism of colonial legal frameworks toward a more culturally resonant and socially grounded conception of criminal liability. At the constitutional level, the integration of living law aligns with Article 18B(2) of the 1945 Constitution, which mandates protection for indigenous legal communities. Philosophically, it resonates with theories of legal pluralism that emphasize the coexistence of state law and community-based norms in shaping societal order.

However, the study also demonstrates that this recognition introduces inherent tensions with fundamental principles of formal legality, particularly those pertaining to legal certainty, non-retroactivity, and the foreseeable nature of criminal sanctions. While living law enriches the criminal justice system with context-sensitive, culturally embedded norms, its unwritten and dynamic character poses challenges to the predictability required in criminal adjudication. The potential for divergent interpretations across jurisdictions further highlights the risk of inconsistent law enforcement without a clear regulatory framework to guide implementation. Therefore, while

the living law provision carries transformative potential, it must be integrated cautiously to avoid undermining essential safeguards of the rule of law.

From a practical standpoint, findings based on case studies especially in disputes involving land use, natural resource conflicts, and ritual practices illustrate both the urgency and the risks of recognizing living law. On one hand, adat-based resolution mechanisms have proven effective in maintaining communal harmony and promoting restorative outcomes. On the other hand, the absence of clear mechanisms for verifying customary norms has sometimes resulted in unequal protection, selective criminalization, and vulnerabilities for marginalized communities. These dualities underscore the need for a robust institutional architecture to ensure that living law contributes to justice rather than perpetuating uncertainty.

Research Limitations

Despite its comprehensive conceptual inquiry, this study acknowledges several limitations. First, the research adopts a normative juridical method, which prioritizes doctrinal and conceptual analysis; therefore, it does not conduct extensive ethnographic or empirical fieldwork across Indonesia's diverse customary communities. As a result, the conclusions may not fully capture the local variations, internal contestations, or the evolving nature of adat practices. Second, the case analyses used herein are illustrative rather than exhaustive, due to the limited availability of documented court decisions explicitly invoking living law. Third, the absence of implementing regulations at the time of writing restricts the ability to evaluate how living law will operate in practice; thus, the conclusions remain partly predictive and theoretical. These limitations highlight the need for future empirical and interdisciplinary research to validate and refine the frameworks proposed in this study.

Overall, while the study affirms that the recognition of living law can enrich Indonesia's criminal justice system, its success depends on the creation of clear, rights-based, and culturally sensitive mechanisms to balance legal pluralism with constitutional guarantees.

Recommendations

Based on the findings and in recognition of the study's methodological limitations, several recommendations are proposed to ensure the coherent and rights-respecting implementation of living law in Indonesia's criminal justice system.

First, the government must urgently enact a comprehensive Government Regulation that establishes detailed criteria for identifying, validating, and applying living law. This regulation should articulate evidentiary standards, verification procedures, and clear limits to judicial discretion. Without this regulatory foundation, the application of living law risks becoming fragmented and arbitrary. The limitation of this study, namely the absence of an existing regulation to analyze, reinforces the urgency of this recommendation.

Second, the application of living law should be restricted initially to minor offenses and culturally specific cases where restorative or compensatory sanctions are most effective. This targeted approach minimizes risks to individual rights and reduces opportunities for misuse. Given that this research did not examine all customary sanction practices across Indonesia, a phased and cautious application is warranted until comprehensive national mapping of adat norms is completed.

Third, restorative justice should be adopted as the central interpretive framework for applying living law. Restorative justice provides a principled foundation that aligns with many indigenous practices while ensuring adherence to constitutional protections. However, the study recognizes its limitations in assessing regional variations in restorative customs; therefore, the state should support further interdisciplinary research to ensure that restorative models are adapted appropriately to local contexts.

Fourth, competency-based training programs are essential for judges, prosecutors, and law enforcement officers. These programs should enhance understanding of cultural anthropology, legal pluralism, and methods for evidencing customary norms. The study's limitation in conducting field observations underscores the likelihood

of significant variations in legal capacity across regions, making training a priority to ensure uniform implementation.

Finally, the creation of a dynamic, continuously updated national database of recognized adat norms is crucial. This database should be developed collaboratively with customary leaders, anthropologists, and regional authorities. It will serve as a reference point for courts, reduce inconsistencies, and promote transparency. This recommendation also addresses a methodological limitation of this research the absence of a centralized, reliable repository of customary norms.

In sum, the successful operationalization of living law requires a multi-layered strategy that combines legal regulation, institutional preparation, cultural engagement, and empirical documentation. By addressing these areas, Indonesia can ensure that the recognition of living law strengthens justice, upholds constitutional protections, and honors the rich diversity of its legal traditions.

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Appendix A. Research Instrument

Research Focus	Analytical Indicators	Sources of Data	Analytical Method
Philosophical & historical basis	- Alignment with pluralism theories - Evolution of adat recognition - Constitutional legitimacy	- Constitution - Scholarly texts - Legislative history	- Content analysis - Conceptual interpretation
Material vs. formal legality	- Doctrinal coherence - Compatibility with legality principles - Retroactivity risks	- Article 2 KUHP - Judicial decisions - Doctrinal literature	- Normative reasoning - Legal construction
Human rights implications	- Anti-discrimination protections - Judicial discretion limits - Compatibility with international norms	- Constitution - ICCPR, UNDRIP - Case law	- Normative analysis - Comparative method
Institutional mechanisms	- Regulatory requirements - Verification procedures - Roles of judicial and executive bodies	- Draft PP/Perda - Reports & studies - Comparative models	- Legal construction - Gap analysis
Integrated model for implementation	- Normative hierarchy - Safeguards & constraints - Practical applicability	- All legal materials	- Synthesis - Prescriptive analysis