

INTEGRATING PANCASILA JUSTICE IN SENTENCING BALINESE CUSTOMARY CRIMES: TOWARD AN INTEGRATIVE MODEL UNDER INDONESIA'S NEW CRIMINAL CODE

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Abstract

This study critically examines the integration of Balinese customary criminal law, specifically the delict of Lokika Sanggraha, within Indonesia's formal criminal justice system under the recent National Criminal Code (Law Number 1 of 2023). Lokika Sanggraha, codified in Article 359 of the Adhigama Code, addresses cases in which a man engages in sexual relations under a promise of marriage but subsequently abandons the pregnant woman. Historically, the colonial-era Criminal Code lacked provisions for such scenarios, necessitating the judicial incorporation of living law (customary law) to fill normative gaps. The Denpasar District Court Decision Number 997/Pid.Sus/2019/PN Dps exemplifies judicial engagement with customary law, where the court applied the Adhigama Code in conjunction with Emergency Law Number 1 of 1951, resulting in a custodial sentence for the perpetrator. This case illustrates the tension between formal legal codification and living law, highlighting both progressive impulses and limitations in sentencing, notably in addressing the multidimensional harm to victims. Using a combined methodological approach—including statutory, case, and conceptual analyses—this research evaluates the decision through Pancasila justice dimensions, progressive legal theory, restorative justice, and legal pluralism frameworks. It further introduces an Integrative Sentencing Model that operationalizes the principles of proportional punishment, customary obligation fulfillment, victim compensation, and child protection under the National Criminal Code. Comparative analysis with Supreme Court Decision No. 1644 K/Pid/1988 and the codified Sharia-based system of Aceh demonstrates the spectrum of judicial approaches to customary law, informing a hybrid framework that balances formal adjudication with culturally embedded restorative mechanisms. The study concludes that while recognition of living law has advanced constitutionally, effective operationalization requires judicial capacity building, coordination with customary institutions, and robust procedural safeguards to ensure substantive justice. The proposed Integrative Sentencing Model provides a practical roadmap for aligning customary practices with formal legal standards, advancing human rights, gender justice, and restorative outcomes within Indonesia's pluralistic legal landscape.

Keywords: *Pancasila Justice; Customary Law (Adat); Sentencing Reform; Living Law; Integrative Sentencing Model.*

A. Introduction

The reform of national criminal law, marked by the enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code), represents

a paradigmatic shift in the position of living law within the Indonesian criminal justice system.¹ Article 2(1) of the National Criminal Code explicitly recognizes the applicability of law that exists and functions within society as a basis for criminal punishment, provided that it aligns with the values of Pancasila, the 1945 Constitution, human rights, and general principles of law recognized by the international community.² This normative acknowledgment reflects a move from a rigid formal legality approach toward a material legality principle that accommodates legal pluralism, while simultaneously establishing a constitutional foundation for the integration of customary criminal law within the national legal framework.³ From the perspective of Satjipto Rahardjo's⁴ progressive legal theory, this shift embodies the fundamental principle that law must serve humanity rather than constrain it, and that formal legal rules must yield to substantive justice when the two come into conflict.

Etymologically, *Lokika Sanggraha* derives from Sanskrit, comprising two words: *lokika*, meaning reason or thought, and *sanggraha*, meaning to master, hold, or maintain a relationship.⁵ Within the context of Balinese customary criminal law, the delict of *Lokika Sanggraha* refers to an act in which a man engages in sexual intercourse with a woman on the basis of a promise to marry her, but subsequently reneges on that promise after the woman becomes pregnant.⁶ Regulation of *Lokika Sanggraha* is codified in Article 359 of the Adhigama Code, a Hindu-Balinese legal text inherited from the Majapahit Dynasty that continues to serve as a normative

¹ Ali Masyhar et al., 'Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform', *Jambe Law Journal* 8, no. 1 (2025): 255–85, <https://doi.org/10.22437/home.v8i1.502>; Simon Butt, 'Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?', *Griffith Law Review* 32, no. 2 (2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>; Mas Putra Zenno Januarsyah et al., 'The Renewal Policy of the Adultery Concept in Article 411 of the Law Number 1 of 2023 on the Indonesian Criminal Code', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 1 (2023): 1–16, <https://doi.org/10.22304/pjih.v10n1.a1>; Aga Natalis et al., 'Sexuality, Privacy, and Human Rights: Rethinking the Criminalisation of Consensual Relationships in Indonesia', *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 18, no. 1 (2026): 77–93, <https://doi.org/10.5130/ccs.v18.i1.10154>.

² Yoserwan, 'Implications of Adat Criminal Law Incorporation into the New Indonesian Criminal Code: Strengthening or Weakening?', *Cogent Social Sciences* 10, no. 1 (2024): 2289599, <https://doi.org/10.1080/23311886.2023.2289599>; Masyhar et al., 'Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform'.

³ Faisal et al., 'Genuine Paradigm of Criminal Justice: Rethinking Penal Reform Within Indonesia New Criminal Code', *Cogent Social Sciences* 10, no. 1 (2024): 2301634, <https://doi.org/10.1080/23311886.2023.2301634>.

⁴ Satjipto Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan', *Jurnal Hukum Progresif* 1, no. 1 (2011): 1–24, <https://doi.org/10.14710/hp.1.1.1-24>.

⁵ Dewa Ayu Widyani, 'Akomodasi Delik Lokika Sanggraha Dalam Pembaruan Hukum Pidana', *Jurnal Hukum To-Ra* 2, no. 3 (2016): 421–28, <https://doi.org/10.33541/JtVol5Iss2pp102>; Nurul Azmi et al., 'Implementation of Customary Criminal Sanctions in Efforts to Resolve the Criminal Act of Lokika Sanggraha (Study of Decision NO. 997/PID. SUS/2019/PN. DPS)', 2024, 948–57, <https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF/article/view/242>.

⁶ Kukuh Dwi Kurniawan, 'Judges' Reasoning in Applying the Customary Offense of Lokika Sanggraha: Case Study of Decision No. 997/Pid. Sus/2019/PN Dps', *Justitia Jurnal Hukum* 9, no. 2 (2025): 177–92, <https://doi.org/10.30651/justitia.v9i2.26119>.

reference for the Balinese customary community.⁷ The existence of this delict is inseparable from the philosophy of *Tri Hita Karana*, which emphasizes the balance between humans and God (*parhyangan*), humans and fellow humans (*pawongan*), and humans and nature (*palemahan*), forming the foundation of Balinese social order.⁸ From a Balinese cosmological perspective, the act of *Lokika Sanggraha* is seen as disturbing the cosmic balance (*sekala-niskala*), necessitating restoration through customary sanctions encompassing material sanctions (*artha danda*), spiritual-ritual sanctions (*angaskara danda*), and moral-psychological sanctions (*jiwa danda*).⁹

A legal problematic arises when the delict of *Lokika Sanggraha* encounters the Indonesian positive criminal law system. The colonial-era Criminal Code (*Wetboek van Strafrecht*) addressed morality crimes only in limited contexts: Article 284 (adultery within marriage), Article 285 (rape), Article 286 (intercourse with an unconscious woman), and Article 287(1) (intercourse with a minor).¹⁰ None of these provisions addressed situations in which an unmarried man impregnates a woman and subsequently refuses to assume responsibility. This normative gap necessitated the application of Balinese customary criminal law, particularly the delict of *Lokika Sanggraha*, to fill the void that formal codified law could not address. This aligns with the principle *ubi societas ibi ius*—where there is society, there is law—affirming that the legal needs of society cannot always be fully met through formal codification alone.¹¹

⁷ Dhestiani Amara Putri et al., 'Lokika Sanggraha Berdasarkan Putusan Nomor 997/Pid. Sus/2019/PN Dps Menurut Teori Kriminologi', *Gema Keadilan* 8, no. 3 (2021): 175–96, <https://doi.org/10.14710/gk.2021.12499>.

⁸ Mohamad Ali Hisyam et al., 'Tri Hita Karana and Islamic Ethics: Bridging Universal Values for Social Harmony and Environmental Sustainability', *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam* 14, no. 2 (2024): 167–94, <https://doi.org/10.15642/teosofi.2024.14.2.167-194>; Dik Roth and Gede Sedana, 'Reframing Tri Hita Karana: From "Balinese Culture" to Politics', *The Asia Pacific Journal of Anthropology* 16, no. 2 (2015): 157–75, <https://doi.org/10.1080/14442213.2014.994674>; Dik Roth, 'Environmental Sustainability and Legal Plurality in Irrigation: The Balinese Subak', *Current Opinion in Environmental Sustainability* 11 (December 2014): 1–9, <https://doi.org/10.1016/j.cosust.2014.09.011>; Putu Agus Ardiana et al., 'Tri Hita Karana: Balinese Local Wisdom and Its Role in the Triumph Over Corruption', *Journal of Accounting & Organizational Change* 22, no. 1 (2025): 127–48, <https://doi.org/10.1108/JAOC-11-2023-0182>.

⁹ Putu Ary Prasetya Ningrum and Komang Ayu Suseni, 'Efektifitas Sanksi Adat Sangskara Danda Di Banjar Tanggahan Tengah Kabupaten Bangli', *Pariksa: Jurnal Hukum Agama Hindu* 6, no. 1 (2022): 18–26, <https://doi.org/10.55115/pariksa.v6i1.2235>; Ni Putu Mirna Sari et al., 'Dualitas Sekala-Niskala Dalam Pararem Gering Agung: Memahami Penanganan Covid-19 Berbasis Adat Dari Perspektif Kebijakan Publik Di Bali', *Jurnal Kajian Bali (Journal of Bali Studies)* 12, no. 1 (2022): 43–68, <https://doi.org/10.24843/JKB.2022.v12.i01.p03>.

¹⁰ Iva Kasuma et al., 'Another Second Chance: Rehabilitation of Marital Rape Offender for the Victim's Recovery', *Indonesian Journal of Socio-Legal Studies* 1, no. 2 (2022): 1–26, <https://doi.org/10.54828/ijsls.2021v1n2.4>.

