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A Living Law Based Model for Regional Regulation Drafting Regency under Law Number 1 of 2023

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Abstract

The model for drafting regional regulations discussed in this article is motivated by the enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP), which replaces its predecessor. The revised KUHP accommodates the concept of living law to preserve the living culture continuously transmitted within regions. To operationalize this, regional regulations serving as implementation frameworks are essential. The enactment of Law No. 1 of 2023 further underscores the importance of establishing such regulations. Previous research across various disciplines has examined this issue: constitutional law studies have focused on the legislative drafting for regional regulations; criminal law studies have highlighted the challenges uncodified living law faces within the formal hierarchy of legislation; and legal sociology studies have examined the sociolegal conditions surrounding the societal acceptance of living law in contemporary settings. Given these conditions, this study aims to formulate an

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appropriate model for guiding the drafting/formulation of Regional Regulation drafts incorporating living law ensuring that the resulting regulations can be effectively implemented.

KEYWORDS *criminal law, living law, regional regulations*

Introduction

Indonesia is a constitutional state (*Rechtsstaat*), a principle that establishes the law as the fundamental instrument for organizing public authority and regulating social relations. However, the operation of law in Indonesia cannot be comprehended solely through the lens of written legislation. Indonesian society is inherently pluralistic, characterized by diverse cultures, social structures, historical trajectories, and normative practices. Consequently, legal development occurs through continuous interaction between state-enacted rules and the social norms evolving within communities. This dynamic relationship becomes particularly significant when the state formally recognizes norms that are already operational within society as a form of 'living Law'.

The concept of living law posits that legal frameworks exist beyond formal, enacted legislation. Friedrich Carl von Savigny's concept of the *Volksgeist* asserts that law may exist beyond enacted legislation. Savigny's *Volksgeist* explains law as is historically tethered to the spirit of a people, whereas Eugen Ehrlich's sociological of jurisprudence emphasizes the actual norms that actually governing social relations. These perspectives challenge strictly formalist formal conceptions of law, and providing a robust theoretical foundation for examining customary norms, community practices, and social expectations as legitimate sources of normative order. In Indonesian context, this theoretical stance aligns connected with the constitutional recognition of customary law communities (*masyarakat hukum adat*) and to the broader reality of legal pluralism.

Regional regulations (*Peraturan Daerah*) serve as a vital instrument for translating national legal policies into rules tailored to the specific conditions and needs of local communities. Situated within the hierarchy of Indonesian legislation, their formulation must ensure consistency with higher-level statutes while accurately reflecting the social, cultural, and legal characteristics of their respective jurisdictions. Article 236 of Law Number 23 of 2014 concerning Regional Government affirms the authority of Regional People's Representative

Councils (DPRD) and regional heads to jointly establish enact regional regulations. Accordingly, the drafting of regional regulations is not merely a formal legislative exercise, but rather a crucial mechanism for accommodating local interests within the unified national legal system.

The imperative to accommodate local characteristics has acquired heightened significance following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The revised Criminal Code formally recognizes the existence of 'living law' as the jurisprudential basis for applying customary criminal provisions. Specifically, Article 2 of Law Number 1 of 2023 validates customary criminal law operating within particular community, subject to stringent requirements and limitations delineated by national law. This formal recognition mirrors Indonesia's inherent legal pluralism and aligns with Article 18B (2) of the 1945 Constitution, which explicitly acknowledges and respects customary criminal provisions. law communities and their traditional rights, provided they remain extant and concordant with societal evolution and the fundamental principles of the Unitary State of the Republic of Indonesia. Historically, the applicability of living law was similarly acknowledged through Article 5(3)(b) of Emergency Law Number 1 of 1951.

Pursuant onto the provisions of Article 1, point 18 of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, the term 'Regional Regulation' (hereinafter referred to as *'Perda'* or by analogous nomenclature) encompasses both Provincial Regional Regulations and Regency/Municipal Regional Regulations. These regional regulations are accorded the formal status of statutory legislation under Law Number 12 of 2011 concerning the Formation of Legislation, as subsequently amended by Law Number 13 of 2022.

Nevertheless, integrating the recognition of living law into the revised Criminal Code introduce a fundamental regulatory problem. Living law organically evolves from social practices, customary values, and norms continuously upheld by a specific community. Conversely, regional regulations are codified instruments formally enacted through rigid statutory procedures. Consequently, the inherently dynamic and contextual nature of living law cannot be seamlessly transposed into a regional regulation absent an appropriate mechanism for identification, verification, and formulation. An inadequate transposition process risks producing regulations that either misrepresent the authentic norms practiced by the community or engender jurisdictional friction between customary norms and national legal principles. Therefore, the effective

implementation of Article 2 of Law Number 1 of 2023 necessitates a robust regulatory model capable of translating living law into regional regulations while concurrently preserving legal certainty, ensuring hierarchical consistency with overarching legislation, and respecting the foundational values of the communities concerned. Implicated communities.

This problematic is particularly salient in Brebes Regency. Geographically situated in the extreme northwestern sector of Central Java Province—between coordinates 108° 41′37.7″ and 109° 11′28.92″ East Longitude, and 6° 44′56.5″ to 7° 20′51.48″ South Latitude—Brebes shares a direct administrative border with West Java Province. Furthermore, its adjacency to Tegal Regency creates a degree of sociocultural integration between the two jurisdictions. Brebes geographically expansive regency within Central Java, predominantly characterized by lowland topography. However, its southwestern quadrant is mountainous (featuring the peaks of Mount Pojok Tiga and Mount Kumbang), while the southeastern region encompasses mountainous terrain forming part of the Mount Slamet complex. Characterized by a tropical climate with an average monthly rainfall of 18.94 mm, this geographical and sociocultural heterogeneity dictates that the identification of living law within Brebes cannot be predicated upon generalized assumptions regarding Indonesian customary law

These intricate conditions render the Brebes region a highly relevant context for addressing this regulatory gap. Brebes harbors a documented customary law community in Jalawastu and has a previously promulgated legal instruments recognizing local wisdom and customary institutions. These institutional developments unequivocally demonstrate that local normative values can be successfully integrated into regional governance structures. Furthermore, they underscore why the generalized concept of 'Brebes customary law' remains analytically inadequate. Living law is inherently bound to specific communities and localized territories; therefore, its formal recognition must not precipitate the automatic imposition of norms specific to one community upon residents who fall outside its normative Jurisdiction.

The Criminal Code (KUHP) constitutes one of the most foundational legal frameworks in Indonesia, with its reformulation process commencing as early as 1963. The drafting of the revised KUHP did not entail a de novo reconstruction of the previously applicable penal code, but rather constituted a systematic recodification.[1] The methodology employed was one of total

[1] Tim Perumus Rancangan KUHP, "Naskah Akademik Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP)," 2022.

codification, whereby disparate penal statutes existing outside the KUHP were systematically consolidated into a unified legislative instrument.[2] The jurisprudential foundations of this criminal law reform are articulated through three underlying pillars: 1) Philosophical, establishing the primacy of state ideals and objectives to ensure alignment with the fundamental principles of the Indonesian nation; 2) Sociological, prioritizing indigenous cultural values and contemporary societal needs; and 3) Juridical, underscoring the imperative of achieving national legal Unity and coherence.[3]

Law constitutes an integral matrix of societal life, as the very existence of society necessitates the creation of legal order. In essence, society is governed not solely by codified legal systems but concurrently by alternative normative frameworks, namely 'living law' or customary law, which exert significant influence over the maintenance of social order.[4] While living law is frequently identified as a hallmark of Common Law traditions, Indonesia's profound cultural diversity has provided fertile ground for this concept to flourish, predating the nation's independence.[5] As an endogenous form of law, living law originates and evolves within a community through continuous, iterative practice, culminating in the community's collective recognition of these norms as binding obligations grounded in moral duty.[6] Fundamentally, living law denotes a dynamic jurisprudence that influences and binds society in accordance with the principles of civilized humanity.[7]

The manifestation of living law in Indonesia is most conspicuously observed in the application of customary law (*hukum adat*). Indonesian customary law possesses distinctive characteristics that differentiate it apart from statutory law—most notably its dynamic, flexible nature and its inherently uncodified status. These characteristics are mutually reinforcing; as previously elucidated, living law retains its uncodified form precisely because it must remain sufficiently pliant to adapt to ongoing societal evolution.[8] Consequently, the continued recognition and preservation of customary law in Indonesia

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2 Mudzakkir and others, *Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana Dan Sistem Pemidanaan* (Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM RI, 2010).

3 KUHP, "Naskah Akademik Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP)."

4 A Rif'an and I Y Isdiyanto, "Dediametralisasi Living Law Dan Kepastian Hukum Dalam Pasal 2 RKUHP," *Ahmad Dahlan Legal Perspective* 1 (2021): 22.

5 W S Hernowo, Z Zaid, and M A S P Erawan, "Op.Cit.," n.d.

6 S Hadi, "Hukum Positif Dan The Living Law (Eksistensi Dan Keberlakuannya Dalam Masyarakat)," *DiH Jurnal Ilmu Hukum* 13 (2017): 259.

7 H Christianto, "Measuring Cyber Pornography Based on Indonesian Living Law: A Study of Current Lawfinding Method," *International Journal of Law, Crime and Justice* 60 (2020): 3.

8 M Hertogh, ed., *Living Law: Reconsidering Eugen Ehrlich* (Bloomsbury Publishing, 2008).

imperative, as it constitutes a defining attribute of the nation's rich cultural and customary pluralism.

