BRIDGING LAW AND SOCIETY: REORIENTING SOCIOLOGICAL JURISPRUDENCE FOR PROGRESSIVE LEGAL REFORM IN INDONESIA

Ikhsan[1]*, Rahayu[2], RB Sularto[2]
[1] IKH Law Firm, Jalan Lintas TPI Bugis, Sape, Bima Regency, West Nusa Tenggara 84183, Indonesia
[2] Faculty of Law, Universitas Diponegoro, Jalan dr. Antonius Suroyo, Tembalang, Semarang City, Central Java 50275, Indonesia
***Email**: ikhsanshmh@gmail.com

Abstract

This study investigates the reorientation of sociological jurisprudence as a critical framework for progressive national legal reform in Indonesia. It emphasizes the integration of living law (lebendes Recht) into the formal legal system, drawing on the theories of Eugen Ehrlich and Roscoe Pound, which highlight law as both a social institution and a tool of social engineering. The research identifies the tensions between formalistic, positivist legal frameworks and the dynamic social realities of Indonesian society, characterized by legal pluralism, customary law, and evolving societal values. Empirical findings from civil and criminal court cases demonstrate both successes and limitations in the application of living law, particularly in cases involving indigenous communities and minor offenses. While some decisions integrate customary practices into judicial reasoning, others remain rigid, underscoring the need for a systematic operational framework that balances legal certainty with social responsiveness. The study further proposes the Integrative Responsive Sociological Jurisprudence (IRSJ) model, which rests on three pillars: normative integration, social responsiveness, and substantive justice. This model promotes the formal recognition of living law, enables the legal system to dynamically respond to social needs, and ensures equitable outcomes that reflect societal values and human dignity. The research highlights the importance of institutional capacity-building, judicial training, and empirical methodologies to strengthen the application of sociological jurisprudence. Comparative analysis with countries such as the Netherlands, New Zealand, and Australia illustrates the benefits of integrating empirical evidence, community participation, and culturally embedded norms into legal systems, fostering adaptive, equitable, and socially legitimate outcomes. The study concludes that sociological jurisprudence is fully compatible with Indonesia's constitutional principles and Pancasila values, providing a human-centered approach that addresses systemic social inequalities, empowers marginalized communities, and ensures that law evolves in tandem with society. This orientation shifts the focus from purely formalistic rule-making to a responsive legal system capable of operationalizing substantive justice and societal harmony.

Keywords: *Sociological Jurisprudence; Living Law; National Legal Reform; Substantive Justice; Pancasila.*

A. Introduction

The reorientation of sociological jurisprudence in national legal reform and development is essentially also an issue for the international community, because almost all modern legal systems face structural tensions between positive law based on formal legality and living law in a dynamic

and contextual society.[1] In the context of globalization, legal pluralism has become a ubiquitous phenomenon, in which states must accommodate local norms, customary law, and social values without neglecting universal principles such as legal certainty, human rights, and the rule of law.[2] Criminal law reform in various countries, including Indonesia, Africa, and Latin America, faces the same dilemma, namely how to integrate social norms into the formal legal system without creating legal uncertainty.[3]

In addition, the recognition of living law also poses a global challenge to the principle of legality, which is the main foundation of modern criminal law.[4] This phenomenon is not only occurring in Indonesia, but also in various other legal systems facing social pluralism, giving rise to universal problems related to legal consistency and the protection of individual rights. The issue under review is not merely local in nature, but is part of a global problem in modern legal theory and practice, namely the shift from rigid and formalistic law to responsive, contextual law oriented towards substantive justice.[5]

Indonesia's legal reform has entered a crucial phase, as social dynamics, technology, and changes in societal values are moving faster than the legislative process, rendering a number of regulations, particularly in the criminal justice sector, inadequate to address modern issues.[6] The 2023 Rule of Law Index ranks Indonesia 64th out of 142 countries, with low scores in the area of criminal justice, particularly in terms of the effectiveness of law enforcement and the lack of discrimination.[7]

---

1 Danang Hardianto, "Reorientation Towards the Nature of Jurisprudence in Legal Research," *Jurnal Mimbar Hukum* 26, no. 2 (2014): 340–53, https://doi.org/10.22146/jmh.16044; Steven Vago and Steven E. Barkan, *Law and Society* (Routledge, 2017).

2 Keebet von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and the State," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 255–74, https://doi.org/10.1080/07329113.2018.1532674; 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; Robert Cribb, "Legal Pluralism and Criminal Law in the Dutch Colonial Order," *Indonesia*, no. 90 (2010): 47–66, https://doi.org/10.2307/20798232.

3 Ridwan Arifin et al., "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?," *Lex Scientia Law Review* 8, no. 1 (2024): 561–94, https://doi.org/10.15294/lslr.v8i1.14271.

4 Marie-Christine Sordino, "Droit Pénal Et Usages: Entre Flux Et Reflux…," in *Customary Law Today*, ed. Laurent Mayali and Pierre Mousseron (Springer International Publishing, 2018), https://doi.org/10.1007/978-3-319-73362-3_11; 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.

5 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; Jeremy Horder, "Criminal Law and Legal Positivism," *Legal Theory* 8, no. 2 (2002): 221–41, Cambridge Core, https://doi.org/10.1017/S1352325202082034; Brian H. Bix, "Legal Positivism," in *The Blackwell Guide to the Philosophy of Law and Legal Theory* (2005), https://doi.org/10.1002/9780470690116.ch2.

6 Muhammad Rustamaji et al., "The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 442–72, https://doi.org/10.53955/jhcls.v5i2.637.

7 World Justice Project, "WJP Rule of Law Index 2023 Global Press Release," October 25, 2023, https://worldjusticeproject.org/news/wjp-rule-law-index-2023-global-press-release.

This condition is closely related to the continued dominance of the positivistic approach in lawmaking in Indonesia. This approach has resulted in many legal products failing to substantively address the needs of society. Friedman[8] asserts that a good legal system must pay attention to three elements: structure, substance, and legal culture. In Indonesia, the biggest problem lies in the legal culture of society and officials, where laws are often applied formalistically without considering their social impact.

Roscoe Pound[9] stated that law should be viewed as a tool of social engineering (law as a tool of social engineering) that aims to realize the public interest. This sociological approach emphasizes the importance of assessing how law works in society, not just how it is written in text. Reorienting towards this approach is fundamental, given that many of Indonesia's criminal law issues are rooted in social realities such as economic inequality, gender inequality, overcriminalization, and overcrowding in correctional institutions. Data from the Directorate General of Corrections shows that prison occupancy rates reached 205% as of July 2024, with the majority of cases involving drug-related offenses at the user level. This is further reinforced by various new studies on the urgency of alternative sentencing and non-custodial punishment.[10]

Without a clear conceptual framework, recognition of living law has the potential to lead to disparities in verdicts, inconsistencies in judicial interpretations, and legal uncertainty in criminal court practice. This situation could weaken the legitimacy of the national legal system and potentially cause conflict between state law and the social norms that exist within society.

The reorientation of sociological jurisprudence in the progressive development of Indonesian national law needs to be placed in the context of strengthening the recognition of living law as a source of criminal law, following the enactment of Law No. 1 of 2023 on the New Criminal Code.[11] It is emphasized that the recognition of living law in society creates tension with the principle of legality, particularly in maintaining legal certainty.[12] This is reflected in Article 2

---

8 Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

9 Roscoe Pound, *Interpretations of Legal History* (Cambridge University Press, 1923).

10 Ni Komang Sutrisni and I. Nengah Susrama, "Konsep Ideal Penerapan Pidana Kerja Sosial Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Melalui Sistem Kolaborasi," *Jurnal Hukum Saraswati (JHS)* 5, no. 2 (2023): 408–19, https://doi.org/10.36733/jhshs.v5i2.8129.

11 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; 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; Henny Saida Flora and Ratna Deliana Erawati, "The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 113–25, https://doi.org/10.29303/ius.v11i1.1169.

12 Najarudin Toatubun and Djamaludin Djamaludin, "The Dialectics of the Principle of Legality and Living Law in the National Criminal Law System Post-Enactment of Law No. 1 of 2023," *Jurnal Ilmu Hukum Kyadiren* 6, no. 1 (2024): 85–94, https://doi.org/10.46924/jihk.v6i1.253.

of the New Criminal Code, which in principle opens up space for the application of living law in society as a basis for criminal punishment, even though the act is not explicitly regulated in the law. However, the application of living law is limited by several conditions, namely that it only applies in the environment where the law exists, does not conflict with laws and regulations, and must be in line with the values of Pancasila, the 1945 Constitution, human rights, and generally accepted principles of law. In addition, further regulations regarding the criteria and procedures for determining living law in society are left to government regulations. Thus, this provision shows an effort to compromise between the legalistic and sociological approaches, although in practice it still has the potential to cause problems of interpretation and consistency in the application of the law.

Constitutionally, recognition of the laws that exist within society also gains legitimacy through Article 18B paragraph (2) of the 1945 Constitution, which recognizes and respects customary law communities and their traditional rights.[13] However, this recognition must be harmonized with Article 28D paragraph (1) of the 1945 Constitution, which guarantees fair legal certainty. It is this constitutional tension between the recognition of legal pluralism and the principle of legal certainty that makes the reorientation of sociological jurisprudence not only a theoretical issue, but also a constitutional issue in national legal development.

This finding reinforces the critique that, in the absence of an integrative framework, sociological jurisprudence risks generating inconsistencies in legal interpretation, as its openness to social realities may lead to fragmented or competing understandings of law. This concern is further supported by research conducted by Heliany et al.[14] in the *Sasi* journal, which highlights that legal pluralism in Indonesia—comprising state law, customary law, and religious law—necessitates systematic harmonisation in order to prevent normative conflicts and overlapping authorities. In this regard, the challenge is not merely to acknowledge the existence of living law, but to clearly define its operational boundaries within the national legal system, ensuring that its incorporation enhances coherence rather than undermines legal certainty.

This need for reorientation demonstrates that the success of legal development cannot be

[13] Syahriza Alkohir Anggoro and Tunggul Anshari Setia Negara, "The Struggle for Recognition: Adat Law Trajectories under Indonesian Politics of Legal Unification," *International Journal on Minority and Group Rights* (Leiden, The Netherlands) 29, no. 1 (2021): 33–62, https://doi.org/10.1163/15718115-bja10040; I. Gusti Agung Mas Rwa Jayantiari et al., "The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (2025): 187–98, https://doi.org/10.29303/ius.v13i1.1329.

[14] Ina Heliany et al., "The Pluralism of Indonesian Criminal Law: Implications and Orientations in the Post-New Criminal Code," *Sasi* 29, no. 3 (2023): 514–23, https://doi.org/10.47268/sasi.v29i3.1494.

assessed solely by the quality or sophistication of legislation, but must also consider the character of the legal system as a whole—particularly its capacity to respond to social dynamics in a consistent and structured manner. A responsive legal system requires not only flexibility, but also a guiding framework that integrates social values into formal legal processes without sacrificing predictability. In this context, the reconfiguration of sociological jurisprudence becomes essential as a means of bridging the gap between normative order and social reality, while maintaining doctrinal clarity.