¹¹ P. E. Corbett, 'Social Basis of a Law of Nations', in *The Hague Academy Collected Courses Online / Recueil Des Cours de L'Académie de La Haye En Ligne* (Brill | Nijhoff, n.d.), https://doi.org/10.1163/1875-8096_pplrdc_A9789028612228_05; Monia Ciravegna, 'Ubi Societas, Ibi Ius: The Legal System', in *Damanhur: An Esoteric Community Open to the World*, ed. Stefania Palmisano and Nicola Pannofino (Springer International Publishing, 2023), https://doi.org/10.1007/978-3-031-10137-3_4; Judith Hahn, 'Law Through the Lens of Sociology', in *Foundations of a Sociology of Canon Law*, ed. Judith Hahn (Springer International Publishing, 2022), https://doi.org/10.1007/978-3-031-01791-9_2.

The delict of *Lokika Sanggraha* has obtained juridical legitimacy in judicial practice through Article 5(3)(b) of Emergency Law Number 1 of 1951 concerning Temporary Measures for Organizing the Unity of the Structure of Power and Procedures of Civil Courts.¹² This provision authorizes courts to examine and adjudicate customary criminal cases lacking equivalents in written criminal law, prescribing substitute penalties of up to three months' imprisonment and/or a fine of five hundred rupiah. Moreover, Article 5(1) of Law Number 48 of 2009 concerning Judicial Power obliges judges to explore, follow, and understand the values of law and the sense of justice that exist in society.¹³ Together, these legal foundations have been used by several district courts in Bali as the basis for sentencing in *Lokika Sanggraha* cases.¹⁴

One decision that warrants in-depth examination is Decision Number 997/Pid.Sus/2019/PN Dps of the Denpasar District Court. In this case, the defendant, I Dewa Gede Ardana, was charged with committing the customary crime of *Lokika Sanggraha* against the victim, Ni Putu Dwik Supartini. The case chronology shows that the defendant and victim had been in a romantic relationship since March 13, 2015, during which they engaged in repeated sexual intercourse accompanied by the defendant's promise to marry the victim. After the relationship ended on July 7, 2018, the victim discovered she was pregnant and sought the defendant's accountability through mediation at the village office. DNA test results, documented in Doctor's Certificate Number YR.02.03/XIV.4.4.7/377/2018, confirmed that the child was the biological offspring of the defendant. Despite this evidence, the defendant refused to take responsibility, prompting the case to be reported to the Badung Police and brought to trial. The Panel of Judges ultimately found the defendant legally and convincingly guilty of committing the customary crime of *Lokika Sanggraha* and imposed a sentence of one month and fifteen days of imprisonment.¹⁵

¹² Hazar Kusmayanti et al., 'Legal Politics of the Existence of Customary Courts in Civil Procedure Law', *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 13, no. 1 (2024): 68–84, <https://doi.org/10.22373/legitimasi.v13i1.23079>; Rahmi Dwi Sutanti et al., 'Customary Law as an Instrument of Restorative Justice: An Alternative Approach to Criminal Conflict Resolution in Plural Legal Systems', *Clio. Revista de Historia, Ciencias Humanas y Pensamiento Crítico*, no. 10 (2025): 1348–81, <https://doi.org/10.5281/zenodo.15453907>.

¹³ Fence M. Wantu, 'Shifting the Paradigm of the Indonesian Judicial System from the Influence of the Anglo-Saxon Judicial System', *Jambura Law Review* 5, no. 1 (2023): 118–35, <https://doi.org/10.33756/jlr.v5i1.17927>; Suwitno Yutye Imran, 'The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments', *Jambura Law Review* 3, no. 2 (2021): 395–410, <https://doi.org/10.33756/jlr.v3i2.11154>; Fitria Esfandiari and Aan Eko Widiyanto, 'The Principle of Prudence and Scope Limitation in the Discussion of the Indonesian Constitutional Court: Implications for Legal Reform and Judicial Decision Making', *Journal of Law and Legal Reform* 6, no. 1 (2025): 449–80, <https://doi.org/10.15294/jllr.v6i1.8071>.

¹⁴ Harison Citrawan et al., 'Postcolonial Social Control and the Historicisation of Crimes in Indonesia's Penal Practices', in *The Palgrave Handbook of Criminology and the Global South*, ed. Roxana Pessoa Cavalcanti et al. (Springer Nature Switzerland, 2025), https://doi.org/10.1007/978-3-031-74932-2_85-1.

¹⁵ Putri et al., 'Lokika Sanggraha Berdasarkan Putusan Nomor 997/Pid. Sus/2019/PN Dps Menurut Teori Kriminologi'.

This decision holds significant academic and practical importance. First, it demonstrates that the judge considered not only formal legal provisions but also non-legal factors, including aggravating and mitigating circumstances, reflecting the *daad-dader strafrecht* approach, which considers both the act and the perpetrator.¹⁶ Second, the decision reflects the complexities of judicial absorption of customary law, which, according to Suhariyanto¹⁷, faces interpretative challenges due to the lack of codification regarding the scope and qualifications of customary criminal law. Third, in the context of criminal law reform, the decision is particularly relevant in light of the National Criminal Code, which explicitly recognizes living law as a source of criminal law under Article 2 while also establishing new morality offenses in Chapter XIV, Articles 411–414, thereby expanding the scope of criminal morality provisions.¹⁸

Beyond the specific case, this study addresses a fundamental question in Indonesian legal theory: how should a post-colonial legal system navigate the tension between codified criminal law inherited from the Dutch colonial administration and living law that predates colonialism and continues to shape indigenous communities' sense of justice? This question gains new urgency with the enactment of the National Criminal Code, which formally elevates living law from a subsidiary and informal source of criminal liability to a constitutionally recognized basis for punishment. A progressive legal analysis, drawing on Satjipto Rahardjo's¹⁹ principle that law must be "for humans, not humans for law," provides a theoretical framework to evaluate whether this formal elevation translates into genuine transformative potential in judicial practice.

The broader theoretical contribution of this study lies in demonstrating that integrating living law into the formal criminal justice system requires not only legislative recognition but also institutional, procedural, and conceptual transformation. Legislative recognition, achieved through Articles 2 and 597 of the National Criminal Code, is necessary but insufficient. Institutional transformation demands judicial capacity to engage with customary law, coordination between courts and customary institutions, and infrastructure for enforcing customary obligations. Procedural transformation requires standards of proof for living law, formal roles for customary

¹⁶ Musa et al., 'Guidelines for Implementing Imprisonment Sentences with Single Formulation (A Critique of Book I of the National Criminal Code)', *Law Reform* 20, no. 1 (2024): 106–34, <https://doi.org/10.14710/lr.v20i1.52851>; Hamidah Abdurrachman et al., 'Environmental Crime and Law Enforcement in Indonesia: Some Reflections on Counterproductive Approaches', *Environmental Policy and Law* 51, no. 6 (2021): 409–16, <https://doi.org/10.3233/EPL-210024>; Robiatul Adawiyah and Umi Rozah, 'Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System', *Law Reform* 16, no. 2 (2020): 149–62, <https://doi.org/10.14710/lr.v16i2.33783>.

¹⁷ Budi Suhariyanto, 'Problema Penyerapan Adat Oleh Pengadilan Dan Pengaruhnya Bagi Pembaruan Hukum Pidana Nasional', *Jurnal Mimbar Hukum* 30, no. 3 (2018): 421–35, <https://doi.org/10.22146/jmh.33227>.

¹⁸ Masyhar et al., 'Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform'.

¹⁹ Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan'.

law expert witnesses, and appellate mechanisms for customary criminal cases. Conceptual transformation, the most challenging, entails judges moving beyond the positivist paradigm dominant in Indonesian legal education since the colonial era and embracing a pluralist legal consciousness that recognizes multiple normative orders within a single constitutional framework.²⁰ Rahardjo's²¹ progressive legal theory, emphasizing law as a tool for achieving substantive justice, provides the conceptual foundation for this transformation.

The gender dimension of *Lokika Sanggraha* is particularly significant. The delict involves an asymmetric power relationship: the man who promises marriage controls the outcome, while the woman bears disproportionate biological, social, and economic consequences of pregnancy. Social stigma, denial of inheritance rights for children born outside marriage, and economic vulnerability compound this asymmetry in patriarchal structures.²² Martha Nussbaum's²³ capabilities approach offers a framework to evaluate whether the criminal justice system adequately protects the victim's essential capabilities—bodily integrity, emotional well-being, social affiliation, and control over her environment. This study demonstrates that the Denpasar District Court's sentencing fell significantly short of this standard.

Several prior studies have examined *Lokika Sanggraha* from various perspectives. Kastubi²⁴ analyzed its recognition within Bali using a normative juridical approach, confirming its ongoing application. Pitriyantini²⁵ examined its legal recognition through court decisions, affirming that judges may apply customary criminal law under the Judicial Power Act. Wulan and Triwati²⁶ focused on the sentencing in Decision No. 997/Pid.Sus/2019/PN Dps, though without evaluating

²⁰ Sulistyowati Irianto, 'Legal Education for the Future of Indonesia: A Critical Assessment', *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021): 1–36, <https://doi.org/10.54828/ijsls.2021v1n1.1>; Suteki and Aga Natalis, 'Mainstreaming Progressive Law: Toward an Emancipatory Paradigm in Legal Higher Education', *Cadernos de Dereito Actual*, no. 27 (2025): 160–83, <https://cadernosdedereitoactual.es/index.php/cadernos/article/view/1339>.

²¹ Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan'.

²² Hoko Horii and Theresia Dyah Wirastri, 'Living in a Legal Limbo: Mechanisms to "Fix" the Legal and Social Positions of Unregistered Children in Indonesia', *The Indonesian Journal of Socio-Legal Studies* 2, no. 1 (2022): 1–25, <https://doi.org/10.54828/ijsls.2022v2n1.1>; Solangel Maldonado, 'Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children', *Florida Law Review* 63, no. 2 (2011): 345–94, <https://scholarship.law.ufl.edu/flr/vol63/iss2/2/>.

²³ Martha C. Nussbaum, *Creating Capabilities* (Harvard University Press, 2011), <https://doi.org/10.2307/j.ctt2jbt31>.

²⁴ Kastubi, 'Tindak Pidana Adat "Logika Sanggraha" Di Bali', *Jurnal Spektrum Hukum* 15, no. 1 (2018): 112–23, <https://doi.org/10.35973/sh.v15i1.1112>.

²⁵ Putu Eka Pitriyantini, 'Pengakuan Atas Hukum Adat Lokika Sanggraha Melalui Putusan Pengadilan Dalam Perkara Pidana', *Kertha Wicaksana* 13, no. 2 (2019): 90–96, <https://doi.org/10.22225/kw.13.2.2019.90-96>.