The drafters of the revised Criminal Code define 'living law' as customary law—specifically, localized norms that remain actively observed and serve as primary normative references for customary law communities.[9] The legislative rationale for incorporating 'living law' into the penal code stems from the state's commitment to actualizing the constitutional mandate of Article 18B of the 1945 Constitution, which dictates that the state shall recognize and respect indigenous customary law communities and their traditional rights, provided they remain extant and conform to national principles (to be further regulated by statute). This incorporation also leverages the historical legal precedent established by Article 5(3)(b) of Emergency Law Number 1 of 1951, which permits the regulation of specific acts according to a community's living law, subject to prescribed limitations. However, in contrast to the comprehensive codification paradigm discussed previously, the formal integration of 'living law' possesses a distinct, inherently partial nature; consequently, it risks projecting an impression of overreaching state authority and may inadvertently precipitate legal dualism[10]

The elucidation appended to Article 2(1) of the revised Criminal Code stipulates that to establish a firm legal basis for the applicability of customary criminal offenses, such norms must be explicitly clarified and systematically compiled by regional governments via Regional Regulations specific to the jurisdictions where these offenses operate. These Regional Regulations are intended to serve as authoritative normative references for the judiciary in adjudicating cases, thereby ensuring a more substantive realization of justice.[11]

Beyond its constitutional grounding, the recognition of living law is reinforced by the statutory precedent of Emergency Law Number 1 of 1951, specifically Article 5(3)(b), which authorized the application of living law to regulate specific conduct, albeit within defined limitations. This historical continuum demonstrates that, normatively, the existence of customary law has long been acknowledged within Indonesia’s criminal justice system, even

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9 “Penjelasan Pasal 2 Ayat (1) Dan (2) Draft Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana,” n.d.

10 T J S Utama, “Hukum Yang Hidup Dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP) Antara Akomodasi Dan Negasi,” *Masalah-Masalah Hukum* 49 (2020): 21.

11 Utama.

though its practical implementation continues to encounter significant challenges, particularly concerning harmonization with positive statutory law.[12]

Within the broader context of the comprehensive recodification of national criminal law, the formal recognition of living law introduces complex regulatory dynamics. Unlike integrated, total codification, living law is inherently partial and highly contextual, as its applicability is inextricably tethered to the specific sociocultural conditions of localized communities. This dichotomy possesses the potential to project an unwarranted expansion of state authority in determining normative applicability, while simultaneously risking the exacerbation of legal dualism between state law and customary law. Therefore, the establishment of a clear, structured mechanism to integrate living law into the national legal architecture is imperative to prevent legal uncertainty.[13] Regional Regulations are projected to function as the crucial normative instruments bridging the ontological gap between customary law and state law, providing a definitive reference for judicial adjudication of customary offenses. Consequently, the enactment of Regional Regulations accommodating living law transcends mere formal recognition; it constitutes a deliberate institutional effort to realize a more substantive, contextually sensitive paradigm of justice within Indonesian law enforcement, particularly in heterogeneous jurisdictions such as Brebes Regency.[14]

Prior scholarship concerning living law in Indonesia has predominantly interrogated the concept through theoretical, sociological, anthropological, and criminal law lenses. Additional studies have explored the recognition of customary law within the national legal architecture and its formal incorporation subsequent to recent penal reforms. Collectively, these studies underscore the paramount importance of legal pluralism and the formal recognition of customary norms. Nevertheless, the extant literature has inadequately addressed the specific institutional and legislative mechanisms required for transforming unwritten living law into codified regional regulations pursuant to the enactment of Law Number 1 of 2023. Notably, there is a paucity of discourse detailing how local governments must identify, assess,

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12 S H Rudi Margono, *Teknis Penerapan Hukum Pidana Adat (The Living Law) Di Pengadilan* (Profesor Rudi Margono, 2026).

13 Karolus Charlaes Bego et al., "Paradigma Baru Hukum Pidana Nasional: Analisis Normatif Terhadap Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Jurnal Kolaboratif Sains* 8, no. 11 (2025): 7482–90.

14 Ni Putu Ari Setyaningsih and Putu Chandra Kinandana Kayuan, "Kompilasi Delik Adat Dalam Peraturan Daerah Sebagai Dasar Pemidanaan Dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (RUU KUHP)," *Jurnal Yustitia* 16, no. 1 (2022): 71–79.

harmonize, and formulate living law into statutory provisions, particularly within regencies characterized by distinctive geographical and sociocultural complexities, such as Brebes. Consequently, the critical gap identified is not a mere absence of discourse on living law per se, but rather the stark absence of a practical, normative model for drafting regional regulations capable of bridging community-based living law with the formal legislative framework mandated by Law Number 1 of 2023.

The absence of such a structural model generates a precarious disjunction between the formal recognition of living law at the national level and its practical implementation at the regional echelon. While the recognition of living law offers a profound opportunity to enhance substantive justice and ensure that penal law reflects authentic societal values, the transposition of unwritten, dynamic norms into codified regional regulations necessitates stringent boundaries. These boundaries are imperative to preclude administrative arbitrariness, normative uncertainty, discriminatory practices, or constitutional friction with higher-order legislation. Regional regulations must therefore transcend the mere passive recording of existing customs; they must function proactively as rigorous legal mechanisms for selecting, validating, and formalizing living law via a transparent, accountable legislative process.

Against this backdrop, this study proposes a comprehensive living law-based model for the drafting of regional regulations in Brebes Regency, operationalizing Law Number 1 of 2023. This model is designed to construct a robust normative framework triangulating three core elements: the extant living norms of the local community, the foundational principles and limitations of national criminal law, and the formal statutory procedures governing the enactment of regional regulations. This model is engineered to provide a definitive basis for establishing the criteria of living law, dictating the mechanisms for its precise identification and community validation, governing the process of legal harmonization with superior legislation, and guiding its ultimate formulation into binding regional regulatory provisions. Ultimately, this study seeks to advance the discourse beyond the mere conceptual recognition of living law, progressing toward an operational legislative framework capable of rigorous, practical application at the regional level.

This research utilizes using normative juridical methodology, deploying statutory, conceptual, and analytical approaches to interrogate the recognition of living law and its systematic incorporation into the drafting of regional regulations pursuant to Law Number 1 of 2023 concerning the Criminal Code.

The corpus of legal materials encompasses primary legal sources, notably the 1945 Constitution, Law Number 1 of 2023, Law Number 23 of 2014 concerning Regional Government, and Law Number 12 of 2011 (as amended by Law Number 13 of 2022), alongside other pertinent legislation. This is supplemented by secondary legal materials, including peer-reviewed journal articles, seminal books, and authoritative legal scholarship. These materials were purposively selected based upon their normative relevance, formal legal authority, and academic credibility in addressing the central research questions. The collected data were subsequently analyzed qualitatively through doctrinal interpretation, comparative legal analysis, and the harmonization of disparate legal norms.

The analytical process proceeded through four distinct stages: (1) identification of the foundational criteria and characteristics of living law; (2) validation and harmonization of living law norms against overarching constitutional principles, the stipulations of Law Number 1 of 2023, and superior legislation; (3) formulation of these validated norms into actionable regulatory elements; and (4) institutionalization within the formal legislative mechanics of regional regulation drafting. The specific context of Brebes Regency was integrated as a critical contextual variable—particularly emphasizing its geographical status as a border region and its inherent sociocultural diversity—to construct a region-sensitive regulatory framework, deliberately avoiding presumptive assertions regarding the existence of particular customary norms. The validity of the analysis was reinforced through normative triangulation, which involved cross-referencing statutory provisions, established legal doctrines, and prevailing scholarly interpretations. Given its normative juridical orientation, this study does not seek to empirically quantify the prevalence or community acceptance of specific customary practices. Consequently, the proposed model functions as a normative framework necessitating subsequent empirical validation and rigorous legislative assessment prior to formal enactment within any specific regional regulation.

Living Law Based on Law No. 1 of 2023

Every society invariably develops its own mechanisms of social control. To sustain its internal social system, a degree of uniformity and harmony of in

behavior—codified as 'norms' or is 'rules'—is established.[15] A norm acquires formal legal force when adopted by governing authorities to regulate community behavior, thereby ensuring an orderly societal structure.[16] Thus, the existence of law is inextricably linked to the presence of both society and recognized authority within that community.[17]

In all societies, normative frameworks govern interpersonal relationships. As Cicero famously postulated, *'ubi societas ibi ius'* (where there is society, there is law)." This maxim underscores that every society generates legal structures functioning to regulate human behavior. Indeed, law is an integral component of a society's cultural development; it is aptly characterized as a product of culture. Martin Kryger [18] conceptualizes law as tradition, highlighting its indelible connection to the values and practices cultivated within a society. Consequently, cultural advancement is inextricably accompanied by legal development, and conversely, the law evolves in tandem with the growth and transformation of societal culture. This dynamic demonstrates that law is inherently inseparable from its host society, which serves as its primary generative source. Ronald Dworkin's conception of society as 'a fabric of rules' further elucidates this intimate nexus between legal frameworks and social life.

A society possessing a distinct culture will inevitably cultivate its own endogenous legal system. Each society engenders specific typologies and forms of law that reflect the values, customs, and unique characteristics of its social existence. In this, context, law is continuously molded by the prevailing culture within the community. Consequently, societies produce divergent legal traditions. This differentiation is prominently illustrated by the contrasting traditions of civil law and common law, both of which exhibit unique characteristics derived from their emergence and evolution within disparate cultural contexts.

Law is the natural will of the people.[19] It manifests from the spirit of the people (*volksgeist*) evolving concurrently with the growth and development of the society it governs. The existence of life is not spontaneous; rather, it is deterministically shaped by the existence and trajectory of societal evolution. Consequently, law functions as a mirror reflecting the society in which it

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15 Hoebel.

16 Hilman Hadikusuma, *Antropologi Hukum Indonesia* (PT Alumni, 2013).

17 Utama, "Hukum Yang Hidup Dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP) Antara Akomodasi Dan Negasi."

18 Martin Kryger, "Law as Tradition," *Journal of Law and Philosophy* 5, no. 2 (1986): 240.

19 Soerjono Soekanto, *Teori Yang Murni Tentang Hukum* (PT Alumni, 1985).

operates. The historical school of jurisprudence, pioneered by Friedrich Carl von Savigny (1779–1861), posits that law is not deliberately manufactured by legislators, but is organically shaped by customs, popular beliefs, and internal, silent forces.[20] This perspective profoundly influenced Eugen Ehrlich, who subsequently introduced the term 'living law' in his *Grundlegung der Soziologie des Rechts* (Fundamental Principles of the Sociology of Law). Living law manifests. in diverse forms, encompassing customary law, common law, and religious law. Customary law operates as a quintessential living law because it authenticates the genuine legal sentiments of the people in accordance with their intrinsic nature, continuously growing and adapting in tandem with life itself.[21]

Any act or event resulting from an individual's conduct that contravenes propriety, harmony, order, security, a sense of justice, and the legal consciousness of the implicated community, is defined by I Gede A.B. Wiranata as a violation of custom or a customary offense.[22] Furthermore, according to B. Ter Haar Bzn, a violation (offense) constitutes any unilateral disruption of the personal equilibrium of an individual or a group, irrespective of whether the disturbance is material or immaterial[23] in nature. Consequently, a customary violation invariably triggers customary reaction, necessitating the restoration of the disrupted societal balance.[24]

In his book of *Bab-Bab Tentang Hukum Adat* (Chapters on Customary Law), Soepomo articulates that a defining characteristic of customary law is its failure to demarcate criminal offenses (adjudicated by criminal judges) from civil offenses (adjudicated by civil judges).[25] This concept dictates that there is no differentiation in procedural law when resolving customary offenses. Within this paradigm, the fundamental essence of customary law is the restoration of the balance or cosmic unity fractured by a customary violation.[26] Consequently, customary jurisprudence lacks the rigid dichotomies separating criminal offenses, from civil matters, and public from private domains. Furthermore,

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20 Zulfa Aulia, "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa," *Undang: Jurnal Hukum* 3 (2020): 202–3.

21 Soepomo, *Bab-Bab Tentang Hukum Adat* (Pradnya Paramita, 1983).

22 I Gede A B Wiranata, *Hukum Adat Indonesia: Perkembangannya Dari Masa Ke Masa* (Citra Aditya Bakti, 2005).

23 B Ter Haar Bzn, *Asas-Asas Dan Susunan Hukum Adat* (Pradnya Paramita, 1979).

24 Ter Haar Bzn.

25 Soepomo, *Bab-Bab Tentang Hukum Adat*.

26 Rikardo Simarmata, "Kedudukan Dan Peran Peradilan Adat Pasca Unifikasi Sistem Peradilan Formal," *Undang: Jurnal Hukum* 4 (2021): 286.

upon the occurrence of a legal infraction, the customary legal enforcer undertakes concrete measures intended to restore the violated legal equilibrium to its original state (restitutio in integrum).[27]

Following this jurisprudential reasoning, every society inherently possesses a 'living law ' that has evolved continuously since its inception. This living law emerges organically from the daily interactions of the community, tangibly manifested through continuous practice. Crucially, community adherence is driven by a profound sense of moral duty, not rather due than to external coercion from imposed those by informal authority. Authorities. This living law may derive from customs, traditions, religious doctrines, and various other sociocultural sources. Therefore, the assertion that traditional societies lack behavioral rules analogous to formalized law is conceptually flawed.

With the proliferation of modern states prioritizing the principle of legal certainty, living law has experienced varying degrees of marginalization due to its inherently unwritten nature. Modern statehood precipitated the ascendance of state law, conceptualized by John Austin as 'positive law'. Adherents of the legal positivist school strictly define law as 'the command of the sovereign backed by sanction'. Under this restrictive paradigm, law requires three indispensable elements: a sovereign, a command, and a sanction. The absence of these elements negates the categorization of a norm as law. Propelling this logic to its extreme, strict legal positivism asserts that no law exists outside the parameters of positive law, effectively stripping living law of its unwritten jurisprudential legitimacy.

The tension between the existence and applicability of positive law versus living law forms the crux of an enduring dialogical debate between sociological jurisprudence and legal positivism. This scholarly dialectic centers fundamentally on essential nature and function of law within societal life. Accordingly, this article seeks to critically examine this theoretical dichotomy, endeavoring to propose a viable jurisprudential middle ground. Furthermore, it will analyze the respective roles and influences of both positive and living law within the architecture of the Indonesian legal system, which is intrinsically anchored in the state ideology of Pancasila.

From a sociological standpoint, living law evolves from societal customs that, through continuous iterative practice, ultimately solidify into normative rules within a specific region. As an unwritten construct, living law possesses a

[27] Simarmata.

highly dynamic nature, retaining the capacity to mutate and evolve in tandem with temporal shifts. The social customs that crystallize into living law are performed voluntarily, devoid of coercion from formal state authorities.[28] In contemporary contexts, living law encapsulates the distinct values and subcultures of local communities, accommodating and legitimizing variations from the dominant, hegemonic culture.

In Indonesia, the operation of living law is Indonesia most evident in the application of customary law. Customary. Indonesian customary law exhibits distinctive characteristics that differentiate it from codified positive law enforced throughout the state—principally, its dynamic, flexible nature and its uncodified status. These traits are inextricably linked; as previously established, living law remains uncodified precisely because its inherent nature demands adaptability in the face of ongoing societal evolution. Consequently, the recognition and preservation of customary law in Indonesia are imperative, representing a defining characteristic of a nation defined by its profound cultural and customary plurality.

The concept of living law has served as foundational pillar within the revised Criminal Code (KUHP) since its initial drafting stages. The framers of the penal code explicitly sought to accommodate living law—specifically customary law—as a critical substantive consideration, recognizing that effective law in Indonesia must reflect the implementation of living societal norms. The fundamental demarcation between customary law and positive written law resides in the institutional bodies authorized to determine, establish, and enforce these normative values, notably the formal legislative bodies responsible for drafting the KUHP. Therefore, within this context, unwritten or 'living law' is functionally synonymous with customary law, whereas written law constitutes formalized statutory regulations.[29]

The expansion of the principle of legality within the revised Criminal Code facilitates the incorporation of the aforementioned 'living law' into statutory frameworks. The principle of legality has evolved beyond the rigid strictures of *'nullum delictum sine lege'* (no crime without a law) to embrace *'nullum delictum sine ius'* (no crime without a right/justice), thereby transforming from a strictly formal principle of legality into a material principle of legality.[30] Aligning with this shift, the explanatory notes to Article 2(1) of the

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28 Hertogh, *Living Law: Reconsidering Eugen Ehrlich*.

29 S Mahdi, "Kedudukan Hukum Adat Dalam Sistem Hukum," *Kanun* 50 (2010): 5–6.

30 St. Laksanto Utomo, *Hukum Adat Depok* (Raja Grafindo Persada, 2017).

Criminal Code emphasize that to establish a robust legal foundation for enforcing customary criminal offenses, the government is mandated to formalize and systematically compile these offenses via regional regulations tailored to specific jurisdictions. These Regional Regulations are projected to function as the critical normative instruments bridging the chasm between customary law and positive state law, while simultaneously providing an authoritative reference for judicial adjudication of customary offenses. Consequently, the enactment of Regional Regulations accommodating living law transcends mere formal recognition of customary norms; it constitutes a deliberate effort to realize a more substantive, contextually nuanced paradigm of justice within Indonesian law enforcement, particularly in heterogeneous jurisdictions like Brebes Regency. Additionally, this legislative shift is driven by the drafters' imperative to decolonize the penal code, discarding irrelevant colonial legacies while rectifying the historical failure to integrate indigenous living law values during the original code's formulation.[31] Upon critical examination, the inevitable implication of this legislative trajectory is the institutionalization of legal pluralism.

Legal pluralism, as articulated by Erman Rajagukguk, is broadly defined as the coexistence of two or more interacting legal systems within a single societal matrix. Distinct social groupings—ranging from familial units and age cohorts to local communities and political factions—frequently operate under disparate normative systems.[32] In this context, analyzing pluralism is essential for identifying the potential jurisprudential risks and consequences arising from the formal incorporation of living law into the national Criminal Code. A rigorous examination of its dynamic relationship with positive law is critical to accurately conceptualize this pluralism and preclude theoretical misconceptions.[33] The drafters of the Criminal Code explicitly outlined the underlying legal politics guiding its formulation, characterizing the policy as a situation 'problem-solving design'. This approach dictates that the penal code must align synergistically with structural principles, ideological philosophical tenets (Pancasila), sociological imperatives rooted in national culture, and political principles ensuring consistency with overarching recodification policies.[34]

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31 KUHP, "Naskah Akademik Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP)."

32 Tim Penulis Hukum Online, "Pluralisme Hukum Harus Diakui," 2006.

33 Utama, "Hukum Yang Hidup Dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP) Antara Akomodasi Dan Negasi."

34 P J Hairi, "Kontradiksi Pengaturan 'Hukum Yang Hidup Di Masyarakat' Sebagai Bagian Dari Asas Legalitas Hukum Pidana Indonesia (The Contradiction of 'Living Law' Regulation as Part of the

As established above, no society exists devoid of a legal framework. Even within traditional societies, embedded mores function as the foundational basis for behavior, manifesting as customs, traditions, symbolic systems, and shared belief structures. Crucially, the presence of law is not the exclusive preserve of modern, industrialized societies; normative frameworks are identifiable even in the most rudimentary social structures. This premise rests on the sociological axiom that human group formation intrinsically necessitates 'rules of the game'—guidelines, strictures, and behavioral directives. Because humans are rational and cultured actors, they invariably construct cultural institutions to mitigate chaos and regulate interpersonal conflict. Humanity is not solely driven by adversarial or destructive impulses; humans simultaneously possess an inherent capacity for empathy, cooperation, and the pursuit of social harmony. Law emerges precisely as the regulatory mechanism designed to balance these competing aspects of human nature. While law cannot eradicate human vice, it provides the necessary control structures to prevent societal devolution. Conversely, while it cannot perfect human nature, it offers the normative guidance essential for fostering functional social beings. Consequently, the genesis of law coincides with the formation of human groups, significantly preceding the emergence of the formal state apparatus.

Indonesian society is distinguished by profound heterogeneity, encompassing a vast mosaic of cultures, religions, ethnicities, and customary traditions. Consequently, diverse normative paradigms—most notably customary law (*hukum adat*) and Islamic law—have long coexisted and evolved within the societal fabric. Thus, long before the attainment of national independence, the Indonesian people possessed and actively practiced robust forms of living law. Within historical context, a state of de facto legal pluralism emerged organically, wherein distinct legal communities maintained proprietary legal systems. These systems were characterized by unique normative values and regulatory mechanisms that authentically reflected the specific sociocultural identity of each community.

Concurrently, within the formal architecture of the modern Indonesian legal system, statutory regulations or (positive law) are prioritized as the primary source of legal authority. The national legislative framework is structured both hierarchically and systematically, with legislative authority delegated across disparate tiers of government. Consequently, virtually every facet of governance

Principle of Legality in the Indonesian Criminal Law)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 7 (2017): 105.

and social interaction is ostensibly regulated by positive law, illustrating the hegemonic dominance of codified written law within the Indonesian legal order. This structural reality has led numerous scholars to categorize Indonesia as a constitutional state based strictly on the rule of law (Rechtsstaat), wherein formalized legal norms serve as the indispensable foundation for governmental administration and the regulation of social conduct.

The proliferation of statutory laws and regulations is fundamentally a logical corollary of the rule of law principle, specifically the mandate that all governmental actions and societal behaviors must adhere to the principle of legality. In this capacity, positive law functions as the primary instrument for securing legal certainty, societal order, and behavioral predictability. Nevertheless, despite its paramount structural role, positive law is not immune to inherent weaknesses and operational limitations. In practice, statutory regulations frequently exhibit ambiguous provisions, vague formulations, systemic inconsistencies, contradictions, and juridical gaps (loopholes) that fail to adequately encompass the complexities and fluid dynamics of social life. As a consequence, positive law periodically proves inadequate in comprehensively addressing the evolving legal needs and the substantive sense of justice that permeate society.

In light of these conditions, a critical question emerges: where does 'living law' intersect with this formal paradigm? Indonesia does not exclusively adhere to a traditional civil law system; rather, it possesses a sui generis legal framework anchored in the Pancasila-based rule of law. Consequently, alongside statutory legislation serving as the primary legal source, Indonesia formally recognizes 'living law' as a substantive source of jurisprudence. This recognition is explicitly manifested in several key legal provisions:

1. Article 18B (2) of the 1945 Constitution recognizes customary law communities and their inherent traditional rights. This constitutional provision indirectly acknowledges and respects the existence of 'living law' within the broader context of national and civic life. This is further evidenced by the formal recognition of traditional villages (*desa adat*) and their specific rights derived from their respective 'living laws'.
2. Article 5 of the Judicial Power Act obligates judges to actively explore and understand the substantive sense of justice that organically grows and develops within society. This mandate signifies that a judge,

during adjudication, is not relegated to being merely a 'mouthpiece of the law' (*la bouche de la loi*), as is strictly dictated in orthodox civil law traditions. Instead, judges are granted the judicial discretion to explore 'living law' to ensure the realization of material justice.

3. The Basic Agrarian Law (UUPA) unequivocally stipulates that national land law is fundamentally predicated upon customary law. This principle is operationalized through the formal recognition of customary land rights (*hak ulayat*).
4. The Marriage Law stipulates that a marriage holds legal validity only if conducted in strict accordance with the respective religious laws and beliefs of the contracting parties.
5. Within the realm of inheritance law, structural legal pluralism is actively accommodated, allowing for the concurrent application of Islamic, customary, and Western civil inheritance laws.

The aforementioned examples compellingly indicate that 'living law' retains substantial recognition within the Indonesian legal architecture. Indeed, 'living law' functions as a vital substantive source for the continuous formation of Indonesian positive law, evidenced by the state's extensive codification of various Islamic legal provisions. Nevertheless, the application of 'living law' must be carefully synchronized with overarching national law. For instance, within the domain of criminal law, the principle of formal legality is strictly enforced; consequently, an act cannot be subjected to penal sanction unless explicitly criminalized by formal statute, even if the act egregiously contravenes local 'living law'.

Fundamentally, a legal anthropological perspective demonstrates that law functions primarily as a mechanism of social control designed to establish public order and maintain societal harmony.[35] The recent trajectory of criminal law reform in Indonesia has ignited extensive academic and public debate regarding the substantive content of several provisions within the Draft Criminal Code (RUU KUHP), most notably those concerning the formal regulation of living law.

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[35] T Tongat et al., "Hukum Yang Hidup Dalam Masyarakat Dalam Pembaharuan Hukum Pidana Nasional," *Jurnal Konstitusi* 17 (2020): 159.

The regulation of living law within the revised Criminal Code is slated for implementation via regional regulations specific to jurisdictions where customary criminal offenses remain operative. This is achieved by systematically compiling those living customary offenses that the government officially classifies as customary penal infractions.[36] However, integrating these norms into the Criminal Code through codified compilation threatens to alter their fundamental status as 'living' laws, which inherently require the flexibility to evolve alongside societal changes. Such codification risks artificially ossifying these norms, severely limiting the ability of living law to develop organically within community life. Furthermore, by incorporating only partial provisions of living law—specifically those governing customary penal sanctions—this legislative strategy risks facilitating an unwarranted expansion of coercive state authority.[37]

Enacting provisions regarding living law into formal legislation threatens to constrain the dynamic nature inherent to it. This approach directly contradicts Eugen Ehrlich's jurisprudential perspective, which defines living law as a normative order that arises and evolves organically in accordance with the continuous development of societal customs. Fundamentally, living law does not constitute a rigid rule encapsulated within a normative legal text; rather, it embodies ideal social norms aimed at protecting the community from transgressions and ensuring the equitable distribution of justice.[38]

According to Ehrlich, any attempt to rigidly codify customary criminal offenses risks transmuting them into 'dead law'—a static framework that loses its substantive meaning by being forcibly severed from its underlying social context.[39] Furthermore, the regulation of customary criminal offenses within the revised Criminal Code possesses the potential to generate profound operational confusion for law enforcement officials, particularly if the state's codified compilation of these offenses conflicts with the actual customary norms concurrently prevailing within the community.[40]

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36 "Penjelasan Pasal 2 Ayat (1) Undang-Undang Kitab Undang-Undang Hukum Pidana 2023," n.d.

37 Pusat Kajian Hukum Adat Djojodigoeno Fakultas Hukum Universitas Gadjah Mada, "Brief Paper: Hukum Yang Hidup Dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana" (Yayasan Lembaga Bantuan Hukum Indonesia dan Pusat Kajian Hukum Adat Djojodigoeno FH UGM, 2020).

38 Irianto Sulistyowati, *Menuju Perkembangan Hukum Pro-Keadilan Rakyat* (Bandung, 2003).

39 Hertogh, *Living Law: Reconsidering Eugen Ehrlich*.

40 Utama, "Hukum Yang Hidup Dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP) Antara Akomodasi Dan Negasi."

The state's methodological approach of formulating a compilation of customary criminal offenses and enacting it via Regional Regulations may yield customary law that is formally authoritative yet socially non-binding.[41] Although compiling customary law does not technically constitute absolute legal codification, it introduces a significant risk of normative distortion, which could precipitate the discriminatory treatment of marginalized groups.[42] This distortion typically occurs when the state or local government unilaterally selects, interprets, or simplifies specific customary norms without adequately engaging with the cultural complexity and nuanced social structure of the relevant customary law community. Consequently, the substance of customary law enshrined in Local Regulations risks losing its alignment with the original will of the indigenous community, mutating instead into a reduced or adapted legal form serving the interests of state bureaucracy and local legislative politics. In practice, the process of formalizing customary norms into Regional Regulations is frequently dominated by majority groups or specific customary elites, thereby risking the marginalization of vulnerable demographics, including women, the economically disadvantaged, and indigenous minority groups. If these Regional Regulations are not drafted in strict adherence to the principles of inclusive participation, substantive justice, and the respect for human rights, they may inadvertently become instruments that legitimize discriminatory practices, directly contravening the principles of the rule of law and the protection of citizens' constitutional rights. Therefore, there is an exigent need for an assistive drafting model for Regional Regulations that is not only oriented toward the formal recognition of living law but also rigorously ensures the protection of justice, equality, and legal certainty for all segments of society.[43]

Accordingly, the fundamental challenge inherent in integrating living law into positive statutory law extends beyond merely acknowledging the existence of customary norms within society; it hinges on how such norms can be effectively formalized without sacrificing their social legitimacy, dynamic character, and intrinsic connection to the communities that generate and practice them. The formalization of living law through Regional Regulations is inherently not a value-neutral process; it necessitates a complex exercise in

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41 Pusat Kajian Hukum Adat Djojodigoeno Fakultas Hukum Universitas Gadjah Mada, "Brief Paper: Hukum Yang Hidup Dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana."

