

Formulating Criminal Law Policy for Social Conflict Resolution Based on North Maluku Indigenous Wisdom

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Abstract

This study aims to analyze the local wisdom function of customary communities in North Maluku, Indonesia, as a conflict-resolution mechanism that emphasizes reconciliation before the formal criminal proceedings stage, to prevent excessive criminalization. This research analyzes customary values from four sultanates (*Moloku Kie Raha*), which may be integrated into criminal law policies as a form of legal reformation. Implementing *ultimum remedium* and restorative justice principles. This research employed a normative-empirical legal research method, drawing on approaches from legal sociology and legal pluralism. The analysis examined conflict-resolution mechanisms, with a focus on reconciliation in customary communities in North Maluku. Primary legal materials included the 1945 Constitution. Meanwhile, empirical data were obtained by identifying customary conflict resolution practices. Key Findings this research is North Maluku customary community's local wisdom effectively functions as a pre-criminal conflict resolution through three main mechanisms which is orientation transformation from individual retaliation to the recovery of collective-spiritual balance, The use of customary oaths and rituals as instruments of moral evidence (such as in the *Sopik* tradition) as a moral

evidencing instrument with a high level of compliance, and Deliberation through customary institutions, which emphasize reconciliation rather than the sanction of imprisonment. Implications of the findings for broader legal reform could address the sociological and philosophical aspects of customary conflicts. Thus, social harmony has been achieved, thereby strengthening restorative justice and the principle of *ultimum remedium* within Indonesia's criminal justice system.

Keywords

Criminal Law Policy, Indigenous People, Local Wisdom, Restorative Justice, North Maluku.

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Introduction

As a unique legal subject, indigenous people have constitutional rights over the acknowledgment and respect of their cultural identities and traditional rights.¹ This principle is strictly regulated in national law, especially Article 18B, clause (2), of the 1945 Constitution, which states that the state acknowledges the unity of the indigenous peoples and their traditional rights, so long as they exist and are aligned with the principles of the Republic of Indonesia Unified State.²

In its implementation in the field, this normative idealism is not consistently applied. For instance, there is a strong tendency to use the formal criminal law system, which has repressive characteristics, in conflicts in customary areas, even though, theoretically, criminal law must be positioned as *ultimum remedium*, or the last resort.³

This research shows that the enforcement of criminal law in addressing social conflicts among customary communities in Indonesia is often hindered by significant obstacles, including the dominance of formal legality, the law-enforcement apparatuses' limited understanding

¹ Relexi Bayo, Andy Usmina Wijaya, and Fikri Hadi, "Pengakuan Masyarakat Adat Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 1 (2023), <https://doi.org/10.38156/jihwp.v1i1.87>.

² Yasir Arafat, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Perubahan Ke I, II, III, Dan IV* (Jakarta: Permata Press, 2014); Muhammad Nasir Khalidah, "Penyelesaian Pembagian Warisan Di Kecamatan Simpang Ulim Dalam Perspektif Hukum Islam Dan Hukum Adat," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 8, no. 1 (July 2021): 33–49, <https://doi.org/10.32505/qadha.v8i1.2997>; E. Handayani and Suparno, "The Role of Customary Law in the Governance of Sustainable Agrarian Culture in Local Communities," *Corporate Law and Governance Review* 5, no. 1 (2023): 29–37, <https://doi.org/10.22495/clgrv5i1p3>.

³ Pupu Sriwulan Sumaya, "Keadilan Restoratif Dalam Sistem Hukum Adat Di Indonesia," *Jurnal Ilmu Hukum, Humaniora, Dan Politik* 5, no. 2 (2024), <https://doi.org/10.38035/jihhp.v5i2.3308>; Rusydi Sastrawan, Usman Usman, and Herlambang Herlambang, "The Importance of Realizing Fair, Beneficial and Definitive Criminal Case Resolution Based on the Principles of Deliberation and Consensus," *JHK: Jurnal Hukum Dan Keadilan* 1, no. 3 (2024): 46–54, <https://doi.org/10.61942/jhk.v1i3.166>; Kuntadi Kuntadi, "House of Restorative Justice as a Forum of Actualizing the Nation's Culture in Solving Criminal Cases," *Jurnal Dinamika Hukum* 22, no. 2 (2022): 323, <https://doi.org/10.20884/1.jdh.2022.22.2.3242>.

of living law, and resistance to dispute-resolution mechanisms outside the court. As a consequence, local wisdom values and restorative justice principles are often neglected, especially in addressing conflicts rooted in social issues and in the living spaces of customary communities.⁴

In its practice, national legal policies reflect a dilemma between written legal certainty and substantive justice that lives in society.⁵ Although many normative research articles on customary law have been written, profound analyses of how criminal law policies should integrate local wisdom-based pre-criminal mechanisms remain highly limited. So far, it remains difficult to find literature that systematically analyzes conflict resolution models outside the court that can synergize customary authority with the modern justice system.⁶

The focal point of this research is local wisdom-based social conflict resolution in North Maluku, Indonesia, which is historically known as *Moloku Kie Raha* (The Sultanate of Ternate, Tidore, Jailolo, and Bacan). This territory represents actual dynamics, where customary mechanisms, such as *Sopik* in Bacan or *Adat Se-Atorang* in Ternate, have long

⁴ Umar Dinata Aksar, "Penegakan Hukum Restorative Justice Pada Mediasi Penal Sebagai Upaya Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak," *Journal Equitable* 7, no. 1 (2022), <https://doi.org/10.37859/jeq.v7i1.3648>; Johan Erwin Isharyanto, "Eksistensi Dan Pengaturan Kesatuan Masyarakat Hukum Adat Sebagai Subyek Hukum Tatanegara," *Hukum Dan Dinamika Masyarakat* 16, no. 1 (October 2018), <https://doi.org/10.36356/hdm.v16i1.846>; Kuswardani Kuswardani, Marisa Kurnianingsih, and Andria Luhur Prakoso, "Spiritual Values of Customary Law," *Jurisprudence* 8, no. 1 (2018), <https://doi.org/10.23917/jurisprudence.v8i1.6267>; Asnawi Mubarak et al., "The Relationship Of State Law And Customary Law," *Jurnal Jurisprudence* 13, no. 2 (2023): 188–204, <https://doi.org/10.23917/jurisprudence.v13i2.2914>.