²⁶ Siva Nawang Wulan and Ani Triwati, 'Pemidanaan Terhadap Pelaku Tindak Pidana Lokika Sanggraha Dalam Putusan No. 997/Pid. Sus/2019/Pn. Dps', *Semarang Law Review* 4, no. 2 (2023): 50–63, <https://doi.org/10.26623/slr.v4i2.7623>.

substantive justice in terms of Pancasila values. Artawan et al.²⁷ analyzed interactions between customary and general courts, concluding that law enforcement faces obstacles due to the absence of specific rules and low public legal awareness.

Based on the literature review, no prior study has systematically analyzed the Denpasar District Court decision through a progressive legal lens that maps the ratio decidendi against the Pancasila justice indicators while proposing a practical model for operationalizing living law under the National Criminal Code. The novelty of this research lies in its integrative analysis of judicial reasoning and the Pancasila justice matrix—including divine justice, humanitarian justice, unity-based justice, deliberative justice, and social justice—its comparative analysis with Supreme Court Decision No. 1644 K/Pid/1988, and its construction of an Integrative Sentencing Model that operationalizes sentencing principles under the new Criminal Code for customary criminal cases.

Based on this background, the research questions are as follows: first, how does the sentencing in the Denpasar District Court decision concerning *Lokika Sanggraha* measure up when evaluated through Pancasila justice and progressive legal theory? Second, what are the implications of this decision for national criminal law reform, particularly regarding living law recognition and the operationalization of sentencing principles under the National Criminal Code? This study aims to critically analyze the ratio decidendi of the Panel of Judges, evaluate it using Pancasila justice and progressive legal frameworks, and propose a practical Integrative Sentencing Model for future customary criminal cases.

This research employs three methodological approaches. First, the statute approach, which examines legislation related to customary criminal law, including Emergency Law Number 1 of 1951, Law Number 48 of 2009 concerning Judicial Power, and Law Number 1 of 2023 concerning the Criminal Code. This approach is essential for identifying the normative foundations for the recognition of customary criminal law within the national legal system and for mapping the changes introduced by the National Criminal Code. Second, the case approach, which analyzes the ratio decidendi and legal reasoning of the Panel of Judges in Decision Number 997/Pid.Sus/2019/PN Dps, as well as the comparative case of Supreme Court Decision No. 1644 K/Pid/1988, which applied the *ne bis in idem* principle to customary sanctions. This approach allows the study to uncover the basis of judicial argumentation in sentencing customary delicts. Third, the conceptual approach, which employs five theoretical frameworks: (a) Pancasila justice

²⁷ I. Dewa Gede Teguh Artawan et al., 'Implementasi Pengadilan Adat Dan Pengadilan Umum Terhadap Tindak Pidana Asusila Lokika Sanggraha', *Jurnal Hukum Sasana* 8, no. 2 (2022): 229–42, <https://doi.org/10.31599/sasana.v8i2.1269>.

elaborated into five dimensions; (b) Satjipto Rahardjo's²⁸ progressive legal theory; (c) Philippe Nonet and Philip Selznick's²⁹ responsive law theory; (d) Howard Zehr's³⁰ restorative justice framework; and (e) Brian Tamanaha's³¹ legal pluralism theory. These conceptual frameworks serve as analytical instruments to assess whether the sentencing reflects substantive justice.

The legal materials utilized in this study are categorized into three types. First, primary legal materials, comprising the relevant legislation, the Denpasar District Court Decision as the primary object of study, and Supreme Court Decision No. 1644 K/Pid/1988 as a comparative case. Second, secondary legal materials, including scientific literature such as books, accredited law journals, and relevant research on customary criminal law, the *Lokika Sanggraha* delict, Pancasila justice, progressive legal theory, and national criminal law reform. Third, tertiary legal materials, consisting of legal dictionaries and statistical data from the Central Bureau of Statistics.

The analysis of these materials employs a qualitative analytical method with deductive reasoning, conducted through four stages: description, systematization, interpretation (using systematic and teleological methods), and evaluation. The evaluation stage provides a critical assessment of the conformity of sentencing with the Pancasila justice matrix and identifies implications for national criminal law reform under the National Criminal Code.

Additionally, the study adopts a limited comparative approach, drawing on international scholarship to contextualize the Indonesian experience within the broader global discourse on indigenous justice, legal pluralism, and customary criminal law. This comparative perspective draws on Tamanaha's³² comprehensive analysis of legal pluralism across jurisdictions, Merry's³³ work on the translation of international human rights norms into local justice contexts, and Braithwaite's³⁴ theory of responsive regulation. All of these sources, published in internationally indexed journals, provide theoretical tools directly applicable to the Indonesian context. The comparative insights are employed not as prescriptive models but as analytical mirrors that illuminate features of the Indonesian system that might remain invisible when examined solely from a domestic perspective.

²⁸ Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan'.

²⁹ Philippe Nonet and Philip Selznick, *Responsive Law*, 1st edn (Routledge, 2016).

³⁰ Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* (MennoMedia, 2015).

³¹ Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (Oxford University Press, USA, 2021).

³² Ibid.

³³ Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', in *Dialogues on Human Rights and Legal Pluralism*, ed. René Provost and Colleen Sheppard (Springer Netherlands, 2013), https://doi.org/10.1007/978-94-007-4710-4_10.

³⁴ John Braithwaite, *Restorative Justice & Responsive Regulation*, Studies in Crime and Public Policy (Oxford University Press, 2002).

B. Integrating Customary Law and Progressive Justice: An Analysis of the Denpasar District Court Decision on Lokika Sanggraha Through Pancasila and Living Law Frameworks

1. Rechtsvinding and the Application of Living Customary Law in the Denpasar District Court

The Denpasar District Court Decision demonstrates a distinctive legal construction, as the Panel of Judges did not base the sentencing on the provisions of the 1946 Criminal Code, but rather on Article 359 of the Adhigama Code in conjunction with Article 5(3)(b) of Emergency Law Number 1 of 1951. This choice of legal basis epistemologically illustrates that the judge engaged in *rechtsvinding* (legal discovery) by exploring the living law of the Balinese customary community to address the normative gap in written criminal law. This approach aligns with the judicial obligation under Article 5(1) of Law Number 48 of 2009 concerning Judicial Power, which mandates that judges explore, follow, and understand the values of law and the sense of justice that exist within society.

In establishing the fulfillment of the elements of the *Lokika Sanggraha* delict, the Panel of Judges identified four cumulative elements based on Article 359 of the Adhigama Code: first, the occurrence of sexual intercourse between an unmarried man and woman; second, that the intercourse was accompanied by a promise from the man to marry the woman; third, that the intercourse resulted in the woman's pregnancy; and fourth, that the man subsequently reneged on his marriage promise. Drawing upon evidence presented at trial—including witness testimony, DNA test results, and the defendant's own statements—the Panel concluded that all elements were legally and convincingly satisfied.

A notable feature of the ratio decidendi lies in how the Panel legitimized the use of customary criminal law as the foundation for sentencing. The judge did not merely apply written norms mechanically (*bouche de la loi*), but engaged in a three-stage process of legal reasoning. First, the judge determined that the defendant's act could not be captured by any provision of the 1946 Criminal Code. Second, the judge verified that the customary criminal law of *Lokika Sanggraha* remained living, recognized, and actively practiced by the Balinese customary community, providing a crucial sociological verification. Third, the judge designated Article 5(3)(b) of Emergency Law No. 1 of 1951 as the normative bridge (*brugger norm*) linking customary criminal law to the formal criminal justice system. From the perspective of progressive legal theory, these

three stages embody what Rahardjo³⁵ envisioned as judges “breaking through” the constraints of formal law to achieve substantive justice—though, as will be shown, this breakthrough remained incomplete.

2. Juridical and Non-Juridical Considerations in Sentencing: Evaluating the Lokika Sanggraha Case through Material Legality and Proportionality

The considerations of the Panel of Judges can be categorized into juridical and non-juridical grounds. The juridical considerations relate to the positive legal foundations employed, namely Article 359 of the Adhigama Code in conjunction with Article 5(3)(b) of Emergency Law No. 1 of 1951, and Article 5(1) of the Judicial Power Act. This juridical basis illustrates that, although the *Lokika Sanggraha* delict is not regulated in codified criminal law, it acquires legitimacy through a normative delegation mechanism provided by legislation. In legal theory, this can be understood through the concept of material legality, which differs from formal legality (*nulla poena sine lege scripta*), in that an act may be punished not solely based on written law, but also on living law within society, provided the act is considered reprehensible and disrupts public order.³⁶

The non-juridical considerations encompass sociological, psychological, and cultural factors relevant to the case. The judge took into account that the victim had suffered both physical and emotional harm due to the unwanted pregnancy and the defendant's broken promise; that the defendant's actions disrupted the equilibrium of customary community life (*sekala-niskala*); and that the defendant exhibited no good faith in assuming responsibility despite the DNA evidence. Conversely, mitigating factors were also considered, including the defendant's polite demeanor during trial, his clean criminal record, and his relatively young age. These considerations reflect the application of the *daad-dader strafrecht* approach, which evaluates not only the nature and seriousness of the act but also the circumstances of the perpetrator in determining the appropriate severity of punishment.

The sentence of one month and fifteen days' imprisonment warrants critical analysis. While this duration falls below the three-month maximum prescribed by Article 5(3)(b) of the Emergency Law, it substantively reflects the judge's attempt to balance the repressive and educative functions

³⁵ Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan'.

³⁶ Beni Puspito and Ali Masyhar, 'Dynamics of Legality Principles in Indonesian National Criminal Law Reform', *Journal of Law and Legal Reform* 4, no. 1 (2023): 109–22, <https://doi.org/10.15294/jllr.v4i1.64078>; Barda Nawawi Arief, *Pembangunan Sistem Hukum Nasional (Indonesia)* (Badan Penerbit Universitas Diponegoro, 2021).

of punishment. From the perspective of Muladi's³⁷ integrative punishment theory, an ideal sentence simultaneously fulfills the objectives of retribution, deterrence, and rehabilitation. In this case, the sentence functionally emphasizes deterrence and moral affirmation, signaling to society that *Lokika Sanggraha* constitutes a criminal offense prosecutable by law, rather than imposing harsh retribution. However, according to Andrew von Hirsch's³⁸ proportionality theory, the severity of punishment should correspond to the concrete harm experienced by the victim, rather than merely the abstract gravity of the offense. Measured against this standard, the sentence appears inadequate, given the multidimensional suffering endured by the victim.

3. Evaluating the Denpasar District Court Decision through the Five Dimensions of Pancasila Justice

Having outlined the legal construction and considerations, the following analysis evaluates the Denpasar District Court decision through the five dimensions of Pancasila justice. Pancasila, as the *grundnorm* and *rechtsidee* of the Indonesian nation, encompasses a value system that, according to Notonagoro³⁹, manifests at three levels: base value, instrumental value, and practical value. Within the context of justice, the five *sil*a represent interconnected dimensions forming an integrated whole.⁴⁰

First, divine justice (Belief in the One Supreme God). This dimension requires that all punishment align with divine values and religious morality. The court header, "For Justice Based on the Belief in the One Supreme God," is not a mere procedural formality but carries substantive meaning: judicial decisions must be vertically accountable to God. In this case, the delict of *Lokika Sanggraha* derives from Hindu religious values enshrined in the Adhigama Code. By applying Article 359 of the Adhigama Code, the judge implicitly recognized that the defendant's actions violated not only customary legal norms but also the religious morality of the Hindu-Balinese community. Within the philosophy of *Tri Hita Karana*, the human-divine relationship (*parhyangan*) constitutes the first pillar of cosmic balance. The act of *Lokika Sanggraha*, which causes a pregnancy without the performance of the pregnancy purification ceremony (*biakaonan*),

³⁷ Muladi, *Lembaga Pidana Bersyarat* (Alumni, 1985).

³⁸ Andrew von Hirsch, 'Proportionality in the Philosophy of Punishment: From "Why Punish?" To "How Much?"', *Israel Law Review* 25, nos 3-4 (1991): 549-80, Cambridge Core, <https://doi.org/10.1017/S002122370001061X>; Andrew von Hirsch, 'The Politics of Proportionality', in *Censure and Sanctions*, ed. Andrew von Hirsch (Oxford University Press, 1996), <https://doi.org/10.1093/acprof:oso/9780198262411.003.0019>.

³⁹ Notonagoro, *Pancasila Secara Ilmiah Populer* (Pantjuran Tudjuh, 1975).

⁴⁰ Joko Setiyono and Aga Natalis, 'Universal Values of Pancasila in Managing the Crime of Terrorism', *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (2023): 48-63, <https://doi.org/10.5130/ccs.v15.i2.8084>.

defiles the sacred relationship between humans and the divine.⁴¹ Thus, the sentencing coheres with divine justice by contributing to the restoration of spiritual equilibrium.

Second, humanitarian justice (Just and Civilized Humanity). This dimension demands that every individual be treated in accordance with their inherent dignity. The sentencing of the *Lokika Sanggraha* perpetrator serves to protect the human dignity of the victim—a woman sexually exploited through a false promise of marriage and subsequently abandoned while pregnant. From the humanitarian justice perspective, the defendant's renegeing on his marriage promise constitutes dehumanization, reducing the woman to an object without regard for the consequences. While the guilty verdict affirms the victim's right to justice and protection, the sentence of one month and fifteen days fails to proportionately reflect the multidimensional suffering—psychological, economic, and social—experienced by the victim. Consequently, this dimension calls for additional mechanisms for victim rights restoration, such as restitution. Applying Martha Nussbaum's⁴² capabilities approach, the sentence falls short in safeguarding the essential capabilities required for the victim to live a dignified life.

Third, unity-based justice (Unity of Indonesia). This dimension emphasizes justice that strengthens social cohesion and national unity in diversity (*Bhinneka Tunggal Ika*). By recognizing and applying Balinese customary criminal law, the court affirms legal pluralism as a national asset. Rather than imposing rigid uniformity, the decision allows customary law to operate as an instrument of justice, reflecting that national unity does not require homogeneity but respects the coexistence of diverse living legal systems.⁴³

Fourth, deliberative justice (Democracy Guided by the Wisdom of Deliberation). Prior to litigation, mediation was attempted at the Taman Village Office on August 27, 2018. Although the mediation failed due to the defendant's refusal to accept responsibility, the attempt demonstrates the alignment of customary resolution mechanisms with the deliberative values of the fourth principle of Pancasila. Within the judicial process, deliberative justice is further reflected in the Panel of Judges' consideration of the prosecutor's and defendant's statements, alongside customary norms and community values, ensuring that legal decisions are informed by both statutory law and socio-cultural principles.

⁴¹ Ardiana et al., 'Tri Hita Karana: Balinese Local Wisdom and Its Role in the Triumph Over Corruption'.

⁴² Nussbaum, *Creating Capabilities*.

⁴³ Lita Tyesta Addy Listya Wardhani et al., 'The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems', *Cogent Social Sciences* 8, no. 1 (2022): 2104710, <https://doi.org/10.1080/23311886.2022.2104710>.

Fifth, social justice (Social Justice for All Indonesian People). This dimension entails distributive and corrective justice. Corrective justice is served by recognizing the defendant's act as criminal, while distributive justice ensures that responsibility is shared: the man, not only the woman, bears the legal consequences of extra-marital pregnancy. However, the verdict only prescribes imprisonment without fines or restitution. In Balinese customary law, *Lokika Sanggraha* sanctions traditionally encompass three dimensions: *artha danda* (material), *jiwa danda* (moral-psychological), and *angaskara danda* (spiritual-ritual). The omission of material and spiritual restitution indicates that the translation of customary law into formal law remains incomplete, as the court focused solely on corporal punishment while neglecting the restorative justice elements intrinsic to Balinese customary practice.

4. Arrested Justice in the Denpasar District Court Decision: Progressive Legal Impulses Confront Sentencing Formalism

Drawing upon the analytical framework of progressive legal theory, the sentencing in this case exemplifies what may be termed “arrested justice”—a phenomenon in which the court exhibits progressive impulses in one dimension but retreats to conservative formalism in another. Philippe Nonet and Philip Selznick⁴⁴, in their typology of legal development, distinguish among repressive law, autonomous law, and responsive law. The Denpasar District Court's decision exhibits characteristics of all three types simultaneously, creating an internal tension that reflects the broader challenges of legal pluralism in Indonesia.

The court's progressive orientation is evident in its willingness to apply Article 359 of the Adhigama Code, moving beyond the constraints of the written Criminal Code to recognize customary law as a legitimate source of criminal liability. This approach aligns with Rahardjo's⁴⁵ principle that law should “serve humanity” rather than subordinating humanity to formalistic rules. The judge's legal reasoning—identifying the normative gap in the Criminal Code, verifying the sociological existence of *Lokika Sanggraha* as living law, and constructing a normative bridge through Emergency Law No. 1 of 1951—demonstrates sophisticated legal craftsmanship that is consistent with progressive legal methodology.

Yet this progressive impulse was “arrested” at the sentencing stage. Despite recognizing the multidimensional harm caused by the defendant and the tripartite sanction system of Balinese customary law, the court imposed only a custodial sentence of one month and fifteen days, omitting

⁴⁴ Nonet and Selznick, *Responsive Law*.

⁴⁵ Rahardjo, ‘Hukum Progresif: Hukum Yang Membebaskan’.

any restorative or customary components. This represents a procedural justice deficit, as described by Tom Tyler⁴⁶: the process of recognizing living law appears substantively just, but the outcome fails to deliver the justice that the substantive recognition promised. Viewed through Nonet and Selznick's⁴⁷ framework, the decision remains autonomous law at the sentencing stage—technically correct within the confines of Emergency Law No. 1 of 1951 (maximum three months' imprisonment) but lacking the responsive quality necessary to integrate customary justice values into the punishment itself.

This phenomenon of arrested justice carries significant implications for the implementation of living law under the National Criminal Code. If judges continue to recognize customary law at the liability stage but revert to formalism at sentencing, the Code's aspiration to integrate living law risks remaining largely symbolic. Progressive legal theory demands that the recognition of living law permeate the entire adjudicatory process—from identification of the offense, through assessment of culpability, to determination and execution of the sentence.

5. Gaps in Humanitarian, Social, and Gender Justice: Progressive Analysis of the Denpasar District Court Decision

Based on the foregoing analysis, it can be synthesized that the Denpasar District Court decision adequately reflects the dimensions of divine justice, unity-based justice, and deliberative justice. The judge engaged with religious values through the application of the Adhigama Code, recognized legal pluralism as a strength of national unity, and undertook a deliberative process that considered multiple interests. However, significant gaps remain in the dimensions of humanitarian justice and social justice. The leniency of the sentence fails to correspond to the multidimensional suffering of the victim, and the absence of restitution or restoration mechanisms demonstrates that the restorative justice component—which forms the essence of customary criminal law—was not fully accommodated. Progressive legal analysis attributes this gap to the phenomenon of arrested justice, wherein the court's progressive recognition of living law did not extend to the sentencing stage.

The gender justice dimension warrants further attention. In the *Lokika Sanggraha* case, the victim, Ni Putu Dwik Supartini, endured consequences extending beyond the immediate pregnancy. Under Balinese customary law, a woman who bears a child outside of wedlock risks exclusion from certain religious ceremonies, diminished social standing within the *banjar*

⁴⁶ Tom R. Tyler, *Why People Obey the Law* (Princeton University Press, 2006), <https://doi.org/10.2307/j.ctv1j66769>.

⁴⁷ Nonet and Selznick, *Responsive Law*.

(community ward), and practical difficulties in securing the child's inheritance and paternal maintenance. The child faces similar structural disadvantages, potentially lacking formal paternal recognition, with implications for identity documentation, inheritance rights, and access to educational and social support typically mediated through patrilineal kinship structures.

The court's failure to address these downstream consequences reflects what Sally Engle Merry identifies as a gap in the "translation" of international human rights norms into local justice contexts. Indonesia is a state party to the Convention on the Rights of the Child (1989), which affirms that every child has the right to know and be cared for by both parents (Article 7) and that a child shall not be separated from either parent except when competent authorities deem such separation necessary in the child's best interests (Article 9). Article 28B(2) of the 1945 Constitution further guarantees every child's right to survival, growth, and development, as well as protection from violence and discrimination. A progressive legal analysis requires judges to consider these constitutional and international obligations, moving beyond the narrow question of the perpetrator's culpability to the broader issue of how the judicial response can meaningfully protect the rights and capabilities of both the victim and the child.

Applying Martha Nussbaum's⁴⁸ ten central capabilities to this case highlights stark inadequacies. The capability of bodily integrity—the ability to move freely and make reproductive choices—was violated by the false promise inducing the victim's consent to sexual relations. The capability of emotions—the capacity for attachments outside oneself—was severely impaired by betrayal of trust and psychological trauma during pregnancy. The capability of affiliation—being treated with dignity and equality—was undermined by the defendant's refusal to acknowledge responsibility despite DNA evidence. Finally, the capability of control over one's environment—including political participation and property rights—was compromised by the economic vulnerability resulting from single parenthood without paternal support. The sentence of one month and fifteen days' imprisonment, devoid of restorative or compensatory measures, did little to restore these essential capabilities.

⁴⁸ Nussbaum, *Creating Capabilities*.

C. An Integrative Sentencing Model in Indonesian Customary Criminal Law: Analysis of the Denpasar Decision and Implementation of Living Law Principles under the National Criminal Code

1. Comparative Judicial Models and the Integrative Sentencing Framework: Reconciling Formal Courts and Customary Law in Indonesia

To strengthen the generalizability of the findings and address the limitation of relying on a single case study, this section introduces a comparative analysis with Supreme Court Decision No. 1644 K/Pid/1988, a landmark ruling establishing a fundamentally different model of judicial engagement with customary criminal law. This comparative perspective is essential for understanding the spectrum of judicial approaches and for constructing the Integrative Sentencing Model proposed in this study.

In Decision No. 1644 K/Pid/1988, the Supreme Court held that when a person commits an act considered a violation of customary law in the relevant region, and the Head of Adat and customary elders have already imposed and executed a customary sanction, the individual cannot subsequently be prosecuted in a State Court (District Court) for the same act. This decision effectively applied the *ne bis in idem* principle to customary sanctions, recognizing adat penalties as possessing juridical force equivalent to formal criminal sanctions and precluding subsequent prosecution for the same conduct.

The contrast between the Denpasar District Court's approach in the *Lokika Sanggraha* case and the Supreme Court's approach in Decision No. 1644 K/Pid/1988 reveals two fundamentally different models of judicial absorption of customary law. In the *Lokika Sanggraha* case, the formal court assumed jurisdiction over the customary delict and imposed a formal criminal sanction (imprisonment), effectively displacing the customary sanction system. In contrast, Decision No. 1644 K/Pid/1988 reflects a deferential approach, whereby the court recognized the primacy of adat sanctions and precluded formal prosecution once customary sanctions had been executed. Suhariyanto⁴⁹ identifies these as the "absorptive" model (formal courts absorb and translate customary norms into formal sanctions) and the "deferential" model (formal courts recognize and defer to customary justice processes), respectively.

Each model carries distinct advantages and limitations. The absorptive model, exemplified by the *Lokika Sanggraha* decision, provides the certainty of formal adjudication and institutional guarantees of the state judiciary but risks the "translation loss" identified in the Pancasila justice

⁴⁹ Suhariyanto, 'Problema Penyerapan Adat Oleh Pengadilan Dan Pengaruhnya Bagi Pembaruan Hukum Pidana Nasional'.

analysis: the customary tripartite sanction system of *artha danda*, *jiwa danda*, and *angaskara danda* is reduced to mere imprisonment. Conversely, the deferential model, as seen in Decision No. 1644 K/Pid/1988, preserves the integrity of customary justice mechanisms but raises concerns regarding due process, consistency, and protection of individual rights within potentially informal or unregulated proceedings.

For the implementation of living law under the National Criminal Code, neither model alone is sufficient. The Integrative Sentencing Model proposed in this study seeks to synthesize the strengths of both approaches: maintaining formal judicial adjudication for the determination of guilt (absorptive model) while incorporating customary sanctions as supplementary punishments under Article 66(1)(f) of the National Criminal Code (deferential model). This hybrid approach, informed by John Braithwaite's⁵⁰ theory of responsive regulation, allows courts to calibrate their responses according to the characteristics of each customary criminal case, reserving formal sanctions for instances requiring state authority while activating customary restorative mechanisms where they can meaningfully contribute to justice.

2. From Formal Legality to Material Legality: The Normative-Constitutional Shift

The Denpasar District Court decision in the *Lokika Sanggraha* case effectively anticipated the paradigm shift that has now been formally adopted in the National Criminal Code. At the time the decision was rendered in 2019, Article 5(3)(b) of Emergency Law No. 1 of 1951 served as the sole normative bridge connecting customary criminal law to the formal criminal justice system—a temporary mechanism that provided limited legal certainty due to its outdated penalty provisions. The enactment of the National Criminal Code in 2023 fundamentally transformed this normative landscape. Article 2(1) explicitly adopts the principle of material legality, recognizing that an act's unlawfulness is determined not solely by written law but also by norms living within society. From the perspective of progressive legal theory, this codification represents the formalization of Rahardjo's long-standing principle: the legal system must respond to the living values of society rather than remain constrained by colonial-era formalism.

Article 2(2) further establishes four cumulative conditions for the application of living law: consistency with Pancasila, the 1945 Constitution, human rights, and general legal principles. These function as a constitutional filter, ensuring that not all customary norms can automatically serve as a basis for criminal punishment. When tested against these filters, the delict of *Lokika*

⁵⁰ Braithwaite, *Restorative Justice & Responsive Regulation*.

Sanggraha substantively satisfies all requirements: it aligns with Pancasila values, does not contravene the Constitution, protects women's human rights against sexual exploitation, and accords with general legal principles mandating accountability for harmful acts. However, Article 2(2) also requires formalization through regional regulations, creating a tension between preserving the oral and dynamic character of customary law and meeting the legal certainty demands of formal codification.

3. Sentencing Principles as the Operational Framework for Living Law

The most significant contribution of this study lies in its analysis of how the sentencing principles established in the National Criminal Code provide a practical operational framework for judges adjudicating customary criminal cases. This framework, unavailable at the time of the *Lokika Sanggraha* decision, would have fundamentally altered the judge's approach to sentencing.

Article 51 of the National Criminal Code establishes four purposes of punishment: (a) preventing criminal acts by upholding legal norms for the protection and welfare of society; (b) socializing convicts through guidance to become good and useful members of society; (c) resolving conflicts arising from criminal acts, restoring equilibrium, and bringing security and peace to society; and (d) cultivating remorse and relieving the convict's sense of guilt. Purpose (c)—restoring equilibrium and bringing peace to society—is philosophically consonant with the Balinese concept of cosmic balance (*sekala-niskala*). This alignment demonstrates that, in principle, the National Criminal Code has adopted the spirit of restorative justice, which constitutes the core of customary criminal law.

Article 53 provides detailed sentencing guidelines, obligating judges to consider factors such as: the form of the perpetrator's fault; motive and purpose; manner of committing the act; the perpetrator's attitude and life history; the socio-economic context; post-offense conduct; the influence of the act on the victim or victim's family; forgiveness by the victim; and the values of law and justice living in society. The final criterion explicitly references living law, providing a normative basis for judges to incorporate customary values into sentencing.

Had these guidelines been available during the *Lokika Sanggraha* trial, the Panel of Judges would have been required to: first, assess not only immediate harm (pregnancy, psychological distress) but also downstream effects on the child, including rights to identity, inheritance, and maintenance under Article 28B(2) of the 1945 Constitution and the Convention on the Rights of the Child; second, identify and apply normative expectations of the Balinese customary community regarding appropriate sanctions, including the tripartite system of *artha danda, jiwa*

danda, and *angaskara danda*, rather than imprisonment alone; and third, under Article 51(c), consider restorative mechanisms beyond mere incapacitation.

From a progressive legal theory perspective, these sentencing principles transform the judge from a passive applicator of formal rules (*la bouche de la loi*) into an active agent of substantive justice. Rahardjo's⁵¹ vision requires judges to exercise creative reasoning to bridge formal rules and the living values of society. Articles 51 and 53 institutionalize this creative reasoning, legitimizing judicial consideration of customary values, victim impact, and restorative outcomes within a structured analytical process that prevents arbitrariness while promoting substantive justice.

The jurisprudential significance of Supreme Court Decision No. 1644 K/Pid/1988 extends beyond the facts of the case, establishing a broader principle regarding the relationship between customary and formal criminal justice. By recognizing that the execution of customary sanctions by adat leaders satisfies the prohibition against double jeopardy, the Supreme Court implicitly acknowledged that: first, customary sanctions possess juridical weight sufficient to constitute formal punishment; second, customary institutions led by the *Kepala Adat* and *Pemuka Adat* function as legitimate adjudicatory bodies commanding legal respect; and third, the principle of finality applies, preventing multiple proceedings for the same act. These propositions, first articulated in 1988, find legislative confirmation in the National Criminal Code's formal recognition of living law through Articles 2 and 597.

Lilik Mulyadi's⁵² comprehensive study of customary criminal law identifies three historical patterns of judicial engagement with customary law: the first pattern (e.g., Decision No. 666 K/Pid/1984) displaces customary sanctions, applying the criminal code instead; the second (Decision No. 1644 K/Pid/1988) fully defers to customary justice; and the third (Decision No. 854 K/Pid/1983, also involving *Lokika Sanggraha* in Klungkung) applies the customary delict through formal judicial mechanisms. The Denpasar District Court's approach follows the third pattern but imposed only imprisonment without customary or restorative components.

This typology reveals a spectrum—from full displacement of customary justice to full deference, with hybrid approaches in between. The National Criminal Code, particularly Article 66(1)(f) introducing “customary obligation fulfillment” as a supplementary punishment, provides the normative foundation for a fourth pattern: integrated adjudication combining formal judicial processes with customary justice components in a single verdict. This fourth pattern,

⁵¹ Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan'.

⁵² Lilik Mulyadi, *Hukum Pidana Adat* (Penerbit Alumni, 2021).

operationalized through the Integrative Sentencing Model proposed in this study, represents the most complete realization of living law recognition while preserving the procedural safeguards of formal adjudication.

4. The Integrative Sentencing Model: A Practical Roadmap for Judges

Based on the foregoing analysis, which integrates the evaluation of Pancasila justice, the comparative study of Decision No. 1644 K/Pid/1988, and the established sentencing principles framework, this study proposes an Integrative Sentencing Model comprising four distinct components specifically designed for customary criminal cases under the Indonesian National Criminal Code. This model aims to address justice gaps arising from both formal legal procedures and the socio-cultural values embedded in customary communities, while ensuring that the principles of proportionality and comprehensive victim protection are fully realized.

The first component is Proportional Principal Punishment. The central idea here is that judges should impose a principal sentence, whether imprisonment or a fine, that is proportional to the tangible harm suffered by the victim. This approach draws upon von Hirsch's⁵³ principle of proportionality as well as the sentencing guidelines outlined in Article 53 of the National Criminal Code. In cases such as Lokika Sanggraha, the sentence should not merely reflect the maximum statutory limit but rather account for the multidimensional impact on the victim, including psychological, economic, and social dimensions. The proportionality assessment must be thoroughly documented in the ratio decidendi, referencing specific facts regarding the victim's harm. This approach emphasizes that justice is not merely a formalistic exercise but requires the substantive recognition of the victim's experience and suffering.

The second component is Customary Obligation Fulfillment. In accordance with Article 66(1)(f) of the Criminal Code, judges should impose supplementary punishment in the form of fulfilling customary obligations as determined by the relevant customary community. For cases like Lokika Sanggraha, this could include the *angaskara danda*, a purification ceremony, and may extend to *artha danda*, which refers to material compensation mandated by customary law. Determination of these obligations should be informed by expert testimony from customary leaders (*kelian adat*) and should be recorded in the verdict with sufficient specificity to ensure enforceability. Incorporating customary obligations exemplifies the absorptive model in

⁵³ von Hirsch, 'The Politics of Proportionality'; von Hirsch, 'Proportionality in the Philosophy of Punishment: From "Why Punish?" To "How Much?"'

Indonesia's legal system, where formal law can accommodate local practices and provide legitimacy to customary norms without violating universal human rights principles.

The third component is Victim Compensation. Pursuant to Article 66(1)(d) of the Criminal Code, the court should impose compensation addressing both material and immaterial losses suffered by the victim. In the context of Lokika Sanggraha, such compensation should cover medical expenses, child-rearing costs, and reparation for psychological harm. This component addresses the *artha danda* dimension that was overlooked in the Denpasar District Court's original verdict. By including victim compensation, the judiciary strengthens the restorative justice dimension, ensuring that punishment is not solely punitive but also facilitates the restoration of the victim's condition. This component effectively bridges the gap between formal legal procedures and the substantive needs of the victim, creating a more humane and comprehensive approach to justice.

The fourth component is Child Protection Measures. In cases where the customary criminal act results in the birth of a child, judges should ensure that the child's rights are addressed either within the main verdict or through a separate order, including recognition of paternity, provision of maintenance, and establishment of identity. This component responds to gender justice gaps identified in prior evaluations and ensures compliance with Article 28B(2) of the Constitution as well as the Convention on the Rights of the Child. As Sally Engle Merry notes, translating international human rights norms into local justice contexts requires active judicial mediation, a role that Indonesian judges must increasingly assume under the National Criminal Code. This ensures that children are not indirectly victimized by legal and social systems and that their fundamental rights are protected in the resolution of customary criminal cases.

Collectively, these four components synthesize the absorptive and deferential models identified through comparative analysis, operationalize the sentencing principles of Articles 51 and 53, and address justice gaps revealed by the Pancasila justice matrix. From determining liability to imposing a final sentence, every stage in the judicial process must reflect a balance between the interests of victims, offenders, and the customary community. Consistent application of this model can help overcome the phenomenon of "arrested justice," in which recognition of living law does not extend to the sentencing stage.

Furthermore, the Integrative Sentencing Model provides a flexible framework capable of managing the complexities of customary criminal cases, which often involve social, cultural, and economic dimensions that are not fully addressed by the formal Criminal Code. By combining proportional principal punishment, fulfillment of customary obligations, victim compensation, and

child protection measures, the model equips judges with comprehensive tools to deliver justice that is fair, humane, and contextually sensitive. It also aligns with the Pancasila principle of social justice by emphasizing the need to harmonize formal law with local norms that are meaningful to the affected communities.

In practice, this model requires a proactive and mediation-oriented role for judges rather than a purely adjudicative approach. Judges must critically evaluate relevant facts, understand local customary practices, and consider victims' harms in full. The application of von Hirsch's⁵⁴ proportionality principle and the sentencing guidelines of Article 53 ensures that each verdict is not only legally sound but also substantively just. The inclusion of customary obligations and victim compensation underscores the restorative dimension of justice, aiming to repair the harm caused to victims while respecting local cultural values.

Attention to child protection guarantees that subsequent generations are not further harmed by the consequences of customary criminal acts, while simultaneously addressing gender justice gaps inherent in some customary practices. Integrating these four components enables courts to balance multiple dimensions of justice—punishment, restitution, social obligation fulfillment, and protection of children—so that decisions are comprehensive, equitable, and socially legitimate.

Conceptually, this Integrative Sentencing Model demonstrates that applying Pancasila justice within Indonesia's criminal law system is not only feasible but also provides a practical solution to systemic gaps in justice. By documenting each component in the ratio decidendi, verdicts become more than instruments of formal law; they serve as a practical guide for communities and customary institutions. This model exemplifies progressive legal thought that acknowledges living law, upholds victims' rights, balances the interests of offenders, and ensures children's protection within a culturally sensitive framework.

If implemented consistently nationwide, this model could serve as an effective instrument for achieving substantive justice in customary criminal cases, reducing patterns of procedural injustice, and providing greater legal certainty. By integrating formal legal principles, customary obligations, and victim protection measures, it facilitates a holistic approach to justice, one that is aligned with the values of Pancasila and international human rights norms adopted by Indonesia.

Ultimately, every step of liability determination and sentencing under this model fosters equitable outcomes that consider the needs of victims, offenders, customary communities, and the state. It promotes an adaptive, restorative, and contextually grounded legal system, bridging gaps

⁵⁴ von Hirsch, 'The Politics of Proportionality'; von Hirsch, 'Proportionality in the Philosophy of Punishment: From "Why Punish?" To "How Much?"'

between formal law and living law, and demonstrates that Pancasila-based justice can be translated into practical, community-impactful judicial outcomes. By doing so, the Integrative Sentencing Model strengthens public trust in the judiciary, enhances compliance with the law, and reinforces the role of customary law as an integral element of achieving social justice in Indonesia.

D. Comparative Perspective: Qanun Aceh and the Managed Legal Pluralism Framework

A further comparative dimension emerges when examining the experience of Aceh Province, the only region in Indonesia to have formally codified customary criminal law, based on Sharia principles, into a regional regulation that functions as a formal sentencing instrument. Qanun Aceh Number 6 of 2014 on Jinayat Law provides detailed formulations of offenses, specific elements of criminal acts, clearly defined types of sanctions—including caning, fines, and imprisonment—and explicit enforcement procedures.⁵⁵ The effectiveness of Aceh's codified system relied on three key factors: first, constitutional legitimacy granted through the Special Autonomy Law (Law No. 11 of 2006), which provided the legal foundation for regional self-regulation; second, the availability of comprehensive jurisprudential sources, particularly *fiqh jinayat*, which offered an authoritative interpretive framework for judicial application; and third, dedicated judicial infrastructure in the form of the Mahkamah Syar'iyah, a specialized court tasked with administering Sharia-based criminal law. These elements together enabled a structured and enforceable system of customary-religious law that was both predictable and operationally functional.⁵⁶

When compared to the Balinese context, particularly in relation to the Lokika Sanggraha delict, significant structural contrasts become apparent. Balinese customary criminal law is inherently pluralistic and decentralized, with each *desa pakraman* maintaining its own autonomous *awig-awig*. Unlike Aceh, there is no singular authority in Bali capable of monopolizing interpretation or enforcement. Furthermore, Bali lacks a specialized court system equivalent to the

⁵⁵ Khamami Zada, 'Sharia and Islamic State in Indonesia Constitutional Democracy: An Aceh Experience', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 1–18, <https://doi.org/10.18326/ijtihad.v23i1.1-18>; Yusrizal Hasbi et al., 'Criminalising Women, Silencing Victims: Human Rights and Sharia Enforcement in Aceh', *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (2025): 175–203, <https://doi.org/10.18860/j-fsh.v17i1.29635>; Dedy Sumardi et al., 'Legal Pluralism Within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–49, <https://doi.org/10.22373/sjkh.v5i1.9303>.

⁵⁶ Ahmad Jamaludin et al., 'Caning and Penal Legitimacy: The Double Movement of Aceh's Qanun Jinayat Under Indonesia's New Criminal Code', *Jurnal Hukum Islam* 23, no. 2 (2025): 685–716, <https://doi.org/10.28918/jhi.v23i2.10>; Dian Andi Nur Aziz et al., 'Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance and Impact on Vulnerable Groups and Minorities', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 37–56, <https://doi.org/10.18326/ijtihad.v23i1.37-56>.

Mahkamah Syar'iyah, meaning adjudication occurs through general district courts and customary councils (*pawongan adat*) rather than through a dedicated judicial institution. These structural distinctions highlight the impossibility of simply transplanting Aceh's codified model to Bali. Drawing on Brian Tamanaha's⁵⁷ concept of "managed legal pluralism," this study proposes a framework regulation model tailored to Balinese needs. Under this approach, a regional regulation would establish general principles, recognize customary delicts, define maximum sanction limits, and provide broad enforcement procedures, while simultaneously preserving the autonomy of each *desa pakraman* to elaborate substantive details in their respective *awig-awig*. Such managed pluralism reconciles the tension between legal certainty at the provincial level and the need to respect the dynamic, locally-rooted character of Balinese customary law.

Aceh's experience also illuminates the potential risks associated with the formalization of customary or religious criminal law. Codification inevitably involves processes of standardization and simplification that may compromise the flexibility and contextual sensitivity of living law. As John Griffiths⁵⁸ noted in his seminal work, "What is Legal Pluralism?", the state's codification of customary law often risks transforming it into a form of state law, effectively stripping away its distinctive characteristics and undermining its responsiveness to local conditions. In Bali, where each *desa pakraman* maintains a unique *awig-awig* reflective of its social, cultural, and geographic context, a single regional regulation could either homogenize diverse practices or be rendered so general that it fails to provide meaningful guidance.⁵⁹ The proposed framework regulation model navigates this challenge by setting minimum standards and procedural scaffolding while allowing substantive diversity to continue at the local level, thus protecting the pluralistic nature of Balinese law without sacrificing enforceability.

An additional comparative layer concerns the intersection of customary criminal law with restorative justice paradigms. Howard Zehr's⁶⁰ foundational framework for restorative justice emphasizes three central questions: What harm has occurred? Who bears responsibility for addressing this harm? How can the harm be repaired in a way that meaningfully engages all

⁵⁷ Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*.

⁵⁸ John Griffiths, "What Is Legal Pluralism?", *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>.

⁵⁹ Mirsa Umiyati, 'The Existence of Natural Lexicons in 'Awig-Awig'Tenganan Pegringsingan Bali: An Ecolinguistic Approach', *Jurnal Kajian Bali (Journal of Bali Studies)* 10, no. 1 (2020): 191–216, <https://doi.org/10.24843/JKB.2020.v10.i01.p09>; I. Wayan Suyadnya, 'The Power Interactions Between Adat and the State in the Perspective of Old-Balinese Village of Tenganan Pegringsingan', *Jurnal Kajian Bali (Journal of Bali Studies)* 11, no. 2 (2021): 517–38, <https://doi.org/10.24843/JKB.2021.v11.i02.p15>; Arsyad Aldyan et al., 'Legal Pluralism in Environmental Management: Evidence from Bali, Indonesia', *Journal of Law, Environmental and Justice* 3, no. 2 (2025): 229–67, <https://doi.org/10.62264/jlej.v3i2.131>.

⁶⁰ Zehr, *Changing Lenses: Restorative Justice for Our Times*.

stakeholders? The traditional Balinese resolution of the Lokika Sanggraha delict inherently engages all three dimensions through the tri danda system. First, harm is identified through the disruption of *sekala-niskala* balance, recognizing both tangible and intangible consequences. Second, responsibility is ascribed to the individual who violated the marriage promise, ensuring accountability. Third, repair is accomplished via a triadic mechanism: material compensation (*artha danda*), spiritual purification (*angaskara danda*), and psychological-moral accountability (*jiwa danda*). Each element directly addresses both the identification of harm and the process of repair, making the customary system inherently restorative in nature.

By contrast, the formal criminal justice system in Indonesia often addresses only the question of responsibility, primarily through imprisonment, while largely neglecting harm identification and restorative repair mechanisms. This limitation highlights the complementary value of integrating customary restorative practices with formal sentencing. The Integrative Sentencing Model, which combines proportionate legal sanctions with customary restoration mechanisms, represents a more comprehensive realization of restorative justice principles than either system operating in isolation. By harmonizing formal law with local customary practices, the model ensures that justice is not merely punitive but also reparative, culturally legitimate, and socially coherent, effectively bridging the gap between legal formalism and the restorative needs of affected communities.

In sum, the Aceh comparison underscores both the potential and limitations of codifying customary law. While formalization can produce clarity, predictability, and enforceability, it also risks eroding the local contextual richness and adaptive qualities of living law. Bali's pluralistic, decentralized legal environment requires a nuanced approach that allows for overarching principles while preserving local autonomy and procedural flexibility. Integrating these lessons into the Balinese context, and embedding them within an Integrative Sentencing Model, enables a system of justice that is both legally coherent and substantively responsive, fully incorporating the principles of restorative justice into customary criminal adjudication.

This comparative perspective ultimately reinforces the study's broader argument: that a hybridized legal approach—one that acknowledges formal legal authority, respects local customary variation, and actively incorporates restorative mechanisms—offers the most effective pathway for achieving justice that is both culturally grounded and substantively equitable. By leveraging insights from Aceh while calibrating them to Bali's pluralistic structure, the Integrative Sentencing Model provides a robust framework capable of guiding judges, customary councils,

and policymakers toward outcomes that are fair, restorative, and reflective of Indonesia's diverse socio-legal landscape.

E. Scenario Analysis of Customary Criminal Law Enforcement during the Transition to Indonesia's National Criminal Code

A critical implementation challenge in applying the National Criminal Code arises from the transitional period following its enactment on January 2, 2026. At this point, Emergency Law No. 1 of 1951, which previously served as the normative bridge for customary criminal law, has become obsolete, having been superseded by Articles 2 and 597 of the National Criminal Code. Nevertheless, Article 2(2) introduces a procedural requirement for formalization of customary criminal law through Regional Regulations, yet, as of the Code's entry into force, no local governments, including Bali Province, have enacted such regulations. This creates a paradoxical legal vacuum: the National Criminal Code recognizes living law in principle, affirming its normative legitimacy, yet procedurally requires a formalization process that has not yet materialized.

This gap raises an essential question regarding judicial practice: should judges continue to apply customary criminal law directly through *rechtsvinding*, as exemplified in the Lokika Sanggraha decision, or must they defer until Regional Regulations are enacted? Two interpretive scenarios emerge to address this challenge. Scenario One posits that judges may proceed with direct application under Article 2(1), interpreting Article 2(2) as an instructional provision directed at regional governments rather than as a precondition for judicial enforcement. Scenario Two contends that, without the existence of formal Regional Regulations, customary criminal law lacks an adequate legal basis under the National Criminal Code, creating a temporary legal vacuum until such regulations are established.

From the perspective of progressive legal theory, Scenario One is more defensible. Article 5(1) of the Judicial Power Act imposes a continuing obligation on judges to actively explore and apply living law. Denying this judicial responsibility pending legislative action would directly contradict the purpose of the National Criminal Code's recognition of living law as a legitimate source of normative guidance. Nils Christie⁶¹, in his seminal work *Conflicts as Property*, argues that conflicts and their resolutions should primarily belong to the community members involved, warning against excessive state monopolization that renders justice inaccessible. By requiring

⁶¹ Nils Christie, 'Conflicts as Property', *The British Journal of Criminology* 17, no. 1 (1977): 1–15, <https://doi.org/10.1093/oxfordjournals.bjc.a046783>.

communities to await bureaucratic formalization before their living law can be judicially recognized, the legal system risks perpetuating precisely the monopolization Christie⁶² critiques, effectively delaying access to justice and undermining the very principles the Code seeks to uphold.

To mitigate risks of inconsistency or arbitrary application under Scenario One, judges must rigorously employ the constitutional filters prescribed in Article 2(2) and adhere to the sentencing framework outlined in Article 53. Detailed documentation of judicial reasoning in the ratio decidendi is critical, providing a transparent record suitable for appellate review. By embedding such procedural rigor, judges can ensure that immediate application of living law maintains legal consistency, protects community interests, and aligns with the broader objectives of the National Criminal Code.

The practical viability of Scenario One is further supported by the structure of the Code itself. Article 597(1) explicitly states that “any act that according to the living law in society is declared prohibited, is subject to punishment in accordance with the law that lives in that community.” This provision functions independently of Article 2(2), suggesting that the legislature intended living law to have immediate operative force upon the Code’s enactment. Regional Regulations, therefore, appear to serve primarily as instruments for systematization and local administrative support, rather than prerequisites for judicial enforcement. The Elucidation of the National Criminal Code reinforces this interpretation, emphasizing that the recognition of living law embodies “the principle of justice that the law must be in accordance with the values that live in society.” Delaying judicial recognition of customary norms until bureaucratic formalization would paradoxically perpetuate the injustice the Code was designed to remedy, contravening both its normative purpose and the principles of social justice embedded within Pancasila.

In practical terms, Scenario One empowers judges to operationalize living law immediately, bridging the transitional gap and reinforcing the progressive objectives of the National Criminal Code. It ensures that the Code’s commitment to culturally grounded justice is not subordinated to procedural delays, while still providing sufficient safeguards through Article 2(2) filters and the structured sentencing protocols of Articles 51 and 53. Progressive legal theory thus provides both a theoretical justification and an interpretive methodology for immediate judicial application of customary criminal law, balancing community autonomy, legal certainty, and the equitable enforcement of justice during this transitional period.

⁶² Ibid.

By embracing Scenario One, the judiciary can maintain continuity in recognizing living law, prevent the erosion of customary norms during the interim, and uphold the principle that justice must be substantively accessible and culturally relevant. This approach simultaneously preserves the legitimacy of the National Criminal Code, strengthens procedural transparency, and ensures that the progressive mandate of integrating living law into formal criminal adjudication is fully realized from the very moment of the Code's implementation.

F. Operationalizing Living Law: Judicial Application of Customary Criminal Norms under Indonesia's National Criminal Code

The implementation of customary criminal law under the Indonesian National Criminal Code presents a complex interplay between formal legal structures, living law, and the socio-cultural norms of local communities. The Integrative Sentencing Model, designed for cases such as the *Lokika Sanggraha delict*, provides a framework for reconciling these multiple dimensions. This model consists of four core components: proportional principal punishment, customary obligation fulfillment, victim compensation, and child protection measures. The proportional principal punishment component ensures that the sentence—whether imprisonment or fine—is commensurate with the concrete harm suffered by the victim, reflecting psychological, economic, and social impacts rather than merely the maximum statutory penalty, in line with von Hirsch's proportionality principle and Article 53 of the National Criminal Code. Customary obligations, implemented under Article 66(1)(f), integrate local community norms such as *angaskara danda* (spiritual purification) and *artha danda* (material compensation), with the scope and specifics verified by customary leaders (*kelian adat*) and documented in the court's *ratio decidendi*. Victim compensation pursuant to Article 66(1)(d) ensures that material and immaterial damages, including medical costs, child-rearing expenses, and psychological harm, are addressed. Child protection measures safeguard the rights of children born from customary criminal acts, including recognition of paternity, maintenance, and identity, in accordance with Article 28B(2) of the Constitution and the Convention on the Rights of the Child. These four components collectively operationalize restorative justice principles while ensuring alignment with formal legal standards and human rights obligations.

Comparative insights from Aceh Province illustrate the potential and limits of codifying customary criminal law. Aceh has formalized Sharia-based criminal law through Qanun Aceh Number 6 of 2014 on Jinayat Law, detailing offenses, elements, sanctions (caning, fines, imprisonment), and enforcement procedures. Aceh's success is predicated on three factors:

constitutional authority under the Special Autonomy Law (Law No. 11 of 2006), availability of jurisprudential sources such as *fiqh jinayat*, and dedicated judicial infrastructure through the *Mahkamah Syar'iyah*. In contrast, Balinese customary law is highly decentralized and pluralistic; each *desa pakraman* maintains autonomous *awig-awig*, and there is no specialized judicial institution equivalent to the *Mahkamah Syar'iyah*. Therefore, Bali cannot replicate Aceh's model directly. Drawing on Brian Tamanaha's concept of "managed legal pluralism," a framework regulation model is proposed, establishing general principles, recognized customary delicts, maximum sanctions, and procedural guidance while preserving the autonomy of each *desa pakraman* to determine substantive details. This approach balances legal certainty with the dynamic, locally rooted character of customary law, mitigating the risks highlighted by John Griffiths⁶³ regarding state codification of pluralistic legal systems.

Restorative justice principles, as articulated by Howard Zehr⁶⁴, are particularly relevant in evaluating customary criminal adjudication. Zehr⁶⁵ emphasizes three critical questions: what harm has occurred, who is responsible, and how can the harm be repaired through inclusive stakeholder engagement? In Balinese customary law, the *tri danda* system addresses all three dimensions: the disruption of *sekala-niskala* balance identifies the harm, responsibility is assigned to the individual who violated customary norms, and repair occurs through the integrated mechanisms of material compensation, spiritual purification, and psychological-moral accountability. In contrast, the formal criminal justice system, relying primarily on imprisonment, addresses only responsibility while largely neglecting harm identification and restorative repair. Therefore, integrating customary restoration with formal sentencing produces a more comprehensive realization of restorative justice principles.

The transitional period following the National Criminal Code's enactment on January 2, 2026, introduces critical implementation challenges. Emergency Law No. 1 of 1951, previously serving as a bridge for customary criminal law, has been superseded, while Article 2(2) requires formalization through Regional Regulations—a step not yet taken by Bali or other provinces. This procedural gap creates a legal paradox: living law is recognized in principle, yet no formal mechanisms exist for its operationalization. Two interpretive scenarios arise. Scenario One allows judges to apply customary criminal law directly under Article 2(1), viewing Article 2(2) as an instruction to local governments rather than a prerequisite for judicial action. Scenario Two

⁶³ Griffiths, 'What Is Legal Pluralism?'

⁶⁴ Zehr, *Changing Lenses: Restorative Justice for Our Times*.

⁶⁵ *Ibid.*

requires waiting for formal regulations, creating a temporal legal vacuum. Progressive legal theory favors Scenario One, reinforced by Article 5(1) of the Judicial Power Act, which obliges judges to explore living law. Nils Christie's⁶⁶ argument in *Conflicts as Property* warns against monopolization of dispute resolution by the state, emphasizing that communities should retain authority over conflicts affecting them. Denying immediate judicial application would contravene this principle, obstructing access to justice. To ensure consistency, judges under Scenario One should apply Article 2(2) constitutional filters and Article 53 sentencing guidelines, documenting reasoning comprehensively to enable appellate oversight. Article 597(1) further supports immediate application by granting operative force to living law upon the Code's enactment, while Regional Regulations serve as supplementary rather than preconditionary instruments.

Institutional implications are critical for the practical application of the Integrative Sentencing Model. Three primary areas require attention. First, judicial capacity building is essential: judges adjudicating customary criminal cases must receive specialized training in legal pluralism, customary law research, and the application of sentencing principles. Frequent transfers of judges between regions with distinct customary traditions create knowledge gaps that must be mitigated through continuous education. Second, coordination mechanisms between courts and customary institutions are necessary for enforcing supplementary punishments under Article 66(1)(f). Enforcement should be delegated to the relevant customary institution, such as the *desa pakraman* in Bali, acting in coordination with the court registrar and under the court's supervisory jurisdiction. The customary institution certifies compliance, and failure to comply triggers enforcement proceedings under the National Criminal Code. Third, monitoring mechanisms must ensure compatibility with human rights principles, particularly gender equality, identifying and filtering discriminatory elements in customary norms through Article 2(2) constitutional scrutiny.

The role of expert witnesses is equally critical. Judges are expected to verify the existence and content of living law, a task that may exceed their specialized knowledge, especially in regions outside their cultural background. Expert testimony from *kelian adat*, community leaders, or academic specialists provides empirical grounding for judicial decisions. Experts should clarify whether the alleged delict is recognized, its elements as understood by the community, traditional sanctions, and customary restoration mechanisms. Such testimony ensures that sentencing is informed by living practice rather than solely by inference or outdated documentary sources.

⁶⁶ Christie, 'Conflicts as Property'.

Finally, inter-adat conflicts—cases where parties belong to different customary communities—pose complex questions. Applying the *lex loci delicti* principle, the law of the place where the delict occurred, while respecting Article 2(2) constitutional filters, allows the court to navigate these conflicts. In cases involving cross-community perpetrators, courts may adapt obligations, emphasizing compensation and formal sanctions to serve justice while maintaining respect for local customary norms

G. Conclusion

The adjudication of customary criminal law under the Indonesian National Criminal Code represents a significant evolution in the interaction between formal legal structures and living law. The Denpasar District Court's handling of the *Lokika Sanggraha* case provides a compelling example, demonstrating both the potential and the limitations of integrating customary norms within the formal justice system.

Lokika Sanggraha, rooted in Balinese Hindu law, addresses situations where a man engages in sexual relations with a woman under a promise of marriage and later refuses responsibility, particularly when the woman becomes pregnant. Historically, the colonial-era Criminal Code did not cover such acts, creating a normative gap that required judicial recognition of customary law to ensure justice. The Court's decision illustrates a complex negotiation among codified law, progressive legal principles, and the moral imperatives of the local community.

When analyzed using the five-dimensional framework of Pancasila justice, the decision aligns with certain principles but falls short in others. Divine justice was respected through the application of the *Adhigama Code*, reflecting the religious values of the Hindu-Balinese community. Unity-based justice was supported by recognizing the coexistence of customary law alongside national legislation. Deliberative justice was evident in the consideration of multiple stakeholders and societal norms. However, humanitarian and social justice aspects were insufficiently addressed; the sentence of one month and fifteen days failed to adequately account for the psychological, social, and economic suffering of the victim, nor did it incorporate restorative mechanisms inherent in the *tri-danda* sanction system. Consequently, the holistic customary approach was reduced to mere imprisonment. Progressive legal theory interprets this as “arrested justice,” where recognition of living law is not fully reflected in sentencing, leaving the verdict constrained by formalistic conservatism.

A comparative examination with Supreme Court Decision No. 1644 K/Pid/1988 highlights two judicial approaches to customary law: the absorptive model, in which courts assert jurisdiction

and impose formal sanctions regardless of local customs, and the deferential model, in which courts recognize and defer to customary sanctions while providing formal acknowledgment. The National Criminal Code allows synthesis of these models through Articles 2, 51, 53, 66(1)(f), and 597, enabling a hybrid approach that combines formal accountability with culturally embedded restorative processes. The proposed Integrative Sentencing Model operationalizes this hybrid approach by combining proportional principal punishment, fulfillment of customary obligations, victim compensation, and child protection measures. This approach aligns sentencing with the principles of the National Criminal Code while respecting customary law, ensuring justice, human rights, and social equity are preserved.

The transitional period following the enactment of the National Criminal Code on January 2, 2026, presents unique challenges. With the obsolescence of Emergency Law No. 1 of 1951 and the absence of Regional Regulations under Article 2(2), a potential legal vacuum has emerged, creating uncertainty regarding whether judges may apply customary criminal law immediately or must wait for regional legislation. This study advocates for immediate application of customary law under Article 2(1), consistent with the judicial obligation under Article 5(1) of the Judicial Power Act to explore living law. Applying Article 2(2) constitutional filters and Article 53 sentencing guidelines ensures judicial consistency, prevents arbitrary decisions, and upholds the progressive principle that law should serve human needs rather than bureaucratic procedure. Immediate application also mitigates marginalization of community-based norms and prevents monopolization of dispute resolution by the state, ensuring timely access to justice.

Based on these conclusions, several recommendations emerge for key stakeholders. First, the Provincial Government of Bali and the Provincial Legislature should expedite the drafting of a Regional Regulation on Criminal Offenses Based on Living Law, as mandated by Article 2(2). This process must be participatory, involving the *Majelis Desa Adat*, customary leaders, legal scholars, and community representatives. The framework should provide general principles while preserving the autonomy of each *desa pakraman* to elaborate substantive provisions through its *awig-awig*, balancing legal certainty with local cultural specificity and the restorative capacity of customary law.

Second, the Supreme Court of the Republic of Indonesia should promulgate technical sentencing guidelines for customary criminal cases. These should include procedures for verifying living law, applying constitutional filters to ensure human rights compliance, determining proportional principal punishment, imposing customary obligations under Article 66(1)(f), implementing victim-centered measures including compensation and child protection, and

thoroughly documenting judicial reasoning. These guidelines, informed by the Integrative Sentencing Model and comparative jurisprudence, would enhance consistency in integrating living law within formal sentencing practices.

Future research should empirically examine judicial practice in customary criminal cases across Indonesia after the enforcement of the National Criminal Code, assessing whether phenomena such as arrested justice persist or are mitigated under the new sentencing framework. Comparative studies with indigenous justice systems, including the Māori *tikanga* in New Zealand, the *ubuntu* philosophy in South Africa, and Bolivia's legal pluralism model, could provide insights into operationalizing living law within formal frameworks.

Institutional support is also essential for the practical application of the Integrative Sentencing Model. Judicial capacity building is critical, as judges are often transferred across regions with differing customary traditions. Specialized training in legal pluralism, customary law research methodologies, and sentencing principles is necessary. Coordination mechanisms between courts and customary institutions must be established to monitor and enforce customary obligations, and expert witnesses—including *kelian adat*, community elders, and academic specialists—should provide empirical insight into customary norms and sanctions. Inter-*adat* conflicts require careful adjudication using the *lex loci delicti* principle while remaining subject to Article 2(2) oversight, ensuring justice is locally grounded yet universally consistent. These institutional innovations are crucial for the Integrative Sentencing Model to be culturally legitimate, practically implementable, and aligned with restorative justice and Pancasila principles.

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