42 Pusat Kajian Hukum Adat Djojodigoeno Fakultas Hukum Universitas Gadjah Mada.

43 Jamie S Davidson, David Henley, and Sandra Moniaga, *Adat Dalam Politik Indonesia* (Yayasan Pustaka Obor Indonesia, 2010).

selection and interpretation to accurately determine which norms remain 'living', which specific communities possess and recognize them, the precise territorial scope of their operation, and the appropriate legal consequences arising from their violation. Therefore, the formation of Regional Regulations based on living law cannot be relegated to a merely technical legislative activity; it must be profoundly understood as a transformative process translating social meaning into formal legal meaning. On one hand, this transformation can confer vital legal certainty and formal legitimacy upon norms that have organically developed within the social sphere. On the other hand, it precipitates a substantial risk of normative displacement, whereby the primary source of a norm's legitimacy shifts detrimentally from community acceptance to coercive state authority. This risk is exponentially amplified when every observed cultural practice is automatically codified as a legally binding norm, disregarding the fact that not all cultural practices possess a strict normative character, and that norms historically operative within a community may no longer be actively accepted or practiced. Consequently, the identification and validation of these norms must not be treated as mere administrative preliminaries, but rather as indispensable substantive safeguards designed to ensure that the formalized norm genuinely constitutes living law and retains robust normative force within the relevant community.

This problematic becomes exponentially more complex when the living law targeted for formalization carries penal consequences. The inherent nature of criminal law, which operates by restricting individual liberty, demands rigorous adherence to the highest standards of legality, certainty, equality, proportionality, and predictability. A customary norm that holds profound meaning and legitimacy within a specific community cannot be automatically transmuted into a formalized criminal offense without prior, explicit determination of its legal subjects, exact territorial scope, definitively prohibited conduct, resolution procedures, and legally permissible penal consequences. Accordingly, community-based legitimacy must operate in inextricable tandem with formal legal certainty and the vigilant protection of constitutional rights. Within this context, Eugen Ehrlich's concept of living law retains profound relevance to the Indonesian legal system—not as a justification for relegating living law outside the formal legal architecture, but as a critical theoretical foundation ensuring that the formalization process does not sever the vital nexus between legal norms and the communities from which their normative force originates. Therefore, a Regional Regulation should not be conceptualized

as the terminal endpoint or the exhaustive codification of customary law. Rather, it should be understood as a structured, controlled instrument of legal recognition that affords legal certainty while deliberately preserving the necessary civic space for communities to organically maintain, interpret, and evolve the norms that continue to 'live' within them.

Premised upon this theoretical construct, the principal challenge in Brebes Regency is no longer merely whether living law can be formally recognized through the enactment of Regional Regulations, but rather how such recognition can be executed in a selective, participatory, and contextually sensitive manner, while strictly adhering to the hierarchy of legislation. The sociocultural heterogeneity of Brebes society dictates that localized norms, extant solely within a specific community and territory, must not be generalized into regency-wide rules without robust justification. Accordingly, the integration of living law must be operationalized through a rigorous mechanism capable of verifying the empirical existence and continuing validity of the norm, ensuring authentic representation of the recognizing community, demarcating its precise territorial scope, and assessing its substantive compatibility with Pancasila, the 1945 Constitution, universal human rights, national criminal law, and superior legislation. Within this paradigm, the formulation of a Regional Regulation predicated on living law should proceed through an interconnected legislative sequence: identification and documentation, community-based validation, legal harmonization, regulatory formulation, and finally, institutionalization paired with continuous evaluation. Identification guarantees that the norm under scrutiny genuinely constitutes living law; validation secures community acceptance and meaningful civic participation; harmonization rigorously tests its compatibility with the overarching national legal architecture; formulation translates the abstract norm into clear, enforceable legal provisions; and institutionalization coupled with evaluation ensures that formal state recognition does not ossify a norm whose essential character is inherently dynamic.

Consequently, the integration of living law into Regional Regulations pursuant to Law Number 1 of 2023 must be strategically situated at the nexus of three principal objectives: preserving the social vitality and empirical legitimacy of customary norms, securing legal certainty and regulatory clarity, and maintaining rigorous conformity with constitutional principles, human rights standards, and the statutory hierarchy. This methodological approach demonstrates that living law should neither be marginalized from the formal

legal apparatus nor exhaustively codified without due regard for its socio-legal character and the inherent diversity of its originating communities. By positioning the Regional Regulation as an instrument of controlled, calibrated recognition, the regional legal system can deliver legal certainty without extinguishing the vital, 'living' character of the recognized norms. This framework ultimately provides the normative foundation for developing a comprehensive living law-based model for drafting Regional Regulations in Brebes Regency—a paradigm wherein the community serves as the primary epistemological source of normative knowledge, the state confers formal legal recognition, and the legislative process functions as the crucial harmonizing mechanism bridging local cultural values with the unified national legal system.

Model for Assistance and Drafting of the Brebes Regency Local Regulation Including Living Law

The Republic of Indonesia, as affirmed in Article 1, paragraph (1) of the 1945 Constitution (Undang-Undang Dasar 1945), is a unitary state in the form of a republic. This constitutional provision establishes the fundamental structure of the Indonesian state within a unified national framework while concurrently recognizing the implementation of regional governance. In accordance with Article 18, paragraph (1) of the Constitution, the Unitary State of the Republic of Indonesia is divided into provinces, which are subsequently subdivided into regencies and cities, each possessing its own statutorily regulated regional government. This constitutional architecture is further elaborated within Law Number 23 of 2014 concerning Regional Government, specifically Article 2, paragraph (1), which reiterates that the territory of the Republic comprises provinces subsequently subdivided into regencies and cities. Furthermore, Article 3, paragraph (1) explicitly stipulates that these provinces and regencies/cities constitute autonomous regions, each endowed with its own regional government. These foundational provisions demonstrate that Indonesia adopts a decentralized governmental structure, wherein regional governments are delegated the authority to administer and manage governmental affairs within their respective jurisdictions, operating in

accordance with the principles of regional autonomy while strictly remaining within the overarching framework of the unitary state system.

Pursuant to Law Number 23 of 2014, the Unitary State of the Republic of Indonesia is administratively partitioned into provinces, which are then subdivided into regencies and cities, with each tier possessing its own regional government. Within this decentralized framework, every regional government is vested with the constitutional authority to regulate and administer its governmental affairs in strict accordance with the principles of regional autonomy and co-administration tasks (*tugas pembantuan*), while simultaneously being granted the broadest possible autonomy. The strategic provision of such extensive autonomy is fundamentally intended to accelerate the realization of public welfare through the continuous enhancement of public services, systemic community empowerment, and augmented public participation in regional governance processes. Moreover, within the contemporary context of globalization, expansive regional autonomy is projected to fortify regional competitiveness. Crucially, this must be achieved while steadfastly upholding the democratic principles of equity, justice, regional specificity, and sociocultural diversity, thereby optimizing the unique potential and intrinsic characteristics of each region within the unified framework of the Indonesian state.

Accordingly, the establishment of provincial, regency, and municipal governments is essentially designed to execute governmental powers, functions, and responsibilities that have been expressly delegated, assigned, or acknowledged by the Central Government as regional affairs. These administrative responsibilities are exercised predicated upon the principles of regional autonomy and co-administration (*medebewind*), strictly maintaining congruence with the framework and principles of the Unitary State and adhering to the paradigm of the broadest possible autonomy. Fundamentally, regional autonomy is granted to the populace as a cohesive legal community, endowing them with the authority to independently regulate and administer specific governmental matters entrusted to the regions by the Central Government. As autonomous legal entities, these regions possess the sovereign

right to manage their internal affairs in alignment with the aspirations, interests, and precise needs of their communities, provided that such regional policies remain harmoniously consistent with the national legal architecture and the broader public interest. To operationalize this broad autonomy, the Central Government authorizes regional governments to formulate binding regional policies. These policies serve as the indispensable legal foundation for administering regional autonomy, driving the promotion of public services, fortifying community participation and local initiative, and fostering community empowerment, all directed toward the ultimate objective of elevating public welfare.

A paramount reform imperative that must be realized is the rigorous upholding of the law to guarantee legal supremacy, thereby achieving its foundational objectives: legal certainty, substantive justice, public order, social tranquility, peace, and collective welfare. Deep philosophical inquiry reveals that the law is structurally predicated upon three fundamental, interdependent values:

1. balance in the value of justice;
2. the value of legal certainty; and
3. the value of legal utility

The equilibrium of justice is characterized by statutory regulations that are universally perceived as fair and seamlessly applicable to societal life, aligning with the collective aspirations of the populace. Conversely, law conceptualized as a value of certainty dictates that the binding rules and norms formally established within valid legislation must be unconditionally regarded as the definitive mechanisms for realizing these equitable rules. Concurrently, law is viewed through the lens of utility as an instrument that produces tangible benefits, rooted in the utilitarian premise that the very necessity of the law's existence must generate measurable advantages for societal life.

The conceptual distinctions among these three values are profound: the ontological existence of law must inherently embody the demand for justice; formal legislation signifies the operational norms and rules actively employed to fulfill that demand; and the law must invariably bring substantive benefits to

society. Nevertheless, the systemic interconnection among the three is inescapable; the precise legal elaboration of the value of justice is a fundamental necessity, as justice remains a primary objective of the law. When applied through codified legislation, this objective crystallizes into a form of legal certainty. Ultimately, the synthesis and collaboration of justice and certainty are expected to yield outcomes that are tangibly beneficial and utilitarian for society at large.

As elucidated by Gustav Radbruch, although all three constitute fundamental legal values, a systemic tension (*Spannungsverhältnis*) inevitably exists among them. This tension arises because each value imposes distinct, sometimes competing, demands, thereby creating the potential for jurisprudential conflict. If disproportionate emphasis is placed upon legal certainty—a value heavily rooted in a strict regulatory perspective—it will, either consciously or inadvertently, displace the corollary values of justice and utility. This displacement occurs because, within the paradigm of strict legal certainty, the mere existence and rigid enforcement of the norms and rules enshrined in formal regulations become overwhelmingly dominant. Consequently, whether a specific regulation adequately satisfies the societal sense of justice or provides tangible utility falls outside the immediate purview of legal certainty. Conversely, a predominant inclination toward the value of utility will invariably sideline both legal certainty and formal justice, as the utilitarian calculus prioritizes solely the pragmatic reality of whether the law delivers societal benefits. A similar imbalance occurs if reliance is placed exclusively upon the abstract value of justice; as a solitary value, it threatens to supplant both legal certainty and utility, given that subjective perceptions of justice are not inherently bound to, nor always consistent with, strict legal certainty or utilitarian outcomes. Therefore, the paramount challenge in legislative drafting is striving to achieve a proportional, harmonious 'balance' among these three competing values.

Adapting abstract norms and legal principles to the complex, actual events occurring within society is a formidable task, as it necessitates the simultaneous accommodation of all three fundamental legal values. These

dynamics exert a distinct and measurable impact on the empirical effectiveness of regulations within society. A prevailing practice within the Indonesian legal system is that the State predominantly assesses legal effectiveness through a strictly regulatory lens; consequently, the criteria for evaluating legal conduct and relationships are heavily predicated upon applicable formal sources of law. While this positivist approach is not inherently incorrect—as written regulations provide the most measurable and adaptable parameters for evaluation—its success remains entirely contingent upon whether such regulations were originally formulated with due regard for the proportionality of the other foundational legal values (justice and utility).

The genesis of Regional Regulations (*Perda*) may stem directly from explicit directives embedded within higher-level legislation, functioning as a necessary, detailed elaboration of such overarching statutes. Concurrently, they serve as vital local policies enacted within the operational framework of implementing regional autonomy and executing assistance duties (*tugas pembantuan*). However, during the formulation of Regional Regulations, legislative drafters are mandated to meticulously account for local conditions, unique regional characteristics, and indigenous local wisdom within the broader context of governmental administration, ensuring unequivocally that these regulations do not conflict with the public interest or superior legislation. Analogous to how national legislation constitutes a legal product of the central government requiring executive implementing regulations, Regional Regulations frequently delegate the issuance of Regional Head Regulations (*Perkada*) to operationalize the *Perda*. This delegatory mechanism is explicitly stipulated in Article 246(1) of Law Number 23 of 2014 concerning Regional Government, which mandates that to execute a Regional Regulation, or pursuant to the authority of higher legislation, the Regional Head shall enact a *Perkada*. Despite this statutory mandate, the issuance of *Perkada*—even when explicitly commanded by the parent Regional Regulation—is frequently neglected by local governments. It is a common administrative oversight that technical and operational provisions intentionally omitted from the broader

Regional Regulations must imperatively be addressed within the more specific Regional Head Regulations.

Essentially, the existence of a Regional Head Regulation—arising as a direct legislative delegation from a Regional Regulation—is specifically intended to implement and operationalize the parent regulation. The Regional Regulation explicitly mandates the creation of these implementing instruments in the form of a *Perkada* to address granular administrative details. However, the promulgation of Regional Head Regulations delegated by Regional Regulations suffers from chronic neglect by local governmental apparatuses. The formal legislative delegation granted by the Regional Regulation is rarely followed up immediately with the requisite issuance of a *Perkada*. The proposing executive agencies (stakeholders) that initiated the Regional Regulation frequently—and erroneously—consider their institutional responsibilities fulfilled the moment the Regional Regulation is enacted by the DPRD. This operational lethargy persists despite the fact that the Regional Regulation itself explicitly dictates that essential technical provisions not addressed within its primary text must be subsequently regulated by a Regional Head Regulation.

The fundamental legal basis for the formulation of Regional Regulations is firmly established in Article 236 of Law Number 23 of 2014 concerning Regional Government. This article stipulates that to effectively execute Regional Autonomy and Assistance Tasks; the autonomous region is mandated to formulate Regional Regulations. The statutory framework dictates that the Regional Regulation is enacted by the Regional People's Representative Council (DPRD) exclusively with the joint approval of the Regional Head. Furthermore, the substantive content of the Regional Regulation is statutorily restricted to provisions concerning the implementation of Regional Autonomy and Assistance Duties, and the further, localized elaboration of provisions contained within higher-level laws and regulations. Crucially, in

1. The Regional Regulation referred to in Paragraph (1) is enacted by the Regional People's Representative Council (DPRD) with the joint approval of the Regional Head.

2. The Regional Regulation referred to in Paragraph (1) contains the following provisions:
    a. The implementation of Regional Autonomy and Assistance Duties; and
    b. Further elaboration of the provisions of higher-level laws and regulations.
3. In addition to the content referred to in paragraph
4. A Regional Regulation may contain local provisions in accordance with the provisions of laws and regulations.

The legislative drafting of a Regional Regulation necessitates navigating several formalized stages, as explicitly codified in Article 1(1) of Law Number 12 of 2011 concerning the Formation of Legislation. This statutory framework delineates the legislative continuum into the stages of planning, drafting, deliberation, enactment (or adoption), and promulgation. Specifically, in the formation of regional regulations, six distinct procedural stages must be exhaustively completed: (1) the planning stage; (2) the initial drafting stage; (3) the formal deliberation stage; (4) the ratification or enactment stage; (5) the official promulgation stage; and ultimately (6) the dissemination stage.

Prior to the substantive drafting of a regional regulation (Perda), a rigorous planning process must be conducted within the framework of a Regional Legislative Program (*Prolegda*). Article 1, point 10 of Law Number 12 of 2011 defines *Prolegda* as an indispensable planning instrument for the legislative programming of laws, requiring preparation in a planned, integrated, and highly systematic manner. Concurrently, Article 239(1) of Law Number 23 of 2014 concerning Regional Government stipulates that the planning for the drafting of local regulations must be executed within the local regulation drafting program, formally termed *'Propemperda'*. Consequently, two distinct terminologies are legally utilized to refer to the planning phase of local regulation drafting: Prolegda (pursuant to Law Number 12 of 2011) and *Propemperda* (pursuant to Law Number 23 of 2014). Despite this terminological divergence, their substantive legal meaning and operational functions remain identical.

Furthermore, Articles 32 through 41 of Law Number 12 of 2011 governing the Regional Legislation Program furnish the critical legal foundation for effective inter-agency coordination mechanisms within the local government during the drafting of regional regulations, while simultaneously orchestrating coordination between the local executive branch and the Regional People's Representative Council (DPRD). Specifically, within the operational structure of a regency or municipal DPRD, the role of its supporting apparatus—the Regional Regulation Formulation Body (*Bapemperda*)—is paramount. This specialized body is statutorily mandated to systematically accommodate and synthesize legislative aspirations stemming from internal committees, political factions, and the broader public regarding pressing regional regulation issues. The finalized draft of the Regency/City *Propemperda*, collaboratively developed between the Regency/City DPRD and the local executive government, is formally agreed upon as the definitive Regency/City *Propemperda*. It is subsequently ratified during a plenary session of the DPRD and officially enacted via a formal Decision of the Regency/City DPRD.

During the substantive drafting phase, universities and academic institutions play an indispensable role in the meticulous preparation of Academic Drafts (*Naskah Akademik*) and the initial drafts of local regulations. Universities, positioned as bastions of theoretical expertise and advocates for the ideals of rigorous legislative drafting, must actively collaborate with and assist local governments. In administrative practice, this assistance frequently takes the form of delegating the formulation of the Academic Draft to specialized experts from higher education institutions. These academic experts are tasked with synthesizing all relevant empirical ideas, theoretical perspectives, and the objective factual conditions unique to the specific region for which the regulations are being crafted. Subsequently, the university, working in close synergistic collaboration with relevant local government agencies, systematically documents the localized customary content that necessitates inclusion within the prospective local regulation. Thereafter, the academic expert team meticulously integrates these documented local realities into the formal draft of the local regulation under formulation.

Following the completion of the drafting stage is the deliberation and discussion stage. This phase inherently involves numerous, iterative rounds of debate, commonly facilitated through mandatory public hearings (*Rapat Dengar Pendapat*). During this critical juncture, the involved university continues to play a central, advisory role by providing authoritative information and defending the ideal jurisprudential concepts proposed for incorporation into the pending regional regulation. Structurally, this deliberation process comprises three distinct procedural phases.

The formal deliberation process of a Draft Regional Regulation is generally executed through a structured, multi-tiered sequence. The first stage entails a formal explanation delivered during a plenary session. This is presented either by the Regional Head—concerning the submission of an executive-initiated Draft Regional Regulation—or by the chairperson of the relevant special committee regarding a Draft Regional Regulation (or proposed amendments) originating as a legislative initiative from the DPRD. The second stage involves the formal presentation of general views by the respective political factions concerning an executive-proposed Draft Regional Regulation, which is subsequently followed by the Regional Head's official responses to those views. In instances where the draft originates from a DPRD initiative, this second stage involves the Regional Head delivering an executive opinion regarding the proposed legislation, followed sequentially by the political factions' responses to that executive opinion. The third stage of deliberation is executed through rigorous meetings of the deliberation committee or a designated special committee, conducted jointly with the Regional Head (or appointed executive delegates) to meticulously debate and refine the substantive content of the Draft Regional Regulation. Finally, the fourth stage culminates in a definitive plenary session dedicated to formal decision-making on the Draft Regional Regulation. This final stage commences with a comprehensive presentation of the results from the third-stage discussions, proceeds to the delivery of final opinions by the factions, concludes with the formal vote and decision-making process, and ends with concluding remarks from the Regional Head regarding the newly adopted legislative decision.

Prior to the plenary discussion of the third-stage results, internal faction meetings are customarily convened to formulate the definitive, final views of each political faction and to prepare strategically for the impending decision-making process. In specific circumstances, if deemed procedurally necessary, the overarching deliberation committee may mandate that the third stage of discussion be conducted via joint cross-committee meetings or specialized committee sessions. Throughout these complex legislative stages, universities persist in playing a vital supervisory and advisory role. Their objective is to ensure that both the executive apparatus and the legislative body maintain a precise, theoretically sound understanding of the legal norms slated for incorporation into the regional regulation. Within this highly political context, universities are consistently regarded as relatively idealistic and academically independent institutions. This perceived neutrality enables them to function effectively as a crucial balancing mechanism against partisan or particularized vested interests that could otherwise disproportionately influence the substantive content and legislative trajectory of the regional regulation.

The intrinsic essence of a regional regulation acting as a specialized vehicle for addressing specific local conditions is a jurisprudential characteristic wholly unique to this form of legislation. This stands in stark contrast to national laws and state regulations, which are structurally positioned solely as written legal instruments serving unified national interests. The functional essence of local regulations—accommodating specific local realities—extends far beyond merely serving as an administrative elaboration of national legislation; they function as a primary legal mechanism deliberately designed to address the unique sociocultural and geographical characteristics of each region. However, existing positive law fails to provide explicit, detailed clarification regarding the precise definition of these 'unique regional characteristics' or 'specific local conditions'. In the author's analytical view, to achieve requisite normative clarity regarding what constitutes specific local conditions or distinctive regional characteristics, the appropriate normative reference point must be the statutory explanations concerning municipal and regency regulations that are deemed to 'conflict with the public interest'.

Jurisprudentially, a regulation is deemed to conflict with the public interest if, among other factors, the enacted policy precipitates a disruption of social harmony among community members. Furthermore, critical reference can be drawn from the Official Elucidation of Article 6(1)(f) of Law Number 12 of 2011 concerning the 'principle of unity in diversity' (*Bhinneka Tunggal Ika*). This elucidation explicitly dictates that: 'what is meant by the principle of unity in diversity is that the substantive content of legislation must meticulously take into account the profound diversity of the population, religion, ethnicity, and social groups, alongside regional specific conditions and culture—particularly regarding highly sensitive issues inherent in community, national, and state life.' Extrapolating from this official explanation, 'regional specific conditions' can be legally clarified to encompass the following elements: (a) conditions inherently reflecting and maintaining harmony among community members within the region; (b) the nuanced diversity of the region's socioeconomic structure; (c) religious pluralism within the region; (d) ethnic heterogeneity; (e) the diversity of distinct social groups; (f) unique cultural diversity within the region;[44] and (g) the presence of specific, localized sensitivities within community Life.

The profound, diverse pluralities characterizing Indonesian society—spread expansively across its archipelago—must be legally recognized and accommodated through the granting of robust autonomy in legislative formulation, particularly concerning the drafting of regency and municipal regulations. If regional autonomy is not conceptualized and operationalized in this precise manner, it will inevitably precipitate a systemic failure to accommodate the genuine aspirations of localized communities. It remains logistically and jurisprudentially impossible for monolithic national legislation to adequately address the highly specific, granular conditions found across the entirety of Indonesian territory. This limitation is dictated not merely by the sheer vastness of the national geography, but equally by the immense, complex diversity of the ethnic groups residing within it. Therefore, the primary, underlying rationale for the existence of local regulations—specifically designed

[44] Koentjaraningrat, *Pengantar Ilmu Antropologi*, Cet. VIII (Jakarta: Rineka Cipta, 1990).

to address the unique local characteristics of a region—is the stark reality of diverse societies, cultures, religious beliefs, and varying geographical and economic landscapes. These diverse elements invariably culminate in differing, localized needs among regions. These heterogeneous needs can only be satisfactorily met if the local regulations under formulation possess the capacity to accurately incorporate and address the specific conditions unique to each region. Ultimately, the existence of such highly tailored local regulations is the logical, functional consequence of the deliberate decentralization of power operating within a constitutional unitary state (*eenheidsstaat*).

Through the constitutional authority granted to autonomous regions to enact local regulations, the multifaceted aspirations of the local community can be comprehensively accommodated within the legislative framework of the relevant region. In this specific context, the primary function of local regulations is to serve as the definitive legislative vehicle for addressing the specific conditions and distinctive sociocultural characteristics of each region. This normative indicator can thus be theoretically coupled with the concept of 'legal pluralism'.[45] 'Through the constitutional authority granted to autonomous regions to enact local regulations, the multifaceted aspirations of the local community can be comprehensively accommodated within the legislative framework of the relevant region. In this specific context, the primary function of local regulations is to serve as the definitive legislative vehicle for addressing the specific conditions and distinctive sociocultural characteristics of each region. This normative indicator can thus be theoretically coupled with the concept of 'legal pluralism'

Given the paramount importance of local regulations as the primary vehicle for accommodating the specific conditions that define a region's distinctive identity, it can be posited that societal compliance with these local regulations is heavily contingent upon the alignment of the law with the priorities and values of local residents. Consequently, local regulations must strive to be more persuasive and sociologically accepted than merely formally authoritative. These imperative dictates that regency/municipal regulations, as a specific form of legislation, must act persuasively upon local residents, operating

[45] Tim Huma, ed., *Pluralisme Hukum: Sebuah Pendekatan Interdisiplin* (Jakarta: Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (Huma), 2005).

as something far more profound than a mere bureaucratic tool for governance. To ensure that local regulations achieve this persuasive legitimacy—rather than being perceived merely as instruments of state coercion—legislative drafters must deliberately provide substantive space within the regulations to accommodate the specific, lived conditions of the region, directly reflecting the genuine expectations of the local community. By fulfilling this sociological mandate, local regulations can effectively persuade the community of their legitimacy, functioning as trusted legal instruments genuinely capable of protecting citizens' rights and vital interests.

Within modern legal systems, codified written law is perceived as a crucial instrument in the complex process of social engineering (law as a tool of social engineering). It plays a highly strategic role in the life of a modern state, functioning dually as a catalyst to drive deliberate social change and as a regulatory tool for controlling societal behavior. Thus, the existence of law serves not solely to maintain static public order, but is actively utilized by the state as a dynamic instrument to guide overarching societal development in strict accordance with national development goals and rapidly evolving social needs. Therefore, substantive changes within and directed by the law are predominantly realized through the formal enactment of legislation. This reliance on formal enactment constitutes one of the defining, hallmark characteristics of the modern legal system: its fundamentally written, highly systematic nature, designed to produce absolute legal certainty.[46]

Legislation fundamentally functions as the definitive guideline for both civil society and governmental institutions in the execution of their respective actions and responsibilities. Therefore, it is a strict jurisprudential requirement that every formulated legal norm be capable of providing clear, just, and effectively implementable directives. Within the localized framework of regional governance, Local Legal Products (*Produk Hukum Daerah*)—functioning as an integral, subordinate component of the overarching national legislative system—must be drafted in strict accordance with the universally recognized principles

[46] Anas Mukti Fajar and Ach Nurul Luthfi, "Hukum Sebagai Alat Rekayasa Sosial: Telaah Komparatif Pemikiran Roscoe Pound Dan Muchtar Kusumaatmadja," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 3101–11.

of proper law-making. These sacrosanct principles encompass: clarity of legislative objectives; the unquestionable appropriateness and jurisdiction of the authorized drafting institution; strict conformity between the hierarchy of the regulation type and its substantive content; practical enforceability; demonstrable utility and effectiveness; absolute clarity of formulation; and procedural transparency. The meticulous observance of these principles is paramount to ensure that the enacted local legal products not only attain unassailable formal legal legitimacy but also possess the inherent sociological capacity to respond effectively, and adaptively, to the evolving legal needs and expectations of the community.[47]

Beyond strict compliance with the procedural principles governing legislative drafting, the material substance of a legal regulation must concurrently embody the fundamental ideological values explicitly prescribed in Law Number 12 of 2011. These statutorily mandated values encompass the principles of: civic protection; humanity; nationality; kinship; the 'archipelagic insight' (*Wawasan Nusantara*); *Bhinneka Tunggal Ika* (Unity in Diversity); substantive justice; absolute equality before the law and government; the maintenance of legal order and certainty; and the overarching principles of balance, harmony, and systemic compatibility. The deliberate incorporation of these philosophical principles is essential to guarantee that every regulation not only achieves formal juridical validity but faithfully reflects the deep philosophical and sociological values upheld by the Indonesian legal system and its society.[48] The mandatory presence of these principles unequivocally indicates that the formulation of legislation is not an exercise solely aimed at manufacturing sterile legal certainty. Rather, legislation must simultaneously guarantee the robust protection of the people's constitutional rights, accurately reflect the egalitarian value of social justice, and actively maintain harmony across all facets of national and state life.