Such an approach resonates strongly with Rahardjo's[15] concept of progressive law, which places human beings at the centre of legal reasoning and encourages the use of law as an instrument for achieving social change. Progressive law rejects the rigidity of formalism and instead promotes creative and context-sensitive legal interpretation, particularly in situations where strict adherence to written rules would produce unjust outcomes. However, when situated within a plural legal landscape, this flexibility must be balanced with a coherent framework to prevent arbitrariness and ensure that judicial discretion remains accountable.

This recognition marks a shift from the paradigm of legal positivism toward a more contextual and responsive approach to social values. In practice, judges are given the space to explore the values of living law in society as the basis for their decisions.[16]

Table 1. Court Decisions Related to the Practice of Living Law in Civil Law

No	Indigenous Communities	Court Decision/Legal Issue	Approach Trend
1	Awyu (Papua)	Jayapura Administrative Court No. 6/G/LH/2023; Manado Administrative Court No. 92/B/LH/2023; Supreme Court No. 458 K/TUN/LH/2024 | Customary law environmental permit.	Mixed: progressive (first instance) vs. predominantly formalistic (appeal & cassation), with dissent.
2	Moi (Sorong)	Decision No. 35/G/2019/PTUN.JPR; PT.TUN Makassar (2022) | Environmental permit	Formalistic (legal standing & tends to be pro-corporate)
3	Kinipan (Central Kalimantan)	Decision No. 166/G/2016/PTUN-JKT | Forest concession.	Formalistic (ignores living law)
4	Dayak (West Kalimantan)	Decision No. 01/Pdt.G/2018/PN.Ska | Customary land dispute.	Formalistic (written evidence dominant)
5	Bugbug (Bali)	Decision No. 51/Pdt.G/2016/PN- Btl | Land dispute	Formalistic (not recognized as a legal subject)

Source: Data processed in 2025 based on the Supreme Court Decision Directory.

[15] 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.

[16] Rian Sulistio et al., "The Living Law in Judicial Decisions: Formulation and Implications of the National Criminal Code," *Jurnal Dinamika Hukum* 25, no. 1 (2025): 70–90, https://doi.org/10.20884/1.jdh.2025.25.1.15469.

Institutional challenges are a crucial aspect in the implementation of sociological jurisprudence related to the Awyu customary forest case. Specifically, the Jayapura Administrative Court Decision No. 6/G/LH/2023/PTUN.JPR, the Manado Administrative Court Decision No. 92/B/LH/2023/PT.TUN.MDO, and Supreme Court Decision No. 458 K/TUN/LH/2024, as well as other decisions, show that judicial practice in Indonesia is still dominated by a positivistic approach, despite efforts to accommodate substantive justice based on living law.[17]

Table 2. Court Decisions Related to Living Law in Criminal Law

No	Type of Criminal Offense	Consideration of Living Law in the Decision	Source of Decision
1	Adultery (Balinese customary law)	The judge considered the customary sanctions that had been imposed on the defendant as part of the settlement of the case.	Denpasar District Court Decision No. 399/Pid.B/2019/PN Dps
2	Tial assault	Customary settlement (peace + compensation) used as grounds for reducing the defendant's sentence.	Jayapura District Court Decision No. 78/Pid.B/2020/PN Jap
3	Minor theft	The judge considered that the perpetrator had undergone customary sanctions and returned the goods.	Wamena District Court Decision No. 12/Pid.B/2021/PN Wmn
4	Fight between residents	Customary peace served as the basis for the judge to impose a light sentence (*conditional sentence*)	Kupang District Court Decision No. 45/Pid.B/2022/PN Kpg
5	Minor violence	The judge considered traditional mediation as a form of restorative justice	Makassar District Court Decision No. 123/Pid.B/2023/PN Mks

Source: Data processed in 2025 based on the Supreme Court Decision Directory.

These rulings demonstrate that the notion of living law had already been taken into account by judges even prior to the enactment of Law No. 1 of 2023 on the New Criminal Code. In practice, customary law was generally invoked as a mitigating factor, serving to reduce the severity of sentences rather than to eliminate criminal liability altogether.[18] This indicates that judges were not abandoning the formal legal framework, but instead integrating social values and community norms into their reasoning in a measured and contextual manner. Such an approach reflects an implicit recognition that legal justice cannot be fully achieved through rigid application of statutory provisions alone, but requires sensitivity to the social environment in which the law operates.

[17] Achmad Hariri et al., "Between Legality and Justice: A Critical Study of the Supreme Court's Judicial Reasoning in Dispute of the Awyu Customary Forest," *Jurnal Jurisprudence* 15, no. 2 (2025): 146–76, https://doi.org/10.23917/jurisprudence.v15i2.11442.

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

At the same time, these developments highlight that legal reform cannot remain confined to conceptual or legislative change. The incorporation of living law into judicial practice necessitates broader institutional reform, including the strengthening of legal frameworks, the development of clearer guidelines for interpretation, and the enhancement of judicial capacity. Equally important is a paradigm shift among law enforcement officials, who must move beyond a purely positivistic orientation toward a more responsive and socially attuned understanding of law. Without such transformation at the institutional and cultural levels, the recognition of living law risks remaining inconsistent and fragmented, rather than becoming a coherent and effective component of the national legal system.

Strengthening the socio-legal approach is an important requirement in developing sociological jurisprudence.[19] The socio-legal approach combines normative and empirical methods to understand law as a social phenomenon that cannot be separated from its political, economic, and cultural contexts.[20] In addition, empirical studies, such as cases of legal pluralism and customary court practices, show that without field data, the concept of living law tends to be abstract.

The perspective of modern legal theory emphasizes that law must be responsive to social change, that the effectiveness of law depends on public acceptance, and that legal legitimacy comes not only from the state but also from society.[21] However, recent research shows that the dominance of the civil law system in Indonesia still tends to place the state at the center of legal legitimacy, so that living law often becomes only a "normative complement."

Although various studies have discussed legal pluralism and the recognition of customary law in the Indonesian legal system, most of these studies are still normative-descriptive in nature and do not offer an integrative conceptual framework on how sociological jurisprudence can be systematically operationalized in the national criminal law system after the enactment of the 2023 Criminal Code. This conceptual void has created an academic need to formulate a reorientation model capable of bridging the tension between the principles of legality, living law, and the demand for legal certainty.

---

[19] Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing, 2005).

[20] Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 94–112, https://doi.org/10.56444/jidh.v7i2.3154.

[21] Philippe Nonet and Philip Selznick, *Law & Society in Transition: Toward Responsive Law* (Transaction Publishers, 2001).

B. The Relevance and Contribution of Sociological Jurisprudence in Reorienting National Legal Reform

Since 1980, the reform of Indonesian criminal law began to be initiated through the formation of a team by Soedarto at the National Law Development Agency (BPHN), which involved figures such as Oemar Seno Adji, Ruslan Saleh, and J.E. Sahetapy to draft the concept of a national Criminal Code. The results of this study were approved by Soeharto with an approach of recodifying the colonial Criminal Code, rather than drafting it from scratch, through translation into Indonesian, simplification of the system from three books to two without distinguishing between crimes and offenses, and updating and reformulating the elements of criminal acts. This process was then reinforced through various scientific forums involving international experts such as Nico Keijzer and D. Schaffmeister to discuss contemporary issues such as cybercrime and contempt of court. After a long process, the draft Criminal Code was submitted in 1993 by Mardjono Reksodiputro, but it experienced various political dynamics and delays until the era of Susilo Bambang Yudhoyono and Joko Widodo, including public rejection in 2019. Finally, after a long process and public participation, the New Criminal Code was officially passed as Law Number 1 of 2023, marking the birth of national criminal law as a form of Indonesia's legal independence and an effort to end the dominance of colonial heritage in the criminal justice system.[22]

The regulation of living law in the new Criminal Code must be understood within the broader trajectory of criminal law reform, from the 1981 Draft Criminal Code to its enactment through Law No. 1 of 2023, as a response to the limitations of the 1918 *Wetboek van Strafrecht*, which was largely positivistic and failed to accommodate local values. In practice, however, a persistent gap remains between formal law and social reality, reflected in the coexistence of state courts and customary justice mechanisms. This dualism often creates practical difficulties, particularly when the same case is addressed through both systems. Judges frequently struggle to incorporate outcomes from customary proceedings into formal judgments, as the nature of customary sanctions—such as reconciliation, compensation, or community-based resolutions—differs fundamentally from the punitive framework prescribed in the Criminal Code. Several cases illustrate this tension: in the Asman Husin case, although the defendant had taken responsibility through marriage and community processes, the court still imposed imprisonment in accordance

[22] Badan Pembinaan Hukum Nasional, *Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana (KUHP)* (Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2015), https://bphn.go.id/data/documents/naskah_akademik_tentang_kuhp_dengan_lampiran.pdf.

with statutory provisions; in the Suku Rimba conflict in Jambi, customary sanctions in the form of compensation were applied alongside criminal charges; and in the Mickey Holiday case in Karo, a conflict resolved through adat deliberation raised questions as to whether formal prosecution should still proceed. These examples demonstrate not only the parallel operation of legal systems but also the uncertainty faced by judges in balancing legal certainty with social justice. At the same time, concerns remain regarding customary justice, including potential discrimination, weak enforceability, and inconsistencies with human rights standards, particularly in diverse and modern societies. As a result, the challenge lies not merely in recognising living law, but in developing a coherent framework for its integration. Approaches such as hybrid or collaborative justice systems have been proposed to bridge this divide, provided that they ensure non-discrimination, uphold human rights, and maintain legal certainty.[23] Without such integration, legal dualism will continue to produce inconsistencies, undermining both the effectiveness of law and public trust in the justice system.

This empirical reality closely aligns with the theoretical foundations of sociological jurisprudence, particularly as developed by Eugen Ehrlich and Roscoe Pound. Ehrlich's[24] concept of *lebendes Recht* (living law) emphasises that the true centre of legal development lies not in statutes, doctrines, or judicial decisions, but within the social practices and normative orders that emerge organically in society. In this sense, the recognition of living law within the new Criminal Code can be seen as an attempt to reconcile the disjunction between formal legal structures and social realities. At the same time, this approach reflects a careful compromise: while written law remains necessary to ensure legal certainty and institutional coherence, the incorporation of living law acknowledges the indispensable role of society in shaping and legitimising legal norms. Thus, the reform not only addresses doctrinal limitations of the past, but also embodies a broader shift toward a more responsive and socially grounded legal system.

According to Ehrlich, living law is not only customary law, but law that truly governs real life, even if it has not been written down in legal propositions. Living law is understood through modern legal documents and direct observation of daily life, commercial activities, customs, and various social associations, whether recognized by law, ignored, or even rejected by formal law.[25]

---

[23] Eva Achjani Zulfa, *Eksistensi Peradilan Adat Dalam Sistem Hukum Pidana Indonesia* (Badan Pembinaan Hukum Nasional, 2010), https://bphn.go.id/data/documents/lampiran_makalah_dr._eva_achjani,_sh.,mh.pdf.

[24] Eugen Ehrlich, *Grundlegung Der Soziologie Des Rechts* (Verlag von Duncker & Humblot, 1913).

[25] Marc Hertogh, "A 'European'Conception of Legal Consciousness: Rediscovering Eugen Ehrlich," *Journal of Law and Society* 31, no. 4 (2004): 457–81, https://doi.org/10.1111/j.1467-6478.2004.00299.xDigital%2520Object%2520Identifier%2520(DOI); Brian Z. Tamanaha, "A Vision of Social-

Ehrlich's idea of living law shows that the real center of legal development lies in the social life of the community, not in the text of laws or court decisions.[26] For him, living law has more real regulatory power than written law because it comes from customs, social practices, and patterns of daily interaction within the community.[27] This perspective emphasizes that national legal reform will not be effective if it focuses only on normative changes, without considering the social dynamics that shape the legal behavior of society. Thus, the relevance of living law becomes even stronger when Indonesia faces cultural plurality and diversity of values, because the law that is able to live in society is the law that reflects its social structure.[28]

Sociological Jurisprudence is an approach in the Anglo-American legal system that has undergone various modifications over time.[29] In Development Law Theory in Indonesia, the teachings of sociological jurisprudence are often associated with the concept of law as a tool of social engineering. This term is closely related to Roscoe Pound, former Dean of Harvard Law School, who introduced the concept in his monumental book entitled *Jurisprudence*.[30] In Indonesia, the concept of "law as a tool of social engineering" was first introduced in the 1970s by Mochtar Kusumaatmadja, a Harvard Law School alumnus. This concept was then applied and adapted to the needs of the Indonesian national legal system.[31]

Kusumaatmadja[32] defines law as a tool of social engineering, which leads to the understanding that the use of law as "social engineering" is top-down, meaning that all legal drafting and policy-making must originate from the government, not from below or from society. His view of law as a tool of social engineering sparked debate that he was trying to justify the development program during the New Order regime, which later became known as development law theory. The uniqueness of the US legal system, which originates from the common law system,

---

Legal Change: Rescuing Ehrlich from 'Living Law,'" *Law & Social Inquiry* 36, no. 1 (2011): 297–318, Cambridge Core, https://doi.org/10.1111/j.1747-4469.2010.01232.x.

26 K. Alex Ziegert, "A Note on Eugen Ehrlich and the Production of Legal Knowledge," *Sydney Law Review* 20, no. 1 (1998): 108–26, https://classic.austlii.edu.au/au/journals/SydLawRw/1998/4.html.

27 Marcos Augusto Maliska, "Ehrlich, Eugen," in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Springer Netherlands, 2023), https://doi.org/10.1007/978-94-007-6519-1_602; David Nelken, "Law in Action or Living Law? Back to the Beginning in Sociology of Law," *Legal Studies* 4, no. 2 (1984): 157–74, Cambridge Core, https://doi.org/10.1111/j.1748-121X.1984.tb00439.x; P. H. Partridge, "Ehrlich's Sociology of Law," *Australasian Journal of Philosophy* 39, no. 3 (1961): 201–22, https://doi.org/10.1080/00048406112341181.

28 Edi Rosman et al., "The Contestation of Legal Authority: Local Criminal Law, State Law, and Islamic Law in Nagari Pasia Laweh, West Sumatra," *Juris: Jurnal Ilmiah Syariah* 24, no. 2 (2025): 193–203, https://doi.org/10.31958/juris.v24i2.15092; Saiful Anam, "Reactualization of Adat Law in the Establishment of Legislations," *AIP Conference Proceedings* 3116, no. 1 (2024): 100003, https://doi.org/10.1063/5.0210343.

29 Roger Cotterrell, *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (Routledge, 2017).

30 Roscoe Pound, *Jurisprudence*, Jurisprudence, no. v. 2 (Lawbook Exchange, 2000).

31 Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Alumni, 2002).

32 Ibid.

lies in its ontological aspect, which views law as concrete judicial decisions; law is considered judge-made law.[33]

Sociological jurisprudence in the Indonesian context cannot be understood solely as an approach that emphasizes the law as it exists in society, as argued by Eugen Ehrlich, or as an instrument of social engineering, as popularized by Roscoe Pound.[34] In the context of a pluralistic constitutional state such as Indonesia, this approach requires conceptual reconstruction capable of balancing three main dimensions: legal certainty derived from written norms, social justice born of social reality, and constitutional legitimacy that recognizes the existence of customary law.[35] It is this reconstruction that makes sociological jurisprudence relevant as an analytical framework in reorienting national legal reform toward a more responsive and contextual legal system.

The approach adopted by judges in resolving particular cases reflects a synthesis of two distinct but complementary patterns of reasoning: the non-doctrinal, inductive (bottom-up) approach, and the doctrinal, deductive (top-down) approach. On the one hand, the inductive method allows judges to engage closely with the specific facts of a case, drawing general principles from concrete social realities and lived experiences. On the other hand, the deductive method requires judges to apply established legal doctrines and abstract rules to the facts at hand, ensuring consistency, predictability, and coherence within the legal system. Rather than operating in isolation, these two modes of reasoning interact dynamically, enabling judges to balance legal certainty with social responsiveness.

In this context, judicial decision-making is not a purely mechanical application of rules, but an interpretive exercise shaped by broader societal values. This is precisely what is captured in Cardozo's well-known assertion that judges are "under a duty to conform to the accepted standards of the community, the mores of the times."[36] This statement underscores the idea that law is inherently embedded within its social environment, and that judicial reasoning must remain attentive to evolving norms, moral expectations, and collective understandings of justice.

---

[33] Shidarta, *Hukum Penalaran Dan Penalaran Hukum* (Genta Publishing, 2013).

[34] Wempy Setyabudi Hernowo et al., "Peran Sociological Jurisprudence Dalam Menciptakan Keefektivitasan Hukum Melalui Living Law," *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 44–52, https://doi.org/10.33087/legalitas.v13i1.243.

[35] 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.

[36] Mark MacGuigan, *Jurisprudence: Readings and Cases* (University of Toronto Press, 1966).

Consequently, judges are not only bound by legal texts and precedents, but also guided—whether explicitly or implicitly—by the social context in which those laws operate.[37]

The sociological approach in the process of legal discovery has long been understood as a way for judges to overcome the limitations of the legal-positivistic approach, which tends to be rigid in its interpretation of regulatory texts. Various studies confirm that legal reasoning responsive to the social conditions of society can produce more balanced decisions that reflect substantive justice, especially in cases involving vulnerable groups such as women and children. Sourdin and Zariski[38] show that responsive judging allows judges to integrate actual social needs into their legal considerations, so that decisions do not stop at the mechanical application of rules.

Empirical findings by Anleu and Mack[39] also show that judges who consider the social context of the parties involved tend to produce more reflective and proportional decisions because their decision-making process interacts closely with the social and psychological conditions of those seeking justice. In fact, a recent ethnographic study by Johansen[40] shows that judges' interpretations of the credibility and trustworthiness of the parties are never separated from the socio-cultural factors present in the courtroom, so that a sociological approach contributes significantly to producing more humane and contextual decisions. This evidence reinforces the thesis that a sociological approach is not only relevant but crucial in ensuring that the law functions as an instrument of substantive justice in society.

Pound emphasized the importance of combining an empirical approach on the one hand and rationalism on the other.[41] From these two approaches, the view that American Sociological Jurisprudence is a synthesis of two schools of legal philosophy, namely Legal Positivism and the Historical School, can be justified. Some argue that Legal Positivism is the thesis, while the Historical School is the antithesis. However, from an ontological perspective that emphasizes law as a judge's decision in concreto, the positions of thesis and antithesis should be reversed.

---

[37] Brian D. Johnson, "Contextual Disparities in Guidelines Departures: Courtroom Social Contexts, Guidelines Compliance, and Extralegal Disparities in Criminal Sentencing," *Criminology* 43, no. 3 (2005): 761–96, https://doi.org/10.1111/j.0011-1348.2005.00023.x; Michael Stolleis, "Judicial Interpretation in Transition from the Ancien Régime to Constitutionalism," in *Interpretation of Law in the Age of Enlightenment: From the Rule of the King to the Rule of Law*, ed. Yasutomo Morigiwa et al. (Springer Netherlands, 2011), https://doi.org/10.1007/978-94-007-1506-6_1; Suteki, *Desain Hukum Di Ruang Sosial* (Thafa Media, 2013).

[38] Tania Sourdin and Archie Zariski, "What Is Responsive Judging?," in *The Responsive Judge: International Perspectives*, ed. Tania Sourdin and Archie Zariski (Springer Singapore, 2018), https://doi.org/10.1007/978-981-13-1023-2_1.

[39] Sharyn Roach Anleu and Kathy Mack, "Magistrates, Magistrates Courts, and Social Change," *Law & Policy* 29, no. 2 (2007): 183–209, https://doi.org/10.1111/j.1467-9930.2007.00252.x.

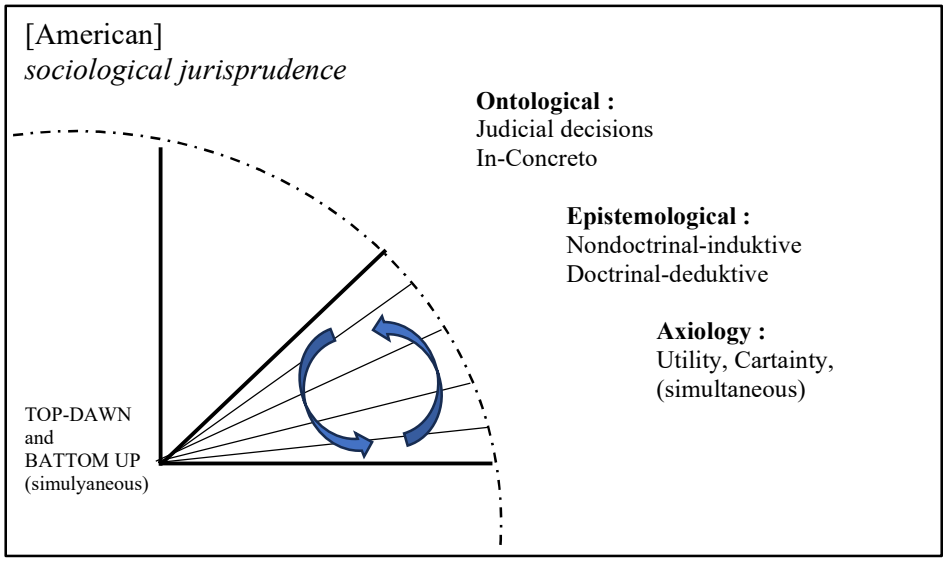
[40] Louise Victoria Johansen, "Incredibly Emotional: Interpreting Trustworthiness in Danish Courtrooms," *Frontiers in Sociology* 9 (2024): 1457424, https://doi.org/10.3389/fsoc.2024.1457424.

[41] Brian Z. Tamanaha, *A Realistic Theory of Law* (Cambridge University Press, 2017).

Conversely, if the American Sociological Jurisprudence model of reasoning is applied in a civil law system, which places legislation as the primary source of law rather than a judge's decision, then the approach may differ.[42]

The reasoning model of sociological jurisprudence differs from utilitarianism, which moves linearly from top-down to bottom-up. In sociological jurisprudence, both patterns occur simultaneously, resulting in a new position of balance in the reasoning process. Axiologically, this approach seeks to combine utility through non-doctrinal empirical analysis with legal certainty obtained from doctrinal reasoning and authoritative legal sources.[43]

To illustrate the relationship between empirical approaches and normative reasoning in sociological jurisprudence, the following model of reasoning patterns shows the simultaneous interaction between doctrinal analysis and social context in the legal decision-making process:



Source: Shidarta (2013)

Figure 1. Pattern of Reasoning [American] sociological jurisprudence

A sociological jurisprudence analysis of judicial decisions positions law not merely as an autonomous system of norms, but as a social practice deeply embedded in, and continuously shaped by, the conditions of society.[44] Within this framework, judicial decisions are understood

[42] Shidarta, *Hukum Penalaran Dan Penalaran Hukum*.
[43] Ibid.
[44] Anne Alvesalo-Kuusi and Steve Tombs, "Sociology of Law," in *The Encyclopedia of Crime and Punishment* (2015), https://doi.org/10.1002/9781118519639.wbecpx109; Roscoe Pound, "Sociology of Law and Sociological Jurisprudence," *The University of Toronto Law Journal* 5, no. 1 (1943): 1–20; Suri Ratnapala, ed., "Sociological Jurisprudence and Sociology of Law," in *Jurisprudence* (Cambridge University Press, 2009), Cambridge Core, https://doi.org/10.1017/CBO9781139168427.007.

not only as formal responses to legal violations, but also as reflections of the broader social, cultural, and economic dynamics that influence individual behaviour and shape how particular acts are interpreted. Accordingly, this approach seeks to uncover the reciprocal relationship between law and society by examining how social values inform legal reasoning, and how, in turn, legal decisions contribute to the maintenance or transformation of social order.[45]

The first dimension of such analysis concerns the social and cultural context, including family norms, religious beliefs, and collectively shared values that shape public perception. In many instances, societal reactions to certain behaviours cannot be separated from prevailing moral frameworks, meaning that what is legally condemned often overlaps with what is culturally stigmatised. Judges, as members of society, are not entirely insulated from these influences; their reasoning may consciously or unconsciously reflect dominant social values. A sociological perspective therefore interrogates the extent to which judicial decisions reproduce, negotiate, or challenge these norms, and how their legitimacy is constructed within the broader social environment.

Closely related to this is the question of social justice, which serves as a critical standard for evaluating the substantive fairness of judicial outcomes. This perspective moves beyond procedural correctness to assess whether decisions contribute to a more equitable distribution of rights and protections. Particular attention is paid to vulnerable groups, such as women and children, who are often situated in structurally disadvantaged positions. The analysis considers whether judicial reasoning acknowledges these vulnerabilities and seeks to remedy them, or whether it inadvertently perpetuates existing inequalities. In this sense, law is viewed as both a potential instrument of emancipation and a mechanism that may reinforce social hierarchies, depending on how it is applied.

Another crucial dimension is the structure of power relations surrounding a case, including inequalities based on gender, class, and social status. These power asymmetries frequently shape access to justice, the quality of legal representation, and the ability of individuals to assert their rights effectively. A sociological jurisprudence approach examines how such inequalities operate within the judicial process and whether they are recognised or overlooked in the court's reasoning. For instance, in cases involving hierarchical relationships—such as employer and employee, or gendered relations within patriarchal contexts—it is essential to assess whether the court takes into account the imbalance of power that may have influenced the conduct in question.

[45] Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Routledge, 2017).

The economic impact of judicial decisions also forms an integral part of this analysis. Court rulings do not only affect the immediate parties involved; they often have broader implications for family livelihoods, economic stability, and community welfare. Sanctions such as imprisonment, fines, or restitution obligations can significantly alter an individual's economic position and, by extension, that of their dependents. A sociological perspective therefore evaluates whether such consequences are proportionate and socially just, or whether they produce unintended hardships that disproportionately burden certain groups.

In addition, the dimension of rehabilitation and reintegration of offenders is a key concern. Rather than focusing exclusively on punishment, sociological jurisprudence emphasises the importance of enabling behavioural change and social reintegration. This involves considering the offender's social background, the availability of rehabilitative programmes, and the opportunities for re-entry into society as a constructive member. The approach underscores that the function of law extends beyond retribution, encompassing the prevention of future harm through social and individual transformation.

Finally, a sociological analysis of judicial decisions considers their potential to generate long-term social change. Judicial rulings, particularly in cases with broad societal implications, can act as catalysts for redefining norms and reshaping collective attitudes. In this regard, judges are not merely interpreters of law, but also participants in an ongoing process of social development. The analysis thus asks whether a given decision contributes to a more just, inclusive, and responsive social order, or whether it reinforces problematic structures and maintains the status quo.

Sociological jurisprudence also provides a critical foundation for national legal reform, particularly when the law addresses social inequality and power relations that influence both enforcement and formation processes.[46] Davis and Trebilcock[47] demonstrates that the success of legal reform does not occur in isolation but is significantly shaped by the surrounding political and economic power structures. These findings confirm that law cannot be understood solely through doctrine and regulatory texts; it must be analyzed as a social practice embedded in the dynamics of societal power.

The broader theoretical framework of Sociological Jurisprudence is further reinforced by Cotterrell[48], who emphasizes that law is essentially a social institution that can only be fully

[46] Cotterrell, *Sociological Jurisprudence: Juristic Thought and Social Inquiry*.
[47] Kevin E. Davis and Michael J. Trebilcock, "Legal Reforms and Development," *Third World Quarterly* 22, no. 1 (2001): 21–36, https://doi.org/10.1080/713701142.
[48] Roger Cotterrell, *The Sociology of Law* (London Butterworth, 1984).

understood when linked to the social structures that shape it. According to Cotterrell[49], law is not merely a normative instrument but part of a social process continuously produced through interaction and the distribution of power. Therefore, national legal reform should ideally move toward responsive law that prioritizes substantive justice, not merely formal certainty.

A review of contemporary journals shows that Sociological Jurisprudence is relevant not only as a theory but also as an orientation that guides the direction of national legal reform.[50] In the Indonesian context, the level of legal responsiveness is largely determined by the capacity of the state and its legal institutions to understand social realities, the needs of vulnerable groups, and the economic and political dynamics that influence law enforcement practices. Sen[51] emphasizes that legal reform is a multifaceted process that goes beyond mere legislative changes. For reforms to be effective and sustainable, they must incorporate several critical components, including shifts in legal culture, enhanced institutional accountability, and active community participation in both the formation and implementation of laws.

It is clear that Sociological Jurisprudence holds strong relevance in reorienting Indonesia's national legal reform. This approach not only provides a theoretical framework for understanding the relationship between law and society but also offers a methodological basis for crafting laws that are more responsive to social dynamics. In the context of Indonesian legal pluralism, Sociological Jurisprudence serves as a bridge between state legal norms, customary legal values, and the demands for human rights protection. Strengthening this approach is therefore essential not only for the advancement of national legal theory but also for developing a legal system capable of achieving substantive justice in society.

C. The Application of Sociological Jurisprudence Principles to Promote Progressive National Legal Development

The reorientation of sociological jurisprudence within the national legal reform agenda has become increasingly relevant as Indonesian law is expected not only to adhere to statutory texts but also to align with the social dynamics of society. Ehrlich's[52] assertion that "the center of gravity of legal development lies not in legislation or judicial decisions but in society itself," as elaborated

---

49 Ibid.

50 Brian Z. Tamanaha, "Sociological Jurisprudence Past and Present," *Law & Social Inquiry* 45, no. 2 (2020): 493–520, Cambridge Core, https://doi.org/10.1017/lsi.2019.26.

51 Amartya Sen, "What Is the Role of Legal and Judicial Reform in the Development Process?," in *The World Bank Legal Review* (Brill | Nijhoff, 2006), https://doi.org/10.1163/9789047411727_004.

52 Ehrlich, *Grundlegung Der Soziologie Des Rechts*.

in *Grundlegung Der Soziologie Des Recht*, underlines the principle that good law is law that lives within society (*living law*).

This principle of *living law* is closely aligned with the orientation of the Indonesian Constitution, which establishes the state as a *rechtsstaat*, as affirmed in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Within a rule-of-law framework, law cannot be divorced from the social needs of society or the fundamental human values that underpin national life. This perspective is further reinforced by the Constitution's human rights provisions, including the right to fair legal treatment and legal certainty in Article 28D, paragraph (1), as well as the respect for social and cultural values enshrined in Articles 28H and 28I. These provisions emphasize an orientation toward substantive justice—justice that goes beyond mere legalistic or text-based interpretations and reflects the social realities of society.

In line with this perspective, Pound's[53] concept of law as a tool of social engineering, as presented in *Social Control Through Law*, emphasizes that the purpose of law is to balance public, social, and individual interests in order to achieve substantive justice. Consequently, Indonesia's national legal reform possesses a strong constitutional foundation for adopting an approach informed by sociological jurisprudence, one that prioritizes social justice and the public good.

Post-1998 national legal reforms represent a decisive turning point in the orientation of the legal system, marking a transition from a rigid, formalistic paradigm toward a more responsive and socio-legal approach that seeks to align law with the lived realities of society. Prior to this period, legal development was largely characterised by an emphasis on doctrinal certainty, procedural compliance, and the preservation of institutional authority, often at the expense of substantive justice and public accountability. However, the political and social transformations that unfolded in 1998 created an urgent demand for a legal system capable of addressing systemic governance failures, particularly those related to corruption, abuse of power, and the erosion of public trust. Within this broader context of reform, People's Consultative Assembly Decree No. XI/MPR/1998 emerged as a foundational instrument that articulated both the normative direction and institutional commitments required to reconstruct the legal order.

This decree not only symbolised a break from past practices, but also established a comprehensive framework for promoting integrity within state administration. At its core was the affirmation of the principle of a clean and authoritative state, explicitly rejecting corruption, collusion, and nepotism as entrenched features of governance. This normative commitment

[53] Roscoe Pound, *Social Control Through Law* (Routledge, 1996).

signalled a shift in the understanding of state power—from one that was historically insulated and hierarchical, to one that is expected to be ethically grounded and accountable to the public. By embedding these values at the highest level of constitutional policy, the decree functioned as both a moral and legal benchmark against which the conduct of state institutions and officials would be evaluated.

In addition, the decree imposed a clear obligation on state administrators to uphold transparency and accountability in the exercise of their functions. This marked a significant departure from previous governance practices that were often opaque and resistant to public scrutiny. Transparency, in this sense, was not merely procedural openness, but a substantive requirement to ensure that decision-making processes, allocation of resources, and exercise of authority could be monitored and evaluated by society. Accountability, meanwhile, implied that public officials could no longer operate with impunity, but must be prepared to justify their actions within legal and ethical frameworks. Together, these principles laid the groundwork for a more participatory and responsive legal system, in which citizens are recognised not merely as subjects of regulation, but as active stakeholders in governance.

Furthermore, the decree mandated the establishment and continuous improvement of legislation aimed at supporting the eradication of corruption, collusion, and nepotism. This legislative directive acknowledged that existing legal frameworks were insufficient to address the complexity and scale of systemic corruption, and that comprehensive reform was necessary to create effective enforcement mechanisms. As a result, the post-reform period witnessed the development of a wide range of legal instruments, institutional innovations, and regulatory mechanisms designed to strengthen oversight, enhance investigative capacity, and ensure the integrity of public administration. Importantly, this process also reflected a broader shift toward a socio-legal understanding of law, in which legal reform is seen not only as the production of new rules, but as an ongoing process of institutional adaptation and cultural change.

Equally crucial was the decree's emphasis on strict and non-discriminatory law enforcement. This principle addressed one of the most persistent weaknesses of the previous legal system: the selective application of law based on political affiliation, social status, or economic power. By insisting on equality before the law, the decree sought to dismantle patterns of impunity and restore public confidence in legal institutions. In practice, however, this aspiration also revealed the challenges inherent in transforming deeply embedded power structures. A sociological perspective highlights that the effectiveness of this principle depends not only on formal legal provisions, but

also on the broader configuration of social forces, including political will, institutional independence, and public engagement.

Taken together, the reforms initiated in the post-1998 period, as crystallised in the People's Consultative Assembly Decree No. XI/MPR/1998, reflect an evolving conception of law as a dynamic and socially embedded institution. The shift toward a responsive and socio-legal paradigm underscores the recognition that legal legitimacy is not derived solely from formal validity, but from its capacity to address social injustice, regulate power, and respond to the needs and expectations of society. In this sense, the decree represents not merely a legal milestone, but a foundational moment in the reconfiguration of the relationship between law, state, and society.

This decree (People's Consultative Assembly Decree No. XI/MPR/1998) does not merely serve as an ethical-political norm, but also as the initial constitutional basis for national legal reform, which demands that the law be not only formally valid but also responsive to the demands and aspirations of the people for justice and integrity, free from corrupt practices. After the enactment of People's Consultative Assembly Decree No. XI/MPR/1998, legal reform in Indonesia was no longer positioned as a technocratic project but as a moral and political agenda to dismantle corrupt and elitist legal structures. Here, the socio-legal approach becomes relevant because it shifts the focus from "what the law says" to "how the law works in society".[54] This means that the law is no longer neutral but rather laden with social interests that must be tested empirically.

This principle was then accommodated in Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Formation of Regulations, specifically Articles 5 and 6, which regulate the principles of clarity of purpose, appropriate institutionalization, suitability of type and hierarchy, and—most relevant in this context—the principles of utility, fairness, and implementability. These three principles form the core of responsive law, as explained by Nonet & Selznick[55] in *Law and Society in Transition*, where they emphasize the need for a legal system that is sensitive to social change and capable of balancing legal authority with the needs of society.

In addition, law is also positioned as an instrument of social change, as stipulated in Law No. 25 of 2004 concerning the National Development Planning System, which regulates the procedures for the preparation, implementation, and evaluation of integrated national development planning in order to achieve national objectives. Article 3 of this law emphasizes that the

[54] Simon Halliday et al., "Law in Everyday Life and Death: A Socio-Legal Study of Chronic Disorders of Consciousness," *Legal Studies* 35, no. 1 (2015): 55–74, https://doi.org/10.1111/lest.12042; Shubhangi Roy, "Theory of Social Proof and Legal Compliance: A Socio-Cognitive Explanation for Regulatory (Non) Compliance," *German Law Journal* 22, no. 2 (2021): 238–55, Cambridge Core, https://doi.org/10.1017/glj.2021.5.

[55] Nonet and Selznick, *Law & Society in Transition*.

development planning system aims to ensure the achievement of a just and prosperous society, while Article 5 paragraph (1) states that development planning covers all fields, including legal development as an integral part of national development. Furthermore, the direction of legal development is reinforced in Law Number 17 of 2007 concerning the National Long-Term Development Plan 2005–2025, which sets out Indonesia's vision, mission, and direction for long-term development over 20 years. In Appendix Chapter IV, it is emphasized that legal development is directed at forming a national legal system that is fair, certain, and beneficial, as well as supporting national stability and equitable welfare. This direction is consistent with Rahardjo's[56] idea of Progressive Law, which states that law must "prioritize human values and work to free humans from social injustice." The orientation of Indonesia's national law is in line with the paradigms of sociological jurisprudence and progressive law.

This compatibility is also clearly evident in the judicial sphere through the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority, which states that "Judges and constitutional judges are obliged to explore, follow, and understand the values of living law and the sense of justice that exists in society." This formulation directly reflects the adoption of the living law theory developed by Ehrlich[57] in the context of legal discovery theory, where judges are no longer positioned as "mouthpieces of the law" but as active actors who bridge the gap between written law and social reality. Friedman[58] in *The Legal System: A Social Science Perspective* asserts that a legal system will only be effective if it understands the social structure, substance, and culture in which the law operates. Progressive legal development must involve an empirical understanding of the social dynamics that influence law enforcement practices.[59]

Although Law No. 48 of 2009 has accommodated the socio-legal approach, its implementation still faces obstacles in the form of judicial subjectivity, limitations of the empirical approach, and the dominance of positivistic traditions. Therefore, strengthening the capacity of judges to understand social realities is key to realizing a truly progressive and substantively just judiciary.

The sociological jurisprudence approach at the international level has gained strong legitimacy in international human rights instruments that place humans and social conditions at the center of law formation. The 1948 Universal Declaration of Human Rights (UDHR) affirms

---

[56] Rahardjo, "Hukum Progresif: Hukum Yang Membebaskan."
[57] Ehrlich, *Grundlegung Der Soziologie Des Rechts*.
[58] Friedman, *The Legal System: A Social Science Perspective*.
[59] 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.

that the purpose of law is not only normative certainty but also the protection of the dignity of humans living in social reality. This is evident in Article 1 of the UDHR, which states that "all human beings are born free and equal in dignity and rights." This formulation emphasizes that the legal structure must be built with consideration for the quality of life of human beings as dignified beings. Article 1 of the UDHR affirms the principles of human equality and freedom, which indicate that law is not only oriented towards normative certainty but also towards the protection of human values in social reality.[60] In recent studies, the UDHR is seen as the foundation of human-centered law, a legal paradigm that places humans as the main subject in the legal system.[61]

The ratification of the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005 contains the state's obligation to guarantee legal certainty, justice, and the protection of civil liberties. Article 2 paragraph (1) of the ICCPR affirms that each state party is obliged to "respect and ensure to all individuals the rights recognized in this covenant, without any discrimination whatsoever." Furthermore, Article 26 of the ICCPR states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law".[62] The obligations of non-discrimination and substantive justice are in line with Pound's concept that the law must balance individual and social interests proportionally. The principle of non-discrimination in the ICCPR is a concrete manifestation of responsive law oriented towards social justice, not merely normative formalities.

In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) through Law No. 11 of 2005 strengthens the dimension of welfare in legal development. Article 2 paragraph (1) of the ICESCR requires states to take measures, including through legislation, to progressively realize economic, social, and cultural rights. Meanwhile, Article 12 of the ICESCR stipulates that everyone has the right to enjoy the highest attainable standard of physical and mental

---

60 Elsa Lafaye de Micheaux, "The Universal Declaration of Human Rights: A Normative Benchmark for Southeast Asia?," in *The Palgrave Handbook of Political Norms in Southeast Asia*, ed. Gabriel Facal et al. (Springer Nature Singapore, 2024), https://doi.org/10.1007/978-981-99-9655-1_3.

61 Thamil Venthan Ananthavinayagan, "Is the Universal Declaration of Human Rights Truly Universal?," in *Human Rights after 75 Years of the Universal Declaration of Human Rights* (Brill | Nijhoff, 2024), https://doi.org/10.1163/9789004517967_004; Mustafa Burak Şener, "A Review of the Meaning and Importance of the Universal Declaration of Human Rights," *Uluslararası Politik Araştırmalar Dergisi* 7, no. 3 (2021): 15–25, https://doi.org/10.25272/icps.962292.

62 Sarah Joseph and Melissa Castan, "Rights of Non-Discrimination—Articles 2(1), 3, and 26," in *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, ed. Sarah Joseph and Melissa Castan (Oxford University Press, 2013), https://doi.org/10.1093/law/9780199641949.003.0023; Paul M. Taylor, ed., "Equality Before the Law Equal Protection of the Law," in *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press, 2020), Cambridge Core, https://doi.org/10.1017/9781108689458.029.

health.[63] The rights-based approach in the ICESCR reflects the integration between legal norms and socio-economic realities, thereby strengthening the relevance of sociological jurisprudence in modern legal development.

These three international human rights instruments show that modern law no longer functions solely as a system of rules but as an active mechanism for ensuring substantive justice, welfare, and human dignity. This aligns with the framework of sociological jurisprudence, which places law in a dynamic and human-oriented social context.

The international normative basis for laws that are responsive to social realities is also reinforced by the UN Declaration on the Rule of Law at the National and International Levels (2012), which makes an important shift by emphasizing that the rule of law cannot be separated from the social conditions of society, which are rich in social dimensions, inclusiveness, and substantive justice. The Declaration, adopted by the United Nations through Resolution A/RES/67/1, explicitly affirms that the rule of law does not exist in a vacuum. Paragraph 2 emphasizes that states have a responsibility to build legal systems that are "fair, stable, and predictable," but also inclusive and accessible. This phrase is important because it shows that the legitimacy of the law is not only determined by its formal structure but also by the extent to which it is accessible and relevant to the community. Furthermore, paragraph 7 emphasizes that the rule of law must support "social justice, equality, and the protection of human rights." This affirmation demonstrates the integration between the rule of law and the principle of substantive justice. In contemporary literature, this is often referred to as a shift from thin rule of law to thick rule of law, that is, from merely procedural to substantive. These principles are in line with Roscoe Pound's thinking that law should not be understood as a closed, self-contained system, but rather as a social institution that must adapt to the dynamics of human needs.

The Bangalore Principles of Judicial Conduct (2002) emphasize that judges should not merely apply rules mechanically but must uphold justice that is sensitive to social and cultural contexts.[64] The six ethical values that form the basis of these principles are independence, impartiality, integrity, propriety, equality, and competence and diligence. These values require judges to remain free from pressure, be objective, act honestly, maintain proper behavior, treat all parties equally, and continuously improve their professionalism so that the decisions they make

---

[63] M. Schulze, "Human Rights Principles in Developing and Updating Policies and Laws on Mental Health," *Global Mental Health* 3 (2016): e10, Cambridge Core, https://doi.org/10.1017/gmh.2016.5; Christine Chinkin, "Health and Human Rights," *Public Health* 120 (October 2006): 52–59, https://doi.org/10.1016/j.puhe.2006.07.016.

[64] Muhammad Anugerah Perdana et al., "A Prophetic Law Perspective on Judicial Independence of the Indonesian Constitutional Court: Looking Back on 20 Years," *Prophetic Law Review* 6, no. 1 (2024): 71–97, https://doi.org/10.20885/PLR.vol6.iss1.art4.

reflect substantive justice. Although these principles frame judicial ethics universally, their main substance recognizes that law cannot be separated from the life of society.

Overall, these various national and international legal instruments show that modern legal development increasingly positions law as a social institution that must be able to respond to the dynamics of society. The sociological jurisprudence approach is therefore not only theoretically relevant but also has strong normative legitimacy within the framework of progressive national legal development oriented towards substantive justice.

D. The Compatibility of Sociological Jurisprudence with the Constitution and Pancasila Values and Its Role in Overcoming Social Inequality

The Sociological Jurisprudence approach is essentially aligned with the Indonesian Constitution, particularly the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia. This approach regards law as both an instrument and a social phenomenon that exists within society (living law), so the existence of law cannot be separated from the social, cultural, and value dynamics that develop within the community. This concept is consistent with the fifth principle of Pancasila, which emphasizes the importance of social justice for all Indonesian people. From a constitutional perspective, this approach is also relevant to the principle of the rule of law, which emphasizes not only legal certainty but also substantive justice and utility. As stated by Rahardjo[65], the law must align with the community and cannot be separated from social reality, so that the values of Pancasila can be operationalized in legal practice and respond to the real needs of the people.

Conceptually, the rule of law adopted by Indonesia is not merely understood in a formal sense (formal *rechtsstaat*) but in a broader material sense, often identified with the concept of a welfare state, in which the state bears an active responsibility to create social justice and improve the welfare of society through legal and social policies that are responsive to public needs.[66] Within this framework, the main objective of the Indonesian state, as stated in the Preamble to the 1945 Constitution, is to create a just and prosperous society, both spiritually and materially, based on the values of Pancasila. This concept of the rule of law has unique characteristics because the application of its principles is adapted to the social, cultural, and value conditions of the Indonesian people themselves, with Pancasila as the benchmark. Thus, the Indonesian rule of law can be

[65] Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis* (Genta Publishing, 2009).
[66] Moh Mahfud MD, *Politik Hukum Di Indonesia*, Cetakan ke-10 (Raja Grafindo Persada, 2020).

referred to as the Pancasila rule of law, which is a legal system grounded in the fundamental values of Pancasila.

Pancasila provides a set of foundational characteristics that shape the life of the nation and the operation of the state, functioning not merely as an abstract philosophical doctrine but as a living normative framework that informs governance, law, and social relations. One of its central features is the emphasis on harmonious relations between the government and the people, encapsulated in the principle of harmony. This concept carries both a positive and a negative dimension. Positively, harmony reflects the aspiration for balanced, cooperative, and mutually respectful interactions between state institutions and society, where governance is conducted in a manner that fosters trust and collective well-being. Negatively, it implies the avoidance of conflict, hostility, and social fragmentation, encouraging the state to act prudently in maintaining stability and cohesion. In this sense, the principle of harmony does not simply suppress disagreement, but ideally seeks to manage diversity and difference in a way that sustains social equilibrium.[67]

In addition, Pancasila guarantees freedom of religion as a fundamental manifestation of the state's commitment to human dignity and individual rights. This guarantee underscores the recognition that religious belief and practice constitute an essential aspect of personal identity and moral autonomy. By ensuring that every citizen has the right to embrace and practice their religion without fear, coercion, or discrimination, the state affirms its role as a neutral guardian of pluralism. This principle also reflects the broader ethos of tolerance embedded within Pancasila, which acknowledges the diversity of beliefs within society and seeks to create a legal and social environment in which such diversity can coexist peacefully. The protection of religious freedom, therefore, is not only a constitutional mandate but also a sociocultural imperative that reinforces national unity amidst plurality.

Another key characteristic promoted by Pancasila is the principle of kinship, which serves as a foundational guideline in the administration of the state and the organisation of social and economic life. This principle emphasises solidarity, cooperation, and mutual assistance as the basis for collective progress. Rather than prioritising individual competition or purely market-driven logic, the kinship approach encourages policies and practices that enable shared prosperity and inclusive development. It provides space for all members of society to improve their welfare collectively, while simultaneously requiring that such efforts do not undermine the broader public

[67] Elfrida Herawati Siregar et al., "Pancasila in the Context of Indonesian Legal Reform: A Critical Evaluation and International Debate," *Journal of Law and Legal Reform* 5, no. 4 (2024): 2093–126, https://doi.org/10.15294/jllr.v5i4.18923.

interest. In this regard, the principle of kinship bridges ethical values and institutional arrangements, promoting a model of governance that is both socially responsive and communally oriented.

Furthermore, Pancasila affirms the principle of equality before the law and in government, a cornerstone of any constitutional state committed to justice and fairness. This principle is explicitly reflected in Article 28D of the 1945 Constitution, which guarantees recognition, protection, and legal certainty that is just and equitable for all citizens. It also encompasses the right to work, to receive fair and decent treatment in employment, and to have equal opportunities in participating in governmental processes. The enforcement of equality before the law is crucial in preventing discrimination, abuse of power, and unequal treatment based on social, economic, or political status. From a broader perspective, this principle reinforces the legitimacy of the legal system by ensuring that justice is not selective but universally accessible.

Taken together, these characteristics illustrate how Pancasila operates as a normative compass guiding the development of a constitutional state that is not only legally structured but also ethically grounded. Its emphasis on harmony, religious freedom, kinship, and equality reflects an integrated vision of society in which legal order, social justice, and collective welfare are mutually reinforcing. In this framework, law is not conceived merely as an instrument of control, but as a means of achieving a balanced and inclusive social order, oriented toward the well-being of all members of society.

Pancasila in the Indonesian legal system is classified as a source of substantive law because it contains the fundamental values that form the basis for the creation of law, while also functioning as the nation's worldview, the philosophical foundation of the state (*philosophische grondslag*),[68] national identity, and state ideology. Its highest position in the hierarchy of legal sources is confirmed in Article 1 paragraph 3 of People's Consultative Assembly Decree No. III/MPR/2000 and Article 2 of Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation, which states that Pancasila is the source of all sources of state law. Thus, all legal products in Indonesia must be rooted in Pancasila and must not conflict with its values, so that Pancasila functions as the ultimate legal source in the national legal system.

This compatibility is also evident in the recognition of legal pluralism in Indonesia, particularly through the existence of customary law as part of the national legal system. Pancasila,

[68] F. X. Adji Samekto and Aga Natalis, "Exploring the Grundnorm Dilemma: Can Pancasila Be Considered the Grundnorm in the Context of 'The Pure Theory of Law'?," *Journal of Philosophical Investigations*, ahead of print, 2024, https://doi.org/10.22034/jpiut.2024.62978.3843.

as the foundation of the state, provides legitimacy to the diversity of values and norms that exist in society, which are then accommodated in various legal policies, including in the 2023 Criminal Code through the recognition of living law. This shows that Indonesia's national law is not monolithic but rather open to social norms that develop within society. In this context, sociological jurisprudence becomes the theoretical basis explaining the importance of integrating state law with the law that lives within society.

The integration of Pancasila values and sociological approaches has also encouraged the emergence of a more progressive and humanistic legal paradigm. National legal reform is no longer solely oriented toward the formation of norms but also toward the effectiveness and social acceptance of the law. This approach positions law as an instrument of social change (*law as a tool of social engineering*) that must be sensitive and capable of dynamically responding to society's needs, including the protection of vulnerable groups and the achievement of substantive justice. Thus, sociological jurisprudence is not only theoretically relevant but also contributes directly to shaping the direction of national legal development based on Pancasila.

The concept of the Pancasila rule of law is closely aligned with sociological jurisprudence, as both view law as a social institution that lives and develops within society. The integration of Pancasila values and this sociological approach is an important foundation for reorienting national legal reform toward a legal system that is more responsive, humanistic, and substantively just.

Social inequality is a global phenomenon that is becoming increasingly complex and has a broad impact on social, economic, and political stability. Inequality in the distribution of resources, access to justice, and social opportunities not only hinders development but also reinforces the marginalization of vulnerable groups. In this context, the law cannot be viewed as a neutral instrument because, in practice, the legal system often reproduces existing inequalities. Therefore, an approach is needed that reads law as part of the social structure, as emphasized in sociological jurisprudence, which views law as both a reflection of and a tool for social transformation.

Sociological jurisprudence contributes significantly to expanding access to justice, particularly for marginalized groups. Social inequality directly impacts individuals' ability to obtain legal aid and fair protection. Comparative research shows that inclusive, socially-based legal aid systems can reduce disparities in the justice system. The sociological approach encourages states not only to provide formal legal services but also to ensure that these services are truly accessible to all segments of society.

The sociological approach also reveals that inequality is often hidden within social structures that are not recognized by society itself. Contemporary sociological research shows that in highly

stratified societies, individuals tend to underestimate the level of inequality that exists, thereby reinforcing its reproduction. Therefore, responsive laws must not only regulate but also correct distortions in social perception through policies that favor social justice.[69]

The implementation of sociological jurisprudence in the Indonesian legal system faces structural challenges stemming from the dominance of the legal positivism paradigm in the civil law tradition. In practice, law is still often understood as limited to written regulations (*law in books*), so the existence of living law that develops in society is not yet fully recognized operationally and is often ignored. This condition creates tension between state law and social law, especially when the two have different legitimacies. Studies show that the existence of customary law or living law is still highly dependent on state recognition, so it often loses social autonomy in law enforcement practice.

The recognition of living law is not unique to Indonesia but has also developed significantly in various countries according to their legal systems. In countries such as Australia, the recognition of indigenous law has developed through case law mechanisms in the common law system, particularly through the recognition of native title, which provides space for indigenous law within the national legal framework. This approach demonstrates high flexibility because judges play an active role in shaping law based on evolving social realities, in contrast to Indonesia, which still tends to be codification-based. This shows that a jurisprudence-based legal system is more adaptive in accommodating living law than a rigid written legal system.

Countries such as New Zealand are important examples of integrating living law based on Maori customary values.[70] This system is not only recognized normatively but has also been institutionalized in the criminal justice system, especially in cases involving children and indigenous communities. This model places the community as the main actor in conflict resolution, so the law is not merely an instrument of the state but also a reflection of the community's social values. Compared to Indonesia, New Zealand demonstrates a more mature level of integration between state law and customary law through a participatory, community-based approach. This approach to punishment emphasizes community-based punishment rather than imprisonment, as

[69] Jonathan J. B. Mijs and Adaner Usmani, "How Segregation Ruins Inference: A Sociological Simulation of the Inequality Equilibrium," *Social Forces* 103, no. 1 (2024): 45–65, https://doi.org/10.1093/sf/soae033.

[70] M. Jackson, *Maori and the Criminal Justice System: A New Perspective, He Whaipaanga Hou* (New Zealand Dept of Justice, 1987), https://www.ojp.gov/ncjrs/virtual-library/abstracts/maori-and-criminal-justice-system-new-perspective-he-whaipaanga-hou.

reflected in the approximately 26,847 prisoners serving community sentences, while only 7,605 prisoners serve prison terms in correctional institutions.[71]

In the Netherlands, a country with a civil law tradition, the development of sociological jurisprudence is reflected in the strengthening of the responsive law approach, which frames law as a tool that must address society's social needs. Laarman[72] Laarman demonstrates that the Dutch legal system is gradually shifting from an adversarial model toward a more responsive framework, one that takes into account the social context, the needs of the parties involved, and the broader social implications of legal decisions. This perspective highlights that law is no longer merely a set of written norms but functions as a social mechanism capable of responding to empirical realities and the concrete needs of society. Concurrently, the Netherlands has reinforced evidence-based lawmaking through empirical, data-driven legislative evaluations (ex-post legislative evaluation), particularly in public sectors such as healthcare. These developments illustrate that lawmaking in the Netherlands is dynamic, continuously adapting to evolving social realities.

Recent reports and studies show that the Dutch legal system prioritizes transparency, public participation, and evidence-based evaluation in legal policy formation, which strengthens the responsiveness and adaptability of the law to social change. This tradition demonstrates that the legitimacy of law is not solely determined by formal legality but also by the extent to which law can respond to societal needs in a rational, data-driven manner.

This comparison shows that the reorientation of sociological jurisprudence in various countries follows a similar pattern, namely a shift from the dominance of *law in books* to the integration of *law in action* within the national legal system. In the Indonesian context, this direction is reflected in the recognition of living law in the 2023 Criminal Code and efforts to develop laws more responsive to society's social values. Thus, progressive national legal development is no longer solely oriented toward normative certainty but also toward the law's ability to dynamically reflect social realities, power structures, and community needs. This confirms that sociological jurisprudence is not merely a theoretical approach but a strategic paradigm in modern legal reform.

Contributing to the novelty of this field, this paper offers the concept of Integrative Responsive Sociological Jurisprudence (IRSJ), a model for developing sociological jurisprudence

---

[71] Bambang Santoso et al., "Restorative Justice as a Resolution Mechanism for Petty Theft: A Comparative Legal Review of New Zealand and Malaysia," *Indonesian Journal of Advocacy and Legal Services* 7, no. 2 (2025): 297–330, https://doi.org/10.15294/ijals.v7i2.24305.

[72] Berber Laarman, "Addressing Harm in Healthcare: A Responsive Perspective," *Utrecht Law Review* 20, no. 4 (2024): 83–97, https://doi.org/10.36633/ulr.1011.

that not only integrates living law into the formal legal system but also emphasizes institutional responsiveness and continuous adaptation to social dynamics. This concept is based on the premise that law is a social system that continuously evolves and cannot be separated from the social structures surrounding it.[73]

The IRSJ model is constructed upon three interrelated pillars that collectively redefine the orientation of law within a socio-legal framework, moving beyond rigid formalism toward a more dynamic and justice-oriented paradigm. The first pillar, normative integration, refers to the formal recognition and incorporation of living law into the national legal system. Living law, understood as the norms, practices, and values that organically develop within society, often operates alongside or even independently of state law. By integrating these social norms into formal legal structures, the IRSJ model acknowledges that law derives not only from legislative authority but also from the legitimacy conferred by societal acceptance. This process of integration does not merely validate informal norms, but also creates a dialogical relationship between state law and social reality, ensuring that legal rules are grounded in the actual experiences and expectations of the community.[74]

The second pillar, social responsiveness, emphasises the capacity of law to adapt dynamically to the evolving needs and conditions of society. In contrast to a static legal system that prioritises predictability and uniformity above all else, a responsive legal system remains open to change, recognising that social realities are constantly shifting. This responsiveness requires legal institutions, including courts and lawmakers, to engage with contemporary issues, emerging social values, and the lived experiences of individuals and communities. It also demands sensitivity to marginalised voices that are often excluded from formal legal discourse. In this sense, law is not merely reactive, but proactively attuned to social developments, enabling it to function as a relevant and effective mechanism for regulating human behaviour and resolving conflicts.

The third pillar, substantive justice, represents a fundamental reorientation of legal purpose from formal certainty to socially just outcomes. While legal certainty remains important for maintaining order and predictability, the IRSJ model asserts that the ultimate legitimacy of law lies in its ability to produce outcomes that are fair, equitable, and reflective of broader social values. Substantive justice requires judges and legal practitioners to look beyond the literal application of rules and consider the real-world implications of their decisions, particularly for

---

[73] Roger Cotterrell, *Jurisprudence and Socio-Legal Studies: Intersecting Fields* (Taylor & Francis, 2024).

[74] Hernowo et al., "Peran Sociological Jurisprudence Dalam Menciptakan Keefektivitasan Hukum Melalui Living Law."

vulnerable or disadvantaged groups. It encourages a holistic evaluation of cases, taking into account social context, power imbalances, and the potential consequences of legal rulings. Through this lens, justice is not reduced to procedural correctness, but is measured by its impact on human well-being and social equity.

Taken together, these three pillars expand the classical notion of law as a tool of social engineering by reconfiguring the relationship between law and society into one that is reciprocal and participatory. Rather than positioning society as a passive object to be regulated, the IRSJ model situates it as an active subject that continuously shapes, interprets, and legitimises legal norms through lived practices and collective values. This reorientation has important implications for both the understanding and operation of law, as it foregrounds the necessity of aligning formal legal structures with the realities, expectations, and experiences of the community. In this sense, normative integration ensures that living law is not marginalised but formally recognised; social responsiveness enables the legal system to remain adaptive to ongoing social transformations; and substantive justice guarantees that legal outcomes are evaluated based on their real impact on fairness and social equity. Consequently, legal development is no longer conceived as a top-down imposition of rules, but as an interactive process in which community values, social movements, and public discourse play a constitutive role in shaping legal norms.

Within this framework, the IRSJ concept offers a coherent theoretical foundation for national legal reform, particularly in addressing the persistent tension between state law and the law that exists within society. It underscores that the effectiveness of legal reform cannot be measured solely by the production of new legislation or formal institutional changes, but must also be assessed through the system's capacity to internalise social realities and respond meaningfully to structural inequalities. By integrating these dimensions, the IRSJ model advances a more grounded and context-sensitive approach to reform, in which law is continuously negotiated, contested, and refined in response to societal needs. In doing so, it not only bridges the gap between formal legality and social legitimacy, but also strengthens the role of law as an instrument for achieving substantive and inclusive justice in practice.

E. Conclusion

The study underscores that the evolution of Indonesia's national legal system cannot be understood merely through the lens of formalistic or positivistic frameworks but must be seen as inherently connected to the social realities and values that permeate society. Sociological jurisprudence, drawing on Ehrlich's concept of living law and Pound's notion of law as a tool for

social engineering, provides a critical framework for this reorientation. Living law emphasizes that the essence of legal development resides in the everyday practices, customs, and norms of society, rather than solely in statutes or judicial texts. In the Indonesian context, this approach gains particular significance given the nation's legal pluralism, the coexistence of state, customary, and religious legal orders, and the historical dominance of colonial-derived criminal codes. The enactment of Law No. 1 of 2023, the New Criminal Code, marks a crucial step in institutionalizing the recognition of living law, providing a legal basis for integrating customary practices into judicial decision-making while maintaining adherence to constitutional principles, human rights, and Pancasila values. This reform represents a shift from a purely text-based legal system to one capable of reflecting the substantive justice, social responsiveness, and human-centered orientation that sociological jurisprudence advocates.

Empirical findings from court decisions illustrate both the promise and the challenges of this approach. In civil and criminal law cases involving indigenous and local communities, judges have begun to incorporate customary practices into their rulings, particularly in matters of environmental permits, minor criminal offenses, and restorative justice. While some decisions reflect progressive integration of living law, others remain formalistic, highlighting the tension between doctrinal legal certainty and socially grounded justice. This dichotomy reinforces the need for an operational framework that guides judicial discretion in a manner that harmonizes statutory norms with social realities, ensuring consistency, fairness, and legitimacy. Moreover, the evidence suggests that responsive judicial reasoning, which combines empirical observation with doctrinal analysis, produces more proportional, socially aware, and humane outcomes, particularly for vulnerable groups such as women, children, and marginalized communities. Such an approach aligns with the international human rights framework, including the UDHR, ICCPR, and ICESCR, which emphasize equality, dignity, and substantive justice as core principles that the law must serve.

The study further highlights the necessity of integrating institutional capacity-building with normative reform. While Law No. 48 of 2009 obliges judges to consider living law, the practical implementation faces obstacles such as judicial subjectivity, limited empirical methodology, and entrenched positivistic traditions. Effective sociological jurisprudence thus requires not only legislative reform but also training, resource allocation, and a cultural shift within the judiciary and legal institutions to sensitize officials to the lived experiences of the communities they serve. Institutional responsiveness, combined with a pattern of reasoning that bridges normative and empirical analysis, is critical for translating the ideals of substantive justice into concrete judicial

practice. Comparative studies from countries such as the Netherlands, New Zealand, and Australia demonstrate that legal systems which actively integrate empirical evidence, community participation, and culturally embedded norms into law-making and adjudication achieve more adaptive, equitable, and socially legitimate outcomes. These international experiences provide both validation and inspiration for Indonesia's ongoing legal reform.

Conceptually, the research introduces the Integrative Responsive Sociological Jurisprudence (IRSJ) model as a theoretical and practical framework to operationalize sociological jurisprudence in national legal reform. The IRSJ model rests on three pillars: normative integration, ensuring formal recognition of living law; social responsiveness, enabling the legal system to dynamically adjust to societal needs; and substantive justice, orienting law toward socially just outcomes rather than merely formal compliance. This integrative approach positions society as an active participant in law formation, bridging the historical divide between written law and lived law, and reinforcing the law's role as a tool of social engineering that promotes equity, dignity, and human-centered justice.

Finally, the research concludes that sociological jurisprudence is fully compatible with the constitutional principles of Indonesia and the foundational values of Pancasila, particularly the emphasis on social justice, harmony, and equality. The approach addresses systemic social inequality by highlighting the structural barriers that prevent marginalized communities from accessing justice, encouraging policies and judicial practices that correct these distortions. By situating law within its social, cultural, and economic contexts, sociological jurisprudence transforms legal reform from a mechanistic project into a dynamic, humanistic endeavor capable of responding to contemporary challenges. In this way, national legal reform in Indonesia moves beyond normative codification to become a proactive instrument of social change, reflecting the aspirations, rights, and dignity of all members of society, ensuring that law not only governs but also lives and evolves with the people it serves.

REFERENCES

Alvesalo-Kuusi, Anne, and Steve Tombs. "Sociology of Law." In *The Encyclopedia of Crime and Punishment*. 2015. https://doi.org/10.1002/9781118519639.wbecpx109.

Anam, Saiful. "Reactualization of Adat Law in the Establishment of Legislations." *AIP Conference Proceedings* 3116, no. 1 (2024): 100003. https://doi.org/10.1063/5.0210343.

Ananthavinayagan, Thamil Venthan. "Is the Universal Declaration of Human Rights Truly Universal?" In *Human Rights after 75 Years of the Universal Declaration of Human Rights*. Brill | Nijhoff, 2024. https://doi.org/10.1163/9789004517967_004.

Anggoro, Syahriza Alkohir, and Tunggul Anshari Setia Negara. "The Struggle for Recognition: Adat Law Trajectories under Indonesian Politics of Legal Unification." *International Journal on Minority and Group Rights* (Leiden, The Netherlands) 29, no. 1 (2021): 33–62. https://doi.org/10.1163/15718115-bja10040.

Anleu, Sharyn Roach, and Kathy Mack. "Magistrates, Magistrates Courts, and Social Change." *Law & Policy* 29, no. 2 (2007): 183–209. https://doi.org/10.1111/j.1467-9930.2007.00252.x.

Arifin, Ridwan, Riska Alkadri, Robert Brian Smith, Nucharee Nuchkoom Smith, and Wahyudin. "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?" *Lex Scientia Law Review* 8, no. 1 (2024): 561–94. https://doi.org/10.15294/lslr.v8i1.14271.

Badan Pembinaan Hukum Nasional. *Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana (KUHP)*. Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2015. https://bphn.go.id/data/documents/naskah_akademik_tentang_kuhp_dengan_lampiran.pdf.

Banakar, Reza, and Max Travers. *Theory and Method in Socio-Legal Research*. Bloomsbury Publishing, 2005.

Benda-Beckmann, Keebet von, and Bertram Turner. "Legal Pluralism, Social Theory, and the State." *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 255–74. https://doi.org/10.1080/07329113.2018.1532674.

Bix, Brian H. "Legal Positivism." In *The Blackwell Guide to the Philosophy of Law and Legal Theory*. 2005. https://doi.org/10.1002/9780470690116.ch2.

Butt, Simon. "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.

Chinkin, Christine. "Health and Human Rights." *Public Health* 120 (October 2006): 52–59. https://doi.org/10.1016/j.puhe.2006.07.016.

Cotterrell, Roger. *Jurisprudence and Socio-Legal Studies: Intersecting Fields*. Taylor & Francis, 2024.

Cotterrell, Roger. *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory*. Routledge, 2017.

Cotterrell, Roger. *Sociological Jurisprudence: Juristic Thought and Social Inquiry*. Routledge, 2017.

Cotterrell, Roger. *The Sociology of Law*. London Butterworth, 1984.

Cribb, Robert. "Legal Pluralism and Criminal Law in the Dutch Colonial Order." *Indonesia*, no. 90 (2010): 47–66. https://doi.org/10.2307/20798232.

Davis, Kevin E., and Michael J. Trebilcock. "Legal Reforms and Development." *Third World Quarterly* 22, no. 1 (2001): 21–36. https://doi.org/10.1080/713701142.

Ehrlich, Eugen. *Grundlegung Der Soziologie Des Rechts*. Verlag von Duncker & Humblot, 1913.

Faisal, Andri Yanto, Derita Prapti Rahayu, Dwi Haryadi, Anri Darmawan, and Jeanne Darc Noviayanti Manik. "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.

Flora, Henny Saida, and Ratna Deliana Erawati. "The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System." *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 113–25. https://doi.org/10.29303/ius.v11i1.1169.

Friedman, Lawrence M. *The Legal System: A Social Science Perspective*. Russell Sage Foundation, 1975. JSTOR. http://www.jstor.org/stable/10.7758/9781610442282.

Griffiths, John. "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.

Halliday, Simon, Celia Kitzinger, and Jenny Kitzinger. "Law in Everyday Life and Death: A Socio-Legal Study of Chronic Disorders of Consciousness." *Legal Studies* 35, no. 1 (2015): 55–74. https://doi.org/10.1111/lest.12042.

Hardianto, Danang. "Reorientation Towards the Nature of Jurisprudence in Legal Research." *Jurnal Mimbar Hukum* 26, no. 2 (2014): 340–53. https://doi.org/10.22146/jmh.16044.

Hariri, Achmad, A. Basuki Babussalam, and Muhammad Aunurrochim Mas'ad Saleh. "Between Legality and Justice: A Critical Study of the Supreme Court's Judicial Reasoning in Dispute of the Awyu Customary Forest." *Jurnal Jurisprudence* 15, no. 2 (2025): 146–76. https://doi.org/10.23917/jurisprudence.v15i2.11442.

Heliany, Ina, Widowati, and Muhenri Sihotang. "The Pluralism of Indonesian Criminal Law: Implications and Orientations in the Post-New Criminal Code." *Sasi* 29, no. 3 (2023): 514–23. https://doi.org/10.47268/sasi.v29i3.1494.

Hernowo, Wempy Setyabudi, Zaid, and M. Aufar Saputra Pratama Erawan. "Peran Sociological Jurisprudence Dalam Menciptakan Keefektivitasan Hukum Melalui Living Law." *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 44–52. https://doi.org/10.33087/legalitas.v13i1.243.

Hertogh, Marc. "A 'European'Conception of Legal Consciousness: Rediscovering Eugen Ehrlich." *Journal of Law and Society* 31, no. 4 (2004): 457–81. https://doi.org/10.1111/j.1467-6478.2004.00299.x.

Horder, Jeremy. "Criminal Law and Legal Positivism." *Legal Theory* 8, no. 2 (2002): 221–41. Cambridge Core. https://doi.org/10.1017/S1352325202082034.

Jackson, M. *Maori and the Criminal Justice System: A New Perspective, He Whaipaanga Hou*. New Zealand Dept of Justice, 1987. https://www.ojp.gov/ncjrs/virtual-library/abstracts/maori-and-criminal-justice-system-new-perspective-he-whaipaanga-hou.

Jayantiari, I. Gusti Agung Mas Rwa, I. Nyoman Prabu Buana Rumiartha, I. Gst Pt Bagus Suka Arjawa, I. Gusti Ngurah Dharma Laksana, and Anak Agung Sagung Ngurah Indradewi. "The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law." *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (2025): 187–98. https://doi.org/10.29303/ius.v13i1.1329.

Johansen, Louise Victoria. "Incredibly Emotional: Interpreting Trustworthiness in Danish Courtrooms." *Frontiers in Sociology* 9 (2024): 1457424. https://doi.org/10.3389/fsoc.2024.1457424.

Johnson, Brian D. "Contextual Disparities in Guidelines Departures: Courtroom Social Contexts, Guidelines Compliance, and Extralegal Disparities in Criminal Sentencing." *Criminology* 43, no. 3 (2005): 761–96. https://doi.org/10.1111/j.0011-1348.2005.00023.x.

Joseph, Sarah, and Melissa Castan. "Rights of Non-Discrimination—Articles 2(1), 3, and 26." In *The International Covenant on Civil and Political Rights: Cases, Materials, and*

Commentary, edited by Sarah Joseph and Melissa Castan. Oxford University Press, 2013. https://doi.org/10.1093/law/9780199641949.003.0023.

Kusumaatmadja, Mochtar. *Konsep-Konsep Hukum Dalam Pembangunan*. Alumni, 2002.

Laarman, Berber. "Addressing Harm in Healthcare: A Responsive Perspective." *Utrecht Law Review* 20, no. 4 (2024): 83–97. https://doi.org/10.36633/ulr.1011.

Lafaye de Micheaux, Elsa. "The Universal Declaration of Human Rights: A Normative Benchmark for Southeast Asia?" In *The Palgrave Handbook of Political Norms in Southeast Asia*, edited by Gabriel Facal, Elsa Lafaye de Micheaux, and Astrid Norén-Nilsson. Springer Nature Singapore, 2024. https://doi.org/10.1007/978-981-99-9655-1_3.

MacGuigan, Mark. *Jurisprudence: Readings and Cases*. University of Toronto Press, 1966.

Maliska, Marcos Augusto. "Ehrlich, Eugen." In *Encyclopedia of the Philosophy of Law and Social Philosophy*, edited by Mortimer Sellers and Stephan Kirste. Springer Netherlands, 2023. https://doi.org/10.1007/978-94-007-6519-1_602.

Masyhar, Ali, Rohadhatul Aisy, Anis Widyawati, M. Azil Maskur, and Ali Murtadho. "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.

MD, Moh Mahfud. *Politik Hukum Di Indonesia*. Cetakan ke-10. Raja Grafindo Persada, 2020.

Mijs, Jonathan J. B., and Adaner Usmani. "How Segregation Ruins Inference: A Sociological Simulation of the Inequality Equilibrium." *Social Forces* 103, no. 1 (2024): 45–65. https://doi.org/10.1093/sf/soae033.

Nelken, David. "Law in Action or Living Law? Back to the Beginning in Sociology of Law." *Legal Studies* 4, no. 2 (1984): 157–74. Cambridge Core. https://doi.org/10.1111/j.1748-121X.1984.tb00439.x.

Nonet, Philippe, and Philip Selznick. *Law & Society in Transition: Toward Responsive Law*. Transaction Publishers, 2001.

Noor, Afif. "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research." *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 94–112. https://doi.org/10.56444/jidh.v7i2.3154.

Partridge, P. H. "Ehrlich's Sociology of Law." *Australasian Journal of Philosophy* 39, no. 3 (1961): 201–22. https://doi.org/10.1080/00048406112341181.

Perdana, Muhammad Anugerah, Muhammad Hamzah Al Faruq, and Garuda Era Ruhpinesthi. "A Prophetic Law Perspective on Judicial Independence of the Indonesian Constitutional Court: Looking Back on 20 Years." *Prophetic Law Review* 6, no. 1 (2024): 71–97. https://doi.org/10.20885/PLR.vol6.iss1.art4.

Pound, Roscoe. *Interpretations of Legal History*. Cambridge University Press, 1923.

Pound, Roscoe. *Jurisprudence*. Jurisprudence, no. v. 2. Lawbook Exchange, 2000.

Pound, Roscoe. *Social Control Through Law*. Routledge, 1996.

Pound, Roscoe. "Sociology of Law and Sociological Jurisprudence." *The University of Toronto Law Journal* 5, no. 1 (1943): 1–20.

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

Rahardjo, Satjipto. *Penegakan Hukum: Suatu Tinjauan Sosiologis*. Genta Publishing, 2009.

Ratnapala, Suri, ed. "Sociological Jurisprudence and Sociology of Law." In *Jurisprudence*. Cambridge University Press, 2009. Cambridge Core. https://doi.org/10.1017/CBO9781139168427.007.

Rosman, Edi, Aidil Alfin, Miswardi, and Bustamar. "The Contestation of Legal Authority: Local Criminal Law, State Law, and Islamic Law in Nagari Pasia Laweh, West Sumatra." *Juris: Jurnal Ilmiah Syariah* 24, no. 2 (2025): 193–203. https://doi.org/10.31958/juris.v24i2.15092.

Roy, Shubhangi. "Theory of Social Proof and Legal Compliance: A Socio-Cognitive Explanation for Regulatory (Non) Compliance." *German Law Journal* 22, no. 2 (2021): 238–55. Cambridge Core. https://doi.org/10.1017/glj.2021.5.

Rustamaji, Muhammad, Shalih Mangara Sitompul, Tojiboyev Sarvar Zafarovich, and Rahimah Embong. "The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality." *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 442–72. https://doi.org/10.53955/jhcls.v5i2.637.

Samekto, F. X. Adji, and Aga Natalis. "Exploring the Grundnorm Dilemma: Can Pancasila Be Considered the Grundnorm in the Context of 'The Pure Theory of Law'?" *Journal of Philosophical Investigations*, ahead of print, 2024. https://doi.org/10.22034/jpiut.2024.62978.3843.

Santoso, Bambang, Itok Dwi Kurniawan, Dara Pustika Sukma, Umi Khaerah Pati, and Mohamad Hