

THE LIMITATIONS OF LIVING LAW IN INDONESIAN CRIMINAL LAW REFORM: AN EFFORT TO REALIZE JUSTICE

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Abstract

One of the important points of criminal law reform in the Criminal Code is the regulatory provision regarding living law. The Criminal Code authentically determines that living law is customary criminal law, which is declared valid and further regulated through Local Regulations. The absence of limitations related to customary criminal law standards that can be qualified as a living law has the potential to cause injustice. This study aims to analyze the urgency and the formulation of limitations on living law arrangements in the Criminal Code in realizing justice. The results of the study show that the urgency regarding limitations on living law arrangements in the Criminal Code is meant to protect human rights while at the same time preventing potential criminalization. The formulation of limitations of the living law arrangements in the Criminal Code is to realize justice. Therefore, the limitations of customary criminal law can be categorized as a living law according to the Criminal Code, that are: indigenous people still practice the law; these customary crimes do not conflict with the principles of the rule of law; they do not conflict with Pancasila values; and the crimes are further formulated by local regulations.

Keywords: Criminal Law Reform; Justice; Living Law.

1. INTRODUCTION

The passing of Law No. 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code) is one of the important points in the reform of Indonesian criminal law. The reform of Indonesian criminal law is an idea and aspiration to compile the substance of the criminal code that refers to the character and legal culture of the Indonesian nation.¹ Ratification of the Criminal Code is a progressive step that marks the commencement of criminal law reform in numerous areas and other elements.² Despite being enacted, the Criminal

¹ Muridah Isnawati, "The Urgence of Indonesian Penal Code (KUHP) Reform to Realize Humanistic-Based Imprisonment," *Borobudur Law Review* 3, no. 1 (2021): 73–83, <https://doi.org/10.31603/bur-rev.5337>.

² Muhammad Arif Agus and Ari Susanto, "The Optimization of the Role of Correctional Centers in the Indonesian Criminal Justice System," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 369, <https://doi.org/10.29303/ius.v11i2.1232>

Code cannot be enforced since the implementation of the Criminal Code is given a three-year limit once it is ratified, which implies that the Criminal Code becomes effective in 2026.

One of the primary goals of criminal law reform through the adoption of the Criminal Code is to rebuild the fundamental requirements of legality. Because the principle of legality is the “foundation” of criminal law, criminal law reform must also include the need for rebuilding efforts connected to the notion of legality. The ratification of the Criminal Code is intended to substantiate the notion of legality to meet the character and personality of the Indonesian country. In this situation, the principle of legality is stated to be material in nature, as opposed to the Previous Criminal Code, where the idea of legality is still formal in nature.³

The principle of legality in the Former Criminal Code which is formal in nature emphasizes that a person or legal entity cannot be convicted without a written legal provision that governs. This provision at first glance actually nullifies the role of law that lives in society which is often referred to as living law. Indonesia is a country with eastern legal character and culture that actually not only recognizes the existence of written law, but also recognizes the existence of unwritten law based on the moral agreement of the community.⁴ Based on this understanding, the principle of legality in the Previous Criminal Code which was formal and did not accommodate aspects of living law was then updated the criminal law substance through the ratification of the Criminal Code, one of which was regulating the enforceability of living law.⁵

The adoption of efforts to recognize living law-based criminal law in this community in the Criminal Code then substantially changed the orientation of the principle of legality in criminal law which was initially formal and then became material in character as stipulated in Article 2 paragraph (1) of the Criminal Code. The regulation of the principle of legality as in the Criminal Code which has a material character emphasizes that any person or legal entity cannot be convicted as long as there are no provisions in the written law and do not violate the provisions of living law that apply in the community. The regulation of living law on the one hand is a progressive effort to facilitate the law that lives in society as part of criminal law reform. Even so, living law arrangements that are too loose in the Criminal Code can potentially lead to criminalization in the community.⁶

org/10.30641/dejure.2021.v21.369-384.but the role of Correctional Centers in the adult criminal justice system has not been optimized as in the juvenile criminal justice system, and it tends to be discriminatory. (2)

³ Fasih Arrizall, “Penerapan Asas Legalitas Dalam Penjatuhan Sanksi Pidana Atas Masyarakat Adat,” *Doktrina* 4, no. 2 (2021): 103.

⁴ Dwi Suryahartati et al., “The Local Customary Law: The Contribution of Adat Law in Preserving the Lubuk Larangan in Jambi,” *Jambe Law Journal* 4, no. 1 (2021): 43–68, <https://doi.org/10.22437/jlj.4.1.43-68>.

⁵ H Amrania, “The Living Law in Indonesian Penal Code: A Combination of Legal Certainty and Justice,” *IJICC* 13, no. 11 (2020): 1030–44, https://www.ijcc.net/images/vol_13/Iss_11/131186_Amrani_2020_E_R.pdf.

⁶ Supardin and Abdul Syatar, “Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia’s Positive Legal System Reform,” *Samarah* 5, no. 2 (2021): 913–27, <https://doi.org/10.22373/sjkh.v5i2.9353>.

Living law arrangements that are too loose in the Criminal Code are evidenced by the absence of restrictions or limitations on the character of living law as to what is still considered valid and can be used as a legal basis to convict someone.⁷ The vagueness of the regulation regarding living law in the Criminal Code is the focus of this paper. This study aims to answer two legal issues, namely the limitation of living law regulations in the Criminal Code and the formulation of limitations of living law regulations in the Criminal Code.

Many prior academics have conducted study on the notion of legality in Indonesian criminal law. This is because as the main pillar of criminal law, it is natural that research on the principle of legality becomes something that is often done. From the various studies on the principle of legality above, there are three studies that according to the author represent research related to the principle of legality, such as research conducted by Anjari (2019) whose language focus is on the existence of the principle of legality after the Constitutional Court decision.⁸ Research conducted by Anjari (2019) explained that the principle of legality after several Constitutional Court rulings indicates that the principle of legality is more material by referring to the value of propriety that applies in society. Further research conducted by Pradiva and Hariyanto (2022) said that although the principle of material legality has the potential to cause legal uncertainty because it recognizes the existence of unwritten law, the role of local governments is expected to be more intense in compiling unwritten laws that are still valid in the community.⁹ Research on the principle of legality was also conducted by Sugianto, et al. (2023) who discussed the importance of the role of judges in courts to conduct legal discovery so that the substance of written law can be a guide and guide for judges in trying criminal acts after the passing of the Criminal Code.¹⁰

Of the three studies on the principle of legality above, the discussion of limitations or limitations regarding living law has not been carried out specifically from various studies on the principle of legality. Therefore, this research is original research and has a novelty that is different from previous research. This research uses normative legal research methods that focus on conceptual analysis of the provisions of legal norms contained in the Criminal Code.¹¹ The primary legal materials used are: the 1945 NRI Constitution and the Criminal Code. Secondary legal material in this study consists of journal articles that discuss the principle of legality, books that discuss criminal law, and

⁷ Nurul Isnina Syawalia Arifah Nasution, "Politik Hukum Pidana Kekerasan Seksual Dalam Rkuhp," *Khazanah Multidisiplin* 2, no. 1 (2021): 45–56, <https://doi.org/10.15575/km.v2i1.11636>.

⁸ Warih Anjari, "Kedudukan Asas Legalitas Pasca Putusan Mahkamah Konstitusi Nomor 003/PUU-IV/2006 Dan 025/PUU-XIV/2016," *Jurnal Konstitusi* 16, no. 1 (2019): 1, <https://doi.org/10.31078/jk1611>.

⁹ Diah Ratna Sari Hariyanto I Gusti Ngurah Bayu Pradiva, "Perluasan Asas Legalitas Dalam Rkuhp Sebagai Upaya Pembaharuan Hukum Pidana Indonesia," *Jurnal Kertha Semaya* 10, no. 8 (2022): 1766–78.

¹⁰ Fajar Sugianto Yuber Lago, Yuni Priskila Ginting, "Dilema Keadilan Hukum Antara Hukum Tidak Tertulis Yang Hidup (Ongeschreven Recht) Dan Asas Legalitas Dalam Hukum Pidana Indonesia Ditinjau Dari Aspek Filosofis," *Jurnal Ilmu Hukum* 19, no. 1 (2023): 1–23.

¹¹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif*, Cetakan ke (Jakarta: Prenadamedia Group, 2017).

websites related to the substance of this study. Non-legal material is a legal dictionary by prioritizing the approach of concepts and legislation.

2. ANALYSIS AND DISCUSSION

2.1. Limitations of Living Law Regulations in the Criminal Code: Why is it Necessary?

The formulation of the concept of living law that is recognized and accepted for its existence in criminal law as stated in the Criminal Code actually caused debate during the preparation of the Criminal Code, especially when the Criminal Code was still in draft form (RKUHP). For those who agree, the substance of living law regulation in the Criminal Code is an effort and progressive step to accommodate the substance of law that lives in society in the criminal justice system in Indonesia.¹² Accommodation of living law provisions in the Criminal Code is actually a symbol of decolonization, namely an effort to facilitate the presence of living law that has been in effect to be integrated in the substance of positive law.¹³ The importance of accommodating living law in the Criminal Code is based on the historical fact that in the era of Dutch colonialism the provisions of living law were actually considered not as law so that they did not get recognition of their enforceability.

On those who reject the formulation of living law in the Criminal Code, it is actually based on the understanding that one of the important principles in criminal law is the principle of legality where the main characteristic of the principle of legality is the formulation of clear and strict punishment so as to minimize the potential for criminalization in society. The birth of the principle of legality and the development of criminal law actually mandates the importance of community protection efforts through guaranteeing legal certainty against the substance of criminal law.¹⁴ Positive criminal law must have a clear and strict character so that it cannot be interpreted at will from law enforcement officials. Related to the formulation of living law in the Criminal Code, the existence of living law is considered to obscure aspects of legal certainty because standards regarding living law are never clear and limitative.

The conception of living law is often considered a conception that is still “airworthy” because its enforceability is based on the agreement of the local community.¹⁵ To assess

¹² Yusrizal, Mukhlis, and Nanda Amalia, “Adat Court vs Syar’iyah Court: Study of the Legal Culture of Aceh Communities Completing the Khalwat Cases,” *International Journal of Recent Technology and Engineering* 7, no. 6 (2019): 1367–70.

¹³ Helmalia Cahyani et al., “Kebijakan Pasal-Pasal Kontroversial Dalam RUU KUHP Ditinjau Dari Perspektif Dinamika Sosial Kultur Masyarakat Indonesia,” *Journal of Law, Administration, and Social Science* 2, no. 2 (2022): 81–90, <https://doi.org/10.54957/jolas.v2i2.175>. there has been an attempt to update the criminal code which is motivated by cultural or socio-cultural developments in society. This led to the discovery of several articles in the criminal code (KUHP)

¹⁴ Hyronimus Rhiti Vincentius Patria Setyawan, “Relasi Asas Legalitas Hukum Pidana Dan Pemikiran Hukum Alam,” *Inovasi Penelitian* 2, no. 12 (2022): 3814.

¹⁵ Reza Fahmi, Sri Endah Wahyuningsih, and Sri Kusriyah, “Legal Reconstruction of Land Dispute Regulation in Indonesia Based on Pancasila Justice,” *Scholars International Journal of Law, Crime and Justice* 6, no. 2 (2023): 134–40, <https://doi.org/10.36348/sijlcj.2023.v06i02.012>.

and determine whether a living law is still valid or not, there is no clear definition or provision. The vagueness of the formulation of living law both conceptually and its formulation in the Criminal Code makes there is a potential for legal vagueness regarding what kind of living law is used as the basis for punishment. This has the potential to cause arbitrariness from law enforcement officials in the form of their own interpretations of living law that are inconsistent from one case to another.

The existence of parties who are pro and contra related to the formulation of living law in the Criminal Code can actually be understood as part of the dynamics and dialectics of drafting laws and regulations. When viewed carefully, both parties emphasize the essence of legal protection as the main orientation in criminal law reform. Pro-parties related to the formulation of living law in the Criminal Code emphasize that legal protection for living law that applies in the community, especially customary law, is an important aspect so that future criminal law reform can aspire to Indonesian law by adopting the substance of living law.

Counterparties related to the formulation of living law in the Criminal Code also based on the conception of legal protection consider that with the vagueness of the concept of living law which is then formulated in the Criminal Code, so it has the potential to cause legal uncertainty where the term living law and its limitations can be interpreted unilaterally by law enforcement officials in accordance with the case and legal needs at hand.¹⁶

The arguments both pro and con related to the formulation of living law in the Criminal Code are actually based on a good view so that criminal law reform is carried out comprehensively and is able to realize a national legal system with Pancasila personality. Even so, related to the formulation of living law in the Criminal Code, at least it needs to be seen in three aspects, namely: first, the conceptual aspect of the formulation of living law in the Criminal Code. The conceptual aspect emphasizes the conception of what kind of living law was later adopted by the framers of the Criminal Code. The conception of living law is important to see how the Criminal Code authentically sees and refers to the conception of living law formulated. The concept of living law historically as proposed by Soetandyo Wignjosoebroto is a conception that is intended to provide criticism of legal positivism.¹⁷

Legal positivism did meet its glorious era in the 19th-20th centuries which emphasized that what is called law is only positive written law.¹⁸ Outside of the written positive law, it is not a law and cannot be used as a legal basis. The key characteristic of legal

¹⁶ Yusman, "Pidana Adat Baduy Dalam Perspektif Pembaharuan Hukum Pidana Nasional," *Rechtsregel* 4, no. 2 (2021): 178–88.

¹⁷ Soetandyo Wignjosoebroto, *Dari Hukum Kolonial Ke Hukum Nasional* (Jakarta: HuMA, Van Vollenhoven Institute, KITLV, Epistema Institute, 2014).

¹⁸ Dominikus Rato, "Realisme Hukum: Peradilan Adat Dalam Perspektif Keadilan Sosial," *Jurnal Kajian Pembaharuan Hukum* 1, no. 2 (July 2021): 285, <https://doi.org/10.19184/jkph.v1i2.24998>.

positivism is to separate law from morality, culture, and social dimensions from other laws. As an “opponent” of the idea of legal positivism, the concept of living law as expressed by Eugen Ehrlich actually puts forward that in addition to state law, there are still other laws that apply in society and are not part of state law.¹⁹ Savigny reinforces Eugen Ehrlich’s view that the main standard for knowing whether living law is still valid or not is to refer to the mind and legal consciousness of the community. If society based on its legal consciousness and ideals still recognizes the existence of living law, then the living law still exists and applies.²⁰ From Savigny and Eugen Ehrlich’s view, the concept of living law is still considered broad, especially in the understanding that living law is “another law” that applies and exists outside state law and has an unwritten character.

The concept of living law is also emphasized by other legal experts such as J.H.P. Bellefroid who asserts that living law has three key characteristics, namely: it is not a state law, unwritten, and not promulgated like positive law.²¹ The view of living law increasingly met with certainty when Soerjono Soekanto identified living law as customary law. In Soerjono Soekanto’s view, living law is synonymous with customary law because it is unwritten, grows and develops along with community development, and its enforceability is determined by community trust as well as the existence of local apparatus that has the function of enforcing these customary norms. Soerjono Soekanto also emphasized that living law is not the same as community habits where habits are more of a propriety that is repeated in effect without having to be enforced by local officials.²² Soerjono Soekanto’s views above are also actually relevant to Soepomo’s views which identify living law as customary law. In his presentation, Soepomo views that living law has the same enforceability aspects as positive law, which distinguishes only the unwritten form of living law while positive law is in written form.

From various views regarding the conception of living law above, it can be seen that the provisions of Article 2 paragraph (1) of the Criminal Code actually limitatively decrypt that living law is customary law. It can also be seen that in the explanation of Article 2 paragraph (1) of the Criminal Code, living law is customary law, so further regulations are needed in the form of Government Regulations and Regional Regulations that classify and compile customary laws that are still in force. Second, in addition to looking at the conception of living law, what is no less important is the understanding

¹⁹ Ermanto Fahamsyah and Fradhana Putra Disantara, “The Dignified Justice Perspective on the Enigma of Health Protocols COVID-19 as a Code of Ethics,” *Jurnal Pembaharuan Hukum* 9, no. 1 (2022): 1–15, <https://doi.org/http://dx.doi.org/10.26532/jph.v9i1.17413>.

²⁰ M. Zulfa Aulia, “Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa,” *Undang: Jurnal Hukum* 3, no. 1 (2020): 201–36, <https://doi.org/10.22437/ujh.3.1.201-236>.

²¹ Fathonah K. Daud and M. Ridlwan Hambali, “Living Law Dalam KHiṭbah Dan Lamaran Perspektif Sosiologi Hukum,” *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 16, no. 1 (2022): 92–107, <https://doi.org/10.35316/lisanalhal.v16i1.92-107>.

²² Sri Wahyu Kridasakti, Abd. Majid, and Henny Yuningsih, “Restorative Justice Tindak Pidana ‘Elopement’ Hukum Adat Dalam Konstruksi Hukum Pidana Positif Indonesia,” *Jurnal Supremasi* 12 (2022): 94–110, <https://doi.org/10.35457/supremasi.v12i2.1839>.

of the principle of legality when the provisions regarding living law are regulated by the Criminal Code. This is because the principle of legality is the main conception in criminal law. Black's Law Dictionary defines legality as a basic principle of criminal law asserts that there can be no criminal remedy without a valid law established by the state.²³

Specifically, the principle of legality in criminal law does not accommodate the existence of enforceability outside positive law. However, in its development, the principle of legality also provides space for laws that apply outside the positive law which is then constructed as the principle of material legality. The principle of material legality is actually a conception that perfects the provisions regarding the principle of legality in order to continue to adopt and accommodate laws outside positive law.²⁴ The provisions in Article 2 paragraph (1) of the Criminal Code have actually adopted a conception of the principle of material legality in a limited manner. The principle of material legality is limited to Article 2 paragraph (1) of the Criminal Code because in addition to being limited to customary law, provisions regarding living law must also be further regulated through Government Regulations and Regional Regulations which are positive laws. This indicates that the Criminal Code actually chooses a "middle position" between the pros and cons related to the principle of material legality by formulating a conception of living law.

Third, the conception of living law and the principle of material legality in criminal law also has implications for law enforcement efforts in a harmonious and integrated manner. The recognition of customary law which is living law in the Criminal Code has the potential to cause uncertainty in law enforcement, for example when there is a person who steals in the territory of a customary law community where the customary law community has a special living law that applies to thieves in their territory while on the other hand, the thief must also be prosecuted through the Criminal Code in the form of theft.²⁵ In that case, the question is, is customary punishment or national law imposed? Or is it applied to both? If law enforcement is enforced in the form of customary criminal law and national criminal law, this actually creates a dimension of injustice where criminal offenders who commit one crime must get sanctions or punishments for more than one type of crime.

Although in general, the regulation of living law and the principle of material legality in the Criminal Code is a progressive step, but no less important is the integration of law enforcement so that there is synergy between the enforcement of customary law

²³ Henry Campbell Black Bryan A. Garner, *Black's Law Dictionary*, 11th ed. (Minnesota: West Publishing Co, St. Paul, 2019).

²⁴ Bustomi, "The Legality Principle Application in Indonesian Criminal Law System," *Nurani Hukum* 4, no. 2 (2021): 31.

²⁵ Bruno Lopes Ninomiya et al., "Indígenas Sob Um Contexto Vulnerável de Segurança Social Em Meio À Crise Sanitária," *Journal of Law and Sustainable Development* 9, no. 1 (2021): e676, <https://doi.org/10.37497/sdgs.v9i1.81>.

and national law in order to provide a sense of justice for the community. Regarding the importance of living law regulation in the Criminal Code, it is intended to facilitate the development of customary law that lives in the community and is still valid and practiced by the community, so that there needs to be clear boundaries so that the regulation of living law in the Criminal Code does not become a means of criminalization for the community.

The urgency of regulating limitations or limitations related to living law arrangements in the Criminal Code is intended to maintain human rights while preventing potential criminalization. In addition, limitations or limitations related to living law arrangements in the Criminal Code are also intended to ensure legal certainty for the community to know which areas still apply customary criminal law and which have not enforced. Knowledge of which regions still enforce customary criminal law and which no longer enforce customary criminal law can provide certainty and legal protection for the community if there is a potential suspicion of having committed a criminal act based on violations of applicable law or living law.

2.2. Formulation of Limitations on Living Law Arrangements in the Criminal Code

The regulation of living law in the Criminal Code specifically does not require certain restrictions or limitations. If analyzed carefully, the limitations regarding living law in the Criminal Code are only general, namely regulated in their respective Regional Regulations. In fact, one of the important orientations related to the regulation of living law in the Criminal Code is the need for regulation regarding limitations or limitations related to living law itself. Restrictions related to living law in the Criminal Code are important so that not all living law in the form of customary law can be applied as a standard for convicting someone. The importance of limitations regarding living law in the form of customary law needs to be done considering that in the customary law itself there is customary law that is still valid and carried out by the community, but on the other hand there is also customary law that is no longer valid.²⁶ Customary law that is no longer valid or no longer implemented is commonly referred to as sleeping law.

Sleeping law, means that the laws that live in society still exist in value, but are no longer enforced by society.²⁷ The phenomenon of customary law that is no longer enforced is what makes the importance of restrictions on living law. Restrictions on living law are expected to make the community more protected and guaranteed aspects of legal certainty in the community. The absence of restrictions regarding living law in the substance of the Criminal Code makes provisions regarding living law in the form of customary criminal law only refer to and base on Regional Regulations in their respective

²⁶ Andi Enri et al., "Legal Pluralism of the Ammatoa (Ilalang Embaya) Indigenous Community in Marriage Aspects (Analysis Study of Maqasid Al- Shari ' Ah)," *Transformatif* 1, no. 1 (2022): 131–42.

²⁷ Khairuddin Hasballah et al., "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 299–324. Islamic jurisprudence (fiqh

regions. In fact, as a legal product in the form of laws, especially those concerning the substance of laws in the field of criminal law, the Criminal Code should specify limits or limitations regarding living law clearly in its article provisions. There are three positive orientations with the limitations on living law regulated in the Criminal Code, namely: first, there are limitations in the Criminal Code related to living law, so this can ensure legal certainty for the community regarding living law as stated is still valid.

Legal certainty, especially in the suspension of criminal law, is important because one of the main characteristics of criminal law is that it can revoke human rights. With the blurring and unclear boundaries or limitations regarding living law, in the future there can be potential criminalization of certain parties only on the basis of violating the living law that is still in effect. Second, the existence of restrictions in the Criminal Code related to living law also makes it easier for the formulation of Regional Regulations that stipulate customary laws that are still in force. With no limitations on living law in the Criminal Code, it can be possible for different standards from one region to another to establish customary law that qualifies as living law.

The variety of standards that will be set by each region has the potential to cause legal uncertainty as well as create obstacles to law enforcement related to customary crimes. This is because customary criminal law that is considered in accordance with the characteristics of living law regulated in Regional Regulations if it is considered not in accordance with legal logic will be tested and judicial review carried out in the Supreme Court, so that instead of enforcing regulations regarding customary criminal law norms based on living law, it will be busy with new problems in the form of corrections to Regional Regulations whose susbtansi stipulates criminal law as living law that is considered to live in community. Third, the existence of limitations in the Criminal Code related to living law can also be a means for law enforcement officials to facilitate socialization related to criminal law which is substantively stated in the Criminal Code.

With clear boundaries in the Criminal Code, socialization and awareness of law in the community will be more easily explained, including the community can assess what kind of customary criminal law and in which areas are still considered applicable and if violated can have implications for the provision of criminal sanctions. Of the three important orientations of limitations in the Criminal Code related to living law, related to the limits of living law in the Criminal Code can construct the conception of customary law which is said to still be valid of course with little development and change. In the context of customary law, a customary law is said to still be valid if it meets several elements such as: still alive and still practiced by the community, in line and relevant to community development, in accordance with the principles of the Republic of Indonesia, and regulated in positive legal provisions in the form of laws.

Referring to the conception of the existence of customary law above, the reconstruction related to limitations or limitations in the Criminal Code related to living law can

be formulated that customary criminal law can be said to qualify as living law if it meets several requirements such as: (i) customary criminal law is still practiced by the community, (ii) there are customary law communities/communities that actually still implement the customary criminal law, (iii) does not conflict with the principles of the rule of law, (iv) does not conflict with the values of Pancasila, and (v) is recorded and facilitated by the regions to be formulated in Regional Regulations.

3. CONCLUSION

The urgency related to limitations or limitations related to living law regulations in the Criminal Code is intended to maintain human rights while preventing potential criminalization. In addition, limitations or limitations related to living law arrangements in the Criminal Code are also intended to ensure legal certainty for the community to know which areas still apply customary criminal law and which have not enforced. Knowledge of which regions still enforce customary criminal law and which no longer enforce customary criminal law can provide certainty and legal protection for the community if there is a potential suspicion of having committed a criminal act based on violations of applicable law or living law. The formulation of limitations on living law arrangements in the Criminal Code that affirms a customary criminal law can be categorized as living law in the Criminal Code, If it meets five restrictions, namely: (i) customary criminal law is still practiced by the community, (ii) there is a customary law community/community that is actually still implementing the customary criminal law, (iii) does not contradict the principles of the rule of law, (iv) does not conflict with the value of Pancasila, and (v) is recorded and facilitated by the regions to be formulated in Regional Regulations.

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