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47 Ida Surya and Abdul Wahab, "Harmonisasi Peraturan Perundang Undangan Dalam Mewujudkan Pemerintahan Yang Baik," *Journal Kompilasi Hukum* 8, no. 2 (2023).

48 Hasbi Pasolo and Sekunda Sanak, "Urgensi Pengintegrasian Nilai-Nilai HAM Dalam Materi Muatan Peraturan Daerah," *Jurnal Sains, Ekonomi, Manajemen, Akuntansi Dan Hukum* 3, no. 1 (2026): 16–23.

Fundamentally, the complex formulation of legislation is executed through highly specific, statutorily mandated procedures, implemented in a gradual, continuous, and iterative manner. This legislative lifecycle commences with the initial emergence of an abstract idea or concept regarding an urgent societal issue requiring formal regulation. This is subsequently followed by the meticulous drafting and formal preparation of a regulatory proposal.[49] Thereafter, the draft is subjected to rigorous institutional discussion, formal legislative approval, and finally, sovereign enactment and enforcement as binding positive law. Thus, the formation of legislation transcends mere administrative procedure; it is a profoundly legal-political process that dictates the ideological and regulatory direction of a nation's entire legal framework. Currently, the exhaustive procedures governing the formation of legislation in Indonesia are strictly guided by Law Number 12 of 2011. This statute serves as the ultimate normative foundation for achieving a legal framework that is planned, structurally integrated, and wholly compliant with the overarching rule of law.

Accordingly, the proposed living law-based drafting model tailored for Brebes Regency is not designed to supplant or bypass the statutorily mandated formal stages of Regional Regulation drafting. Rather, its objective is to inject a rigorous substantive mechanism ensuring that the local norms targeted for formalization are genuinely 'living', actively recognized by the relevant community, and demonstrably compatible with the broader national legal system. Concretely, in instances where empirical research establishes that a particular customary community in Brebes continues to recognize a specific act as a violation and actively enforces a customary obligation to restore social balance, the resulting Regional Regulation should not rely on vague, catch-all phrasing stating that 'customary violations are subject to customary sanctions.' Instead, the regulatory provision must achieve high legal precision: it must clearly demarcate the relevant community and its exact territorial scope, explicitly define the prohibited conduct, outline the recognized settlement procedures, identify the authoritative customary institutions, and specify the

[49] Rengga Kusuma Putra et al., "Politik Hukum Perundang-Undangan Di Indonesia," 2025.

customary obligations. Crucially, all these elements must remain strictly subject to overriding constitutional and human-rights safeguards. Simultaneously, the formal recognition of living law does not dictate the indiscriminate criminalization of every customary practice. Indeed, customary norms concerning cultural preservation, environmental management, institutional organization, or alternative dispute resolution can—and should—be legislatively accommodated without being inappropriately transformed into punitive criminal offenses.

Furthermore, this proposed model systematically positions the indigenous customary communities as the primary, authoritative epistemological source of knowledge concerning the existence, nuance, and meaning of their living law. Concurrently, academic institutions contribute vital expertise in rigorous documentation and jurisprudential analysis, while the regional executive government assesses the pragmatic policy and administrative feasibility of the proposed norms, and the DPRD exclusively exercises ultimate legislative authority. Potential hierarchical conflicts with higher-level national law are systematically addressed and mitigated through a rigorous process of legal harmonization. Under this framework: wholly compatible norms may proceed to formalization; norms requiring minor adjustments must be carefully reformulated; and, critically, any customary norms that directly and irreparably conflict with mandatory national legal provisions, fundamental constitutional principles, or universal human-rights standards are strictly barred from acquiring binding legal force via a Regional Regulation. Particularly within the sensitive context of criminal law, this meticulous harmonization process is absolutely vital to prevent the emergence of overlapping, contradictory, or inconsistent criminal liability vis-à-vis the national Criminal Code.

Therefore, the true novelty of this proposed model does not reside in the invention of a radical new legislative procedure. Rather, its innovation lies in the strategic insertion of a community-based, evidentiary, and normative pathway directly into the architecture of the existing Regional Regulation drafting process. Methodologically, the model is structured as a continuous, iterative cycle: advancing from Initial Identification, to robust Community Validation,

through rigorous Legal Harmonization, culminating in precise Regulatory Formulation, and ultimately ending with Institutionalization and ongoing Evaluation. This paradigm shifts the perception of the Regional Regulation; it is no longer viewed as the terminal endpoint that ossifies living law, but rather as a highly sophisticated instrument of controlled, participatory, and context-sensitive legal recognition. For Brebes Regency, this structured approach successfully carves out vital legislative space for authentic local values—including the profound traditions maintained by indigenous communities such as *Jalawastu*—enabling them to substantially contribute to regional lawmaking. Crucially, this integration is achieved without ever compromising foundational legal certainty, civil equality, the paramount protection of human rights, or the unyielding consistency and unity of the national legal system.

Conclusion

Living law constitutes a paramount dimension of the Indonesian legal architecture, premised upon the reality that jurisprudence does not develop exclusively through formal state legislation. Rather, it organically emerges from the values, customs, and social practices continuously recognized and practiced within localized communities. However, the inherently dynamic and highly contextual character of living law must be rigorously reconciled with the formal legal system's stringent requirements for legal certainty, practical enforceability, and strict conformity with the statutory hierarchy. The central jurisprudential issue, therefore, is not whether living law should be accommodated within Regional Regulations, but rather how such formal recognition can be executed without severing the vital, organic connection between the codified norm and the community from which it originates and actively operates.

Addressing this complexity, this study proposes a comprehensive, living law-based model for drafting Regional Regulations within Brebes Regency, operationalized through controlled, highly participatory, and context-sensitive formalization. This model structurally consists of five interconnected legislative stages: systematic identification and documentation; robust community

validation; rigorous legal harmonization; precise regulatory formulation; and formalized institutionalization coupled with continuous evaluation. Crucially, this model repositions the Regional Regulation as a sophisticated instrument of controlled legal recognition, explicitly rejecting the paradigm of exhaustive, rigid codification of customary life. Contextualized within Brebes—a regency characterized by profound social diversity and vibrant communities maintaining specific customary practices, notably *Jalawastu*—the precise preliminary identification of the relevant community, exact territorial scope, enduring norms, and authoritative customary institutions provides an indispensable evidentiary basis before any norm is formally considered for legislative formalization.

Furthermore, this model provides a structural mechanism for achieving a delicate equilibrium between formal legal certainty and the dynamic, evolutionary character of living law. Norms that successfully pass community validation can be subsequently formulated with absolute statutory clarity regarding the relevant community, exact territory, prohibited conduct, dispute procedures, and legal consequences. Simultaneously, the norm's continuing organic development within the community is deliberately preserved through mandated civic participation and periodic legislative evaluation. The stage of legal harmonization functions as a critical substantive safeguard, ensuring unequivocal compatibility with the state ideology of Pancasila, the 1945 Constitution, universal human rights principles, and higher-level legislation. Under this framework: norms demonstrating absolute compatibility may be formally recognized; norms requiring minor structural adjustments must be rigorously reformulated; and, critically, any customary norms that directly conflict with higher-level national legal requirements are categorically barred from acquiring binding legal force via a Regional Regulation.

The principal scholarly and practical contribution of this study lies in systematically bridging theoretical living law jurisprudence with the concrete, institutionalized process of Regional Regulation drafting, utilizing a community-based, evidentiary, and normative pathway. Accordingly, within this proposed paradigm, living law and formal positive law are no longer treated as

mutually exclusive, antagonistic systems; rather, they operate as two distinct legal dimensions capable of highly structured, synergistic interaction. This model pragmatically enables authentic community-based values and norms to permeate regional legislation while strictly maintaining formal legal certainty, civil equality, the robust protection of human rights, and the indivisible unity of the national legal system.

It is acknowledged that this study is fundamentally limited by its strict normative juridical approach; consequently, it does not seek to empirically establish the statistical prevalence, societal acceptance, or operational effectiveness of specific customary norms currently active within Brebes Regency. Future scholarly research must urgently undertake rigorous empirical studies actively engaging customary communities, traditional institutions, regional executive governments, DPRD legislators, academics, and civil society stakeholders. Furthermore, comparative empirical research across diverse Indonesian regions is highly recommended to comprehensively assess the broader adaptability and scalability of this proposed legislative model. Ultimately, this study concludes that living law must neither be marginalized from the formal legal apparatus nor subjected to exhaustive, rigid codification. The most jurisprudentially sound approach is a process of selective, highly participatory, territorially conscious, and continuously evaluated formalization. This nuanced methodology enables Regional Regulations to deliver definitive legal certainty while meticulously preserving the vital connection of the living law with its host community, ensuring enduring responsiveness to social change, and honoring the foundational sociocultural values from which it organically originates.

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