⁵ Sultan Alwan et al. "Legal Considerations from Judges in Supreme Court Decree No. 85 K/Pid.Sus/2013 Concerning the Acquittal of Exhibitionism Perpetrators and Their Implications as a Jurisprudence." *Jurnal Jurisprudence* 12, no. 2 (2022): 299–312. <https://doi.org/10.23917/jurisprudence.v12i2.1401>.

⁶ D. Bar-Tal, "From Interactable Conflict Through Conflict Resolution to Reconciliation: Psychological Analysis," *Political Psychology* 21, no. 2 (2000): 351–63; Daniel Bar-Tal and Gemma H. Bennink, "The Nature of Reconciliation as an Outcome and as a Process." In *From Conflict Resolution to Reconciliation*, ed. Yaacov Bar-Siman-Tov (Oxford: Oxford Scholarship Online, 2011), <https://doi.org/10.1093/acprof:oso/9780195166439.003.0002>.

functioned to maintain social harmony. The architecture of conflict resolution in this territory reflects the tension between the state's inflexible enforcement of law and society's need to restore balance through the customary method. Therefore, it is crucial to provide an in-depth analysis of this issue.⁷

In the modern criminal policy system, the approach should emphasize social reintegration and recovery, which aim to restore collective harmony, rather than merely imposing individual sanctions. However, many conflict-handling policies fail to consider the need to rebuild social relationships fully and instead emphasize punishments that may actually heighten tension between groups.⁸ The use of criminal sanctions without considering the local context often fails to address the root of the problem, ironically leading to the criminalization of customary communities.⁹

Several previous research articles have relevance to the authors' current research. Previous research has shown that the resolution of customary conflicts is often neglected by the formal justice system, which does not provide room for community-based rehabilitative efforts.

This previous research emphasizes the importance of an acknowledgment of local mechanisms as part of more constructive

⁷ Ardian Kurniawan et al., "Hukum Adat Dan Nilai Restoratif: Kontekstualisasi Penyelesaian Konflik Sumbang Adat Di Jambi," *Masalah Masalah Hukum* 53, no. 2 (2024), <https://doi.org/10.14710/mmh.53.2.2024.111-122>; Kejaksaan Tinggi Maluku Utara, "Pengajuan Restorative Justice Disetujui Oleh Jaksa Agung Muda Tindak Pidana Umum," Kejati Malut, 2023.

⁸ Mochamad Sukedi and I Nengah Nuarta, "Keadilan Restoratif Sebagai Upaya Penyelesaian Tindak Pidana Dalam Sistem Hukum Di Indonesia," *Jurnal Preferensi Hukum* 5, no. 2 (2024): 222–30, <https://doi.org/10.22225/jph.5.2.10415.222-230>.

⁹ Yuni, Chika Takeisha, and Claressa, "Penyelesaian Tindak Pidana Dengan Melibatkan Tokoh Adat/Pemangku Kepentingan: Sebuah Pendekatan Restoratif," *Jurnal Locus Penelitian Dan Pengabdian* 3, no. 3 (2024), <https://doi.org/10.58344/locus.v3i3.2531>; Deslita, Hartiwingsih, and Rehnalemken Ginting, "Perbaikan Lingkungan Hidup Akibat Tindak Pidana Kebakaran Hutan Dan Lahan Oleh Korporasi Sebagai Upaya Pembangunan Berkelanjutan [Environmental Improvement Due To Criminal Acts Of Forest And Land Fires By Corporation As A Sustainable Development Effort]," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 2 (2020): 372–80, <http://dx.doi.org/10.29303/ius.v8i2.747>.

criminal policies. On the other hand, comparative studies from various parts of the world show that restorative justice models based on indigenous people's traditions are proven to be more effective in preventing continuous conflict escalation compared to a pure penal approach.¹⁰

The difference between the previous research and this current research lies in the focus of its analysis. If previous research highlights the existence of customary law in general, this research specifically examines the role of local wisdom in North Maluku as a mechanism for conflict resolution, emphasizing reconciliation before formal criminal proceedings. This research strives to fill the research gap by conducting an in-depth analysis of the construction of criminal law policies that are sensitive towards legal plurality and local values.

In particular, among the broader restorative justice in Indonesia, *Moloku Kie Raha* is that restorative justice *Moloku Kie Raha* is more philosophical in its approach to building social harmony. Whereas the broader restorative justice in Indonesia generally has 2 philosophies, namely restoring the cosmic (both cosmic major and minor) or only between the perpetrator and the victim. *Moloku Kie Raha* aims to restore social harmony damaged by persecutory acts. This research presents a comprehensive.

This study aims to analyze the local wisdom function of customary communities in North Maluku, Indonesia, as a conflict-resolution mechanism that emphasizes reconciliation before formal criminal proceedings, to prevent excessive criminalization. This analysis is crucial, as it provides an empirical contribution to criminal law and restorative justice, enhancing the literature on jurisprudence and criminal policies in Indonesia and serving as a reference for policymakers and legal practitioners.

The crucial point to be discussed in this research is the role of local wisdom in conflict resolution and the formula for an ideal criminal law, with a view to adopting the legal reform principle in the future. This issue

¹⁰ Nur Rochaeti and Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia," *Masalah-Masalah Hukum* 47, no. 3 (2018): 198–214, <https://doi.org/10.14710/mmh.47.3.2018.198-214>.

reflects the dynamics between the need to maintain public order and respect for customary communities' rights within a just, efficient, and relevant legal system.

The urgency of this research is to examine the Existence and Mechanism of Customary Conflict Resolution in North Maluku as a Pre-Criminal Instrument, and to formulate local wisdom-based policies on Criminal Law while achieving functional criminalization. The intensifying social conflicts in customary areas demand a re-evaluation of the consistency in applying the principles of restorative justice and *ultimum remedium*. Apart from that, not many previous research articles have systematically organized the framework of criminal law policies, which place the state as a pre-criminalization screening mechanism through the acknowledgment of customary authority. The scientific contribution of this research to advances in criminal law reform and restorative justice in Indonesia is to provide an in-depth understanding of how to integrate sociological-anthropological aspects in criminal policies to create a more accurate, proportional, and recovery-oriented justice.

This research employed the empirical legal research method (sociological legal research), which analyzes the law as society's real behavior (law in action).¹¹ The main focus of this research was the effectiveness of local wisdom in resolving social conflicts in customary communities in North Maluku. This research utilized the legal sociology and legal pluralism approaches to analyze how customary mechanisms operate as an instrument of conflict resolution outside of the formal justice system.

This research was carried out directly in the legal territories of four sultanates (*Moloku Kie Raha*), encompassing Ternate, Tidore, Jailolo, and Bacan. This method was chosen to portray the implementation of the traditions of *Sopik*, *Adat Se-Atorang*, *Adat se-Madibutu*, and *Sasadu* forum in preventing criminalization and maintaining social harmony. The analysis focused on how these local values function as a form of restorative justice that lives and is upheld by the local customary community.

¹¹ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016).

The research data were obtained through field studies using observation and in-depth interviews with key informants,¹² comprising customary apparatuses, public figures, and customary community members involved in conflicts.¹³ Apart from that, the data were supported by browsing documents on customary disputes and relevant scientific literature in national and international journal databases. The collected data were then analyzed descriptively in qualitatively to construct criminal law policies based on the sociological needs of customary communities.¹⁴

This research approach was a case approach used to analyze conflict resolution practices through the traditions of *Sopik*, *Adat Se Atorang*, *Adat Se Madibutu*, and the *Sasadu* forum. The analysis focused on identifying social facts and the effectiveness of customary decisions in restoring social harmony.¹⁵

Another approach is the statute approach, which was used to analyze Article 18B clause (2) of the 1945 Constitution, Law No. 1 of 2023 (the National Criminal Code) related to living law, as well as regulations on restorative justice in law-enforcing institutions. This aims to assess the synchronization between formal law and customary mechanisms.¹⁶

¹² Arief Budiono et al, "Legal Conscience and the Pressure of the Formal Law System." *Wisdom* 22, no. 2 (2022): 223–33. <https://doi.org/10.24234/wisdom.v22i2.790>.

¹³ Faisal et al, "Judicial Reasoning on Criminal Sanctions in Court Decision: Comparison between Indonesia and Uzbekistan." *Jurnal Jurisprudence* 15, no. 2 (2025): 177–94. <https://doi.org/10.23917/jurisprudence.v15i2.13649>.

¹⁴ Suratman and Philips Dillah, *Metode Penelitian Hukum (Method of Legal Research)* (Bandung: Alfabeta, 2015).

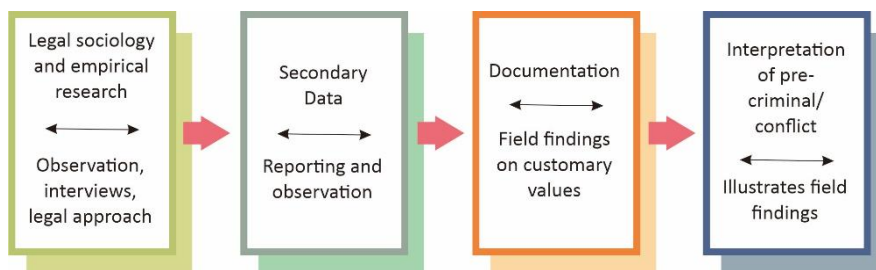
¹⁵ A. Achmadi et al., "Culture-Based Land Right Conflict Resolution Model A Case Study of the Dayak Tomun Indigenous People," *The International Journal of Interdisciplinary Cultural Studies* 16, no. 2 (2021): 1–10, <https://doi.org/10.18848/2327-008X/CGP/v16i02/1-10>.

¹⁶ Achmadi et al., "Cultural Implications of Dayak Tomun Indigenous Peoples In The Management Land Rights: A Case Study Of Lamandau, Central Kalimantan," *Humanities & Social Sciences Reviews* 8, no. 4 (2020): 530–36, <https://doi.org/10.18510/hssr.2020.8452>; Achmadi Achmadi et al., "Concept Legal Culture of the Volkgeist-Based Customary Land Rights Conflict Resolution of the Dayak Tomun Community in Central Kalimantan Indonesia," *Asian Social Science* 16, no. 1 (2019): 115, <https://doi.org/10.5539/ass.v16n1p115>.

The third approach, the conceptual approach, was used to dissect the doctrines of restorative justice, the *ultimum remedium* principle, and the theory of cosmological balance.¹⁷ This approach functions to reconstruct the formulation of criminal law policies that can accommodate the legal pluralism in the *Moloku Kie Raha* territory.

The primary data were obtained through observation and in-depth interviews with traditional leaders in the *Moloku Kie Raha* territory. All data materials were then organized, reduced, and categorized according to the research focus on pre-criminal mechanisms. The final stage was the data presentation process.¹⁸ The illustration of this paper's research framework can be seen in Figure 1 below:

Figure 1. Research Framework



Sources: Authors, 2025 (edited)

A. The Existence and Mechanism of Customary Conflict Resolution in North Maluku as a Pre-Criminal Instrument

Based on research results, it was found that customary communities in the *Moloku Kie Raha* territory have a conflict-resolution mechanism that emphasizes reconciliation and has been institutionalized across generations. This local wisdom is more than a mere symbolic

¹⁷ Hilman Syahril Haq et al., "Community Mediation-Based Legal Culture in Resolving Social Conflicts of Communities Affected by the COVID-19 Pandemic in West Nusa Tenggara, Indonesia," *Studia Iuridica Lublinensia* 31, no. 2 (2022): 11–32, <https://doi.org/10.17951/sil.2022.31.2.11-32>.

¹⁸ Suriansyah Murhaini and Achmadi, "The Farming Management of Dayak People's Community Based on Local Wisdom Ecosystem in Kalimantan Indonesia," *Heliyon* 7, no. 12 (2021), <https://doi.org/10.1016/j.heliyon.2021.e08578>.

tradition; it is a functional legal system that operates before conflicts enter the formal justice realm (before formal criminal proceedings). The names of local wisdom-based functional legal systems that can be found in areas of North Maluku and their characteristics are summarized in Table 1 below:

Table 1. The Main Characteristics of Resolution in the Functional Legal System

Sultanate Territory	Name of Tradition/ Mechanism	The Main Characteristics of this Resolution Method
Bacan	<i>Sopik</i>	The use of customary oaths and the involvement of customary apparatuses as moral evidence that is highly complied with.
Ternate	<i>Adat Se-Atorang</i>	Resolution based on customary laws and regulations that emphasize compliance with the order of the Sultan (the <i>Jou Se Ngofangare</i> philosophy).
Tidore	<i>Adat se-Madibutu</i>	Emphasizes “pure/original habits” to return the social balance that was previously disturbed.
Jailolo	<i>Forum Sasadu</i>	A great deliberation in the customary house (<i>Sasadu</i>) to resolve societal conflicts openly and collectively.

Sources: Authors, 2025 (edited)

1. The Orientation Transformation of Conflict Resolution Mechanisms Emphasizing Reconciliation: From Retaliation to Recovery

Different from the formal criminal law system that orients towards punishing the perpetrator (retributive justice)¹⁹ and places the criminal law system as an instrument to retaliate against law-violating actions, customary law-based conflict

¹⁹ Sukedi and Nuarta, “Keadilan Restoratif Sebagai Upaya Penyelesaian Tindak Pidana Dalam Sistem Hukum Di Indonesia.”

resolution mechanisms emphasizing reconciliation in North Maluku uniquely emphasize the recovery of cosmological and social balance that was disturbed as a result of the perpetrator's behavior. From the perspective of the customary community, the act of violation is not merely understood as a violation against written legal norms. Still, it is also considered an action that disrupts the harmony among human beings, nature, and the values of the ancestors.

In the *Sopik* tradition that develops in the Makian District, South Halmahera Regency. The customary criminal dispute mechanism does not orient towards calculating the length of punishment or the severity of the sanction, as acknowledged in the state criminal justice system.

Its main focus is the self-cleansing process (ritual purification), which perpetrators must undergo as a form of moral and social responsibility for their actions. This ritual is believed to have symbolic meaning, eliminating the "dirt" or negative impacts that result from these violations, both directly to the victims and collectively to the balance of the community.

Based on research in the field, the *Sopik* ritual is usually carried out in several stages that involve customary figures, perpetrators, victims, families from each conflicting party, and is witnessed by the local community. Usually, perpetrators are not only obliged to admit their mistakes openly but also to show a commitment to repairing the damaged social relationship, such as by apologizing, offering customary compensation, and actively participating in recovery rituals determined by the customary institution.

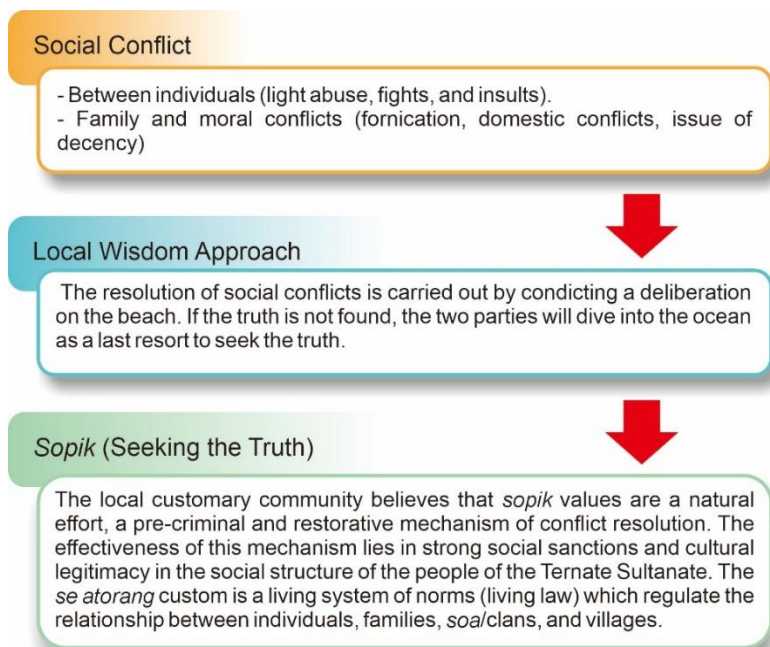
The *Sopik* tradition has implications for criminal law policy regarding the existence of living law, as stipulated in Article 2, paragraph 1 of the new Criminal Code, Law Number 1 of 2023, which emphasizes that the principle of legality does not diminish the validity of local customary law. This means that the *Sopik* dispute resolution tradition has strong legitimacy for recognition in the national legal system, provided it aligns with Pancasila values.

In this context, customary sanctions are not seen as mere physical suffering or the limitation of freedom, but as an educative and corrective process—one that aims to foster awareness, social shame, and collective responsibility.

The stages of local wisdom-based social conflict resolution called *sopik* (seeking the truth) are led by the *Se-Atorang* customary leader. The customary leader acts as the leader of the custom, and this event is participated in by customary figures, customary institutions, village apparatus, imam (to lead the prayer), and society.

This activity aims to allow the two conflicting parties disputing on the coast to dive into the depths of the sea. The method of resolving local social disputes using the local wisdom that has been passed on from generation to generation can be illustrated in Figure 2:

Figure 2. Local Wisdom-Based Resolution of Social Conflicts



Sources: Authors, 2025 (edited)

Further, the *Sopik* mechanism reflects the restorative justice paradigm that has long been part in the practice of customary laws, long before the restorative justice concept was adopted in the formulation of modern criminal law policies, including the legal reform policy. The restoration of the relationship between perpetrators and victims is the main goal, while society's interests are served by restoring social harmony and preventing subsequent conflicts.

Therefore, the success in resolving disputes is not measured by the severity of the imposed punishments. The success in the resolution is how far peace, social balance, and the sense of substantial justice may be recovered in that customary community.

2. The Strength of Moral and Spiritual Evidencing

One of the key findings of this research is the use of the customary oath as the primary instrument of social control in pre-criminal resolution mechanisms within the customary community of North Maluku. In the sociological context, customary communities exhibit a relatively higher level of compliance with supernatural and social sanctions than with formal criminal sanctions, such as imprisonment. The customary oath is not merely understood as a symbolic promise but also believed to have metaphysical consequences that may directly affect the perpetrator and his family, creating a strong deterrent effect in psychological and cultural terms.

Based on the findings in the field, the strength of the customary oath is placed on the moral and collective legitimacy given by the customary community.²⁰ The violation of oaths is not only perceived as a violation of individuals and social norms. Still, it is also deemed a violation of ancestral values and the cosmological order of society.²¹

²⁰ F. Albersmeier, "Speciesism and Speciescentrism," *Ethic Theory Moral Practice* 24 (2021), <https://doi.org/10.1007/s10677-021-10168-6>.

²¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru) (Anthology of Criminal Law Policies (Development of Drafting the New Criminal Code))* (Jakarta: Kencana Prenada Media Group, 2008).

As a consequence, perpetrators may face social isolation, lose community trust, and endure prolonged negative stigma, thereby impacting their social and economic lives. This condition makes the customary oath a more effective and sustainable control mechanism.²²

Further, the existence of the customary oath encourages perpetrators to acknowledge their actions in customary forums voluntarily. This process is an open admission, and resolution is deemed a means of restoring social balance and avoiding more severe supernatural consequences or social sanctions.

Therefore, pre-criminal mechanisms through the customary method not only function as a facility to resolve conflicts, but also as an instrument of criminality prevention. It works preventively through the internalization of values, social shame, and cultural fear that live in the collective awareness of customary communities.²³

3. The Role of Customary Institutions as a Mediator

Customary institutions (such as *Bobato* in Ternate) function as mediators with high moral authority. They can grasp the ecological and sociological dimensions of a conflict (such as a customary land dispute or an insult to a family's honor), which are often left unaddressed by the inflexible Criminal Code articles. The resolution of conflicts in the customary level may prevent the potential for violence escalation, which may lead in criminal actions from the start.

²² Sugeng Wibowo et al, "Islamic Nomocracy: From the Perspectives of Indonesia, Spain and Russia." *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023). <https://doi.org/10.22219/ljih.v31i1.25358>.

²³ P. Gała, "Legal Protection of Traditional Agricultural Knowledge Relating to Genetic Resources," *Studia Iuridica Lublinensia* 29, no. 2 (2020): 25–36, <https://doi.org/10.17951/sil.2020.29.2.25-36>.

B. The Formulation of Local Wisdom-Based Policies on Criminal Law: Achieving a Functional Criminalization

This research analyzes how the customary mechanism, previously discussed, is integrated in modern criminal policy in Indonesia.

1. The Implementation of Restorative Justice in North Maluku

Based on law enforcement operational data in North Maluku, there is a positive trend in the use of non-litigation methods. For instance:

- a. The Regional Police Force of North Maluku (2022-2023): It was noted that 552 criminal cases were resolved through the restorative justice mechanism. This high number shows that the police force's discretion often touches justice at the grassroots level (in customary communities).
- b. The High Prosecutor's Office of North Maluku (2023-2024): It succeeded in bringing peace to more than 34 cases through the restorative justice house. An integration with local customary institutions is the key to the success of this mediation, in which customary figures serve as witnesses and guarantors of harmony.²⁴

However, the main obstacle found is the lack of legal stipulations that automatically bind customary decisions with the termination of the investigation process. So far, customary resolution methods are still highly dependent on the subjective discretion of the apparatus.

2. The Synchronization with Article 2 of the New Criminal Code (Law No. 1 of 2023)

The novelty in Indonesia's criminal code policies provides a great opportunity for the customary communities of North Maluku. Article 2 of the new Criminal Code explicitly acknowledges the "Law that Lives in Society" (the living law).

²⁴ <https://kehati-malut.kejaksaan.go.id/13-pengajuan-restorative-justice-disetujui-oleh-jaksa-agung-muda-tindak-pidana-umum-jam-pidum/>

Based on empirical research conducted in the Moloku Kie Raha area, it was found that the conflict resolution mechanisms emphasizing reconciliation through the Sopik and Sasadu forum traditions are still practiced, especially in handling local social conflicts.

These findings were obtained through interviews with customary figures, community elders, and village officials who were directly involved in the community-level dispute resolution process. Informants generally state that to resolve the conflicts that arise in society, resolution through customary mechanisms is strived for before bringing them to the realm of formal law.

In practice, the Sopik and Sasadu forum traditions function as a space for deliberation that brings together disputing parties, customary figures, and other community elements. Conflict resolution in this forum is oriented towards the recovery of social relationships and community balance, rather than merely towards punishment.

The customary sanctions imposed are usually in the form of open apologies, specific obligations, or compensation, as agreed. Informants assess that this mechanism is quite effective in de-escalating conflicts and preventing escalation to a more serious stage, even though not all cases can be resolved through the customary forum.

To strengthen the integration of social conflict resolution with the new Criminal Code, below is a comparative analysis between formal justice and customary mechanisms.

Table 2. Comparison of Formal Justice and Customary Mechanisms

Aspect	Formal Criminal Justice	Customary Mechanism
Orientation	Punishment	Social restoration
Evidence	Legal proof	Moral-Spiritual oath
Institution	Police and courts	Customary leaders
Outcome	Sanctions	Reconciliation

These empirical findings show that customary laws in *Moloku Kie Raha* still function as a social control mechanism that lives in and is complied with by society. In this context, the application of Article 2 of Law No. 1 of 2023 on the Criminal Code, which acknowledges the law that lives in society (the living law), is highly relevant. The normative acknowledgment of the living law provides a juridical basis for the state to respect and consider conflict-resolution methods carried out through customary mechanisms.²⁵

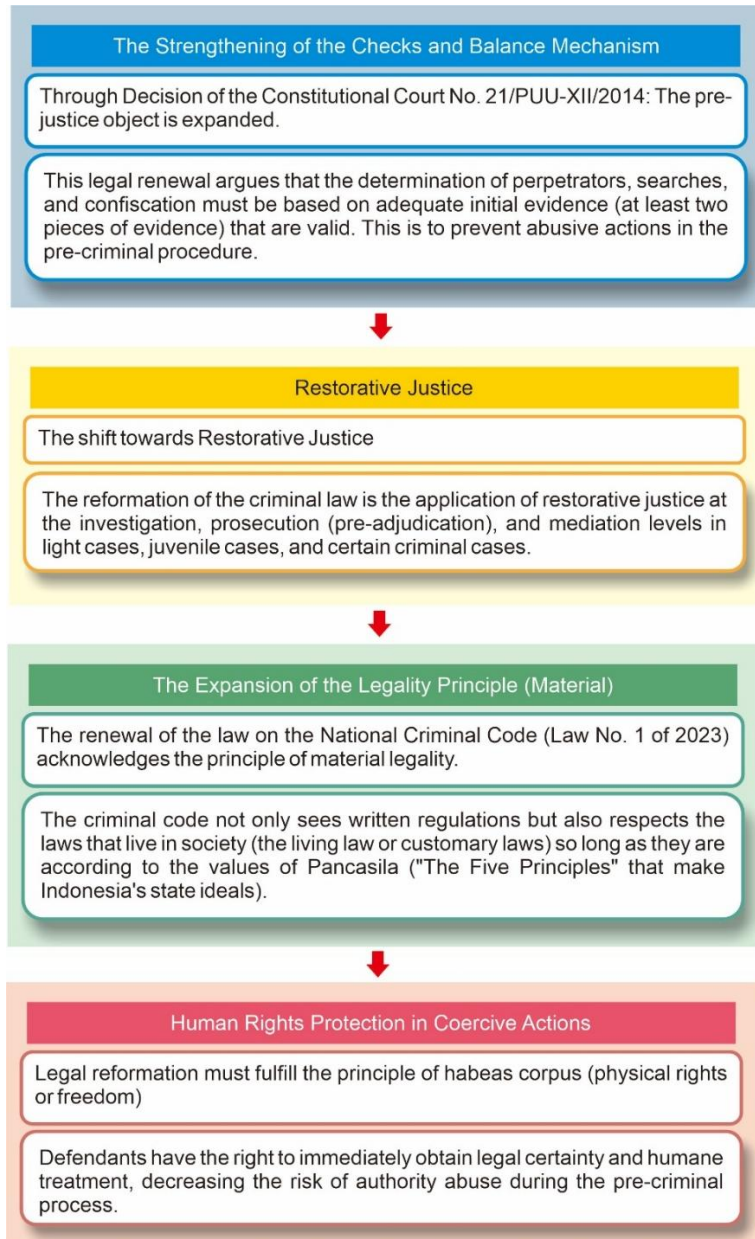
The existence of the new Criminal Code's content on the legal reform principle strengthens the position of the law that lives in society.²⁶ The legal reform principle is the basic principle of encouraging the review, change, and renewal of existing legal systems to make them more just, efficient, and relevant to society's development.

Its main objective is to overcome the weaknesses of the old law and strengthen the justice, certainty, and effectiveness of law enforcement, including by creating, revoking, consolidating, or codifying new laws and regulations. Meanwhile, pre-criminal mechanisms according to the legal reform principle can be seen in Figure 3 below:

²⁵ M. Stefaniuk, "Environmental Awareness in Polish Society with Respect to Natural Resources and Their Protection (Overview of Survey Research)," *Studia Iuridica Lublinensia* 30, no. 2 (2021): 357–379, <https://doi.org/10.17951/sil.2021.30.2.357-379>.

²⁶ Sunardi Purwanda, Nurul Asyikeen Binti Abdul Jabar, Rudini Hasyim Rado, and Nurul Miqat, "The Fate of Indigenous Peoples' Rights Recognition After the Enactment of the National Criminal Code," *Indonesian Journal of Criminal Law Studies* 9 no. 2 (2024): 357–388, <https://doi.org/10.15294/ijcls.v9i2.36636>.

Figure 3. The Application of the Legal Reform Principle before Formal Criminal Proceedings in Indonesia



Source: Faisal et al.

For instance, in the context of restorative justice, the implication of the parties' acknowledgment is that law enforcement agencies normatively have discretion not to continue the case to the prosecution and trial stages if the social conflict has been resolved through the customary method and has been accepted by the conflicting parties. However, in practice, interview results indicate that some law enforcement agencies doubt the use of customary resolution as the basis for terminating a case. This doubt is especially caused by the lack of regional-level written regulations that explicitly regulate the legal position and impact of customary decisions in the state criminal law system.

This condition leads to the existence between the normative acknowledgment of the living law in the new Criminal Code and its implementation in the field.²⁷ In some cases, conflict resolution through the *Sopik* or *Sasadu* traditions has reached a peaceful agreement, but the criminal law process continues to the investigation stage. This situation potentially leads to double criminalization, where perpetrators must face both customary sanctions and the state's criminal law process, which, in the end, is perceived as unjust by customary communities.²⁸

Based on these findings, it can be understood that Article 2 of the New Criminal Code opens the door to the formulation of layered criminal law policies. In this framework, customary institutions function as the *first filter* in determining whether a given conflict is appropriate for processing through the state's criminal law.

The state, through law enforcement agencies, is positioned as the *second filter*, operating only when customary

²⁷ Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (2025), <https://doi.org/10.22437/home.v8i1.502>.

²⁸ Septhian Eka Adiyatma, Ana Silviana, and Dorcas Adesola Thanni, "Criminalizing the Guardians: Eco-Justice and Indigenous Struggles in Indonesia and Nigeria," *Indonesian Journal of Criminal Law Studies* 10 no 2 (2025): 901-52, <https://doi.org/10.15294/ijcls.v10i2.33536>.

mechanisms can no longer resolve conflicts or when such actions have serious impacts on public interests or human rights. This approach proportionally positions the state's criminal law as *ultimum remedium*.²⁹

In this context, there is no urgency to codify the customary dispute-resolution mechanism through Regional Regulations. Data in the field show that the lack of written regulations also hinders the integration of customary resolution in the formal law enforcement system. This is actually a blessing because the codification under Regional Registration could destroy the flexibility inherent in this customary law. Therefore, Regional Regulations that codify customary dispute resolution mechanisms in *Moloku Kie Raha* are not needed because they could positivize or standardize customary norms, thereby turning Moloku Kie Raha into rigid rules.

As for providing formal legality to the legal mechanisms and impacts of customary resolution, it could be legalized through higher law, such as national law, which is not codified but which acknowledges and accepts this customary law as part of national law. With the existence of acceptance and acknowledgment from national law, law enforcement agencies obtain clear and accountable guidelines in respecting customary resolution, as well as preventing the occurrence of double criminalization between the customary law system and the state criminal law.

Therefore, the empirical findings in the *Moloku Kie Raha* show that the integration of the living law, as regulated in Article 2 of the New Criminal Code, is only effective when supported by adequate legal instruments. Codification through the Regional Regulation becomes a key element in building a strict, rigid, local wisdom-based criminal law policy.

²⁹ Yanto Rochmayanto et al., "Devolution of Forest Management to Local Communities and Its Impacts on Livelihoods and Deforestation in Berau, Indonesia," *Helijon* 9, no. 5 (2023): e16115, <https://doi.org/10.1016/j.helijon.2023.e16115>.

This issue is linked to the Sustainable Development Goals, specifically numbers (10) Reduce Inequality and (16) Peace, Justice, and Strong Institutions.³⁰ Regarding its link to the SDG on Reducing Inequality, the use of the local wisdom-based conflict resolution model may allow indigenous communities to apply the principles they have passed down from generation to generation to resolve disputes.³¹

The use of the formal legal system may be unfamiliar to indigenous groups, and they may be uncomfortable with the associated procedures. By using the system they are accustomed to, they can resolve issues in a manner that is more acceptable and comfortable for their group, thereby providing them with equality of access in the legal system that best suits their values.

Meanwhile, regarding this paper's link to SDG number (16) on Peace, Justice, and Strong Institutions, peace and justice are the main objectives in the use of legal systems based on the customary model. The *Sopik* tradition, as well as other dispute resolution models from North Maluku, aims to maintain the balance in the community and cosmos, having a holistic vision for peace and justice. It also relates to the "Strong Institution" aspect of the SDGs, as strengthening these customary institutions in resolving criminal cases enables the use of local wisdom-based traditions that consider the sociological and communal aspects of certain cases, which are often neglected by the formal legal system.³²

³⁰ Bambang Ali Kusumo et al., "Corporate Crime Prevention Through Sustainable Governance and Regulatory Reform," *Journal of Sustainable Development and Regulatory Issues* 3, no. 3 (2025), <https://doi.org/10.53955/jsderi.v3i3.168>.

³¹ Indah Sri Utari et al., "Relevance of Local Wisdom in Rural Judiciary for Indonesian Societies," *International Journal of Innovation, Creativity and Change*, no. 4 (2020).

³² I. Wayan Wahyu Wira Udytama, Mella Ismelina Farma Rahayu, and I. Wayan Gde Wiryawan, "The Illusion of Integrating Customary Law into Indonesia's Contract Law System on the Communal Sanctions Policy Forum," *Journal of Human Rights, Culture and Legal System* 6, no. 1 (April 8, 2026): 222–53, <https://doi.org/10.53955/JHCLS.V6I1.896>.

3. Customary law within India: Pluralistic legal system

In comparison with India and the practice in Indonesia, a crucial aspect of the Indian legal system is legal pluralism, which is basically the existence of multiple legal systems within the same state. This idea has also undergone internal conceptual evolution in recent years. Legal pluralism thrives in diversity, and diversity is inherent to Indian society. Rather than being observed as a panacea to these social evils and social frictions, legal pluralism provides a framework that emphasizes a bottom-up approach towards understanding and, more importantly, appreciating how the agency of individuals and their communities flourishes in diversity and acts innovatively to tackle the frictions that may arise from it, rather than dismissing it altogether.³³

When two or more legal systems coexist in the same social context, the same is referred to as legal pluralism. Much of the view of legal pluralism is completely compatible with India's social realities. State acknowledgment of legal plurality. "In all suits regarding marriage, caste, and other religious usages and institutions, the law of the Koran with respect to the Mohammedans and the law of the Shaster with respect to the Gentoos shall be adhered to."³⁴

a variety of procedural mechanisms, institutions, and practices to manage hybridity rather than eliminate it by imposing sovereign territorial prerogatives or universalist harmonization schemes. The India states practiced procedural mechanism legal pluralism as an approach.³⁵

³³ Rochmayanto et al., "Devolution of Forest Management to Local Communities and Its Impacts on Livelihoods and Deforestation in Berau, Indonesia."

³⁴ Shandilaya Shandilaya, "A comparative study of the notion of legal and political pluralism in India and the Western world: Challenges and way ahead." *International Journal of Health Sciences* 6, no. 4 (2022): 3804-3818 <https://doi.org/10.53730/ijhs.v6nS4.9518>

³⁵ Chakravarthi Ram-Prasad, "Pluralism and liberalism: reading the Indian Constitution as a philosophical document for constitutional patriotism", *Critical Review of International Social and Political Philosophy* 16, no. 5 (2023); 676-697 <https://doi.org/10.1080/13698230.2012.691765>

As a normative text, the Indian Constitution's Fundamental Rights illustrate that the citizen is an independent person who derives identity from belonging to a diverse group. Rights are seen as both a matter of individual autonomy and of community membership, with specific safeguards for the most vulnerable people.

Religion, tribalism, and government each have considerable limitations in a pluralistic system, yet each may nevertheless play a unique role in society. Rather than a shift in religious conviction, normative religious diversity is made possible by the relationship between law, religion, and politics. Legal pluralism starts with identifying specific laws that manifest in current circumstances, with how the national law recognizes and accepts this kind of law, and with how it is stated in the national law. Instead of starting with universal principles of justice under national law, the national law recognizes this local law (either religion, tribal law, or customary law). It is practiced under the legalization of procedural justice.³⁶

The recognition and acceptance adopted through this procedural process have made local wisdom-based customary law in India accepted and recognized within the pluralistic legal system. The combination of procedures that must be followed has caused many of these customary laws, namely community resolution, to lose their relevance and become state-mandated, with state officials failing to understand the philosophy behind them.³⁷

Conclusion

There is a structural weakness in the form of a lack of a strict legal instrument that links customary decisions or agreements to the termination of formal legal processes under criminal law. This condition

³⁶ Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings*. New York: Cambridge University Press, 2015. 262

³⁷ Ketan Dayal, "Legal Pluralism and the Politics: A Study", *International Journal of Law Management and Humanities* 6, no. 2 (2023); 2151-2164 <https://doi.org/10.10000/IJLMH.114638>

leads to legal uncertainty and opens room for double criminalization. Therefore, there needs to be an acceptance and acknowledgment of Regulations that acknowledge and provide formal legitimacy to customary dispute resolution mechanisms, not to formalize or freeze customs, but to guarantee legal certainty and prevent the existence of *ne bis in idem* between customary law and state law. The ideal formulation of criminal law policies in a pluralistic territory, such as North Maluku, must be directed toward a dual-track policy model that integrates state criminal law with a local wisdom-based restorative justice mechanism as a mechanism of acceptance, recognition, and legalization, but not codified.

The main advantage of customs-based conflict resolution lies in moral-spiritual and collective compliance, as well as in the effectiveness of social and symbolic sanctions, such as customary oaths and recovery rituals. These instruments have been proven to create a deterrent effect and significant prevention without the need to use state criminal sanctions. Apart from that, customary institutions function as mediators with high social authority and may grasp the sociological, ecological, and cultural dimensions of a conflict, which are often left unaddressed in formalistic positive criminal law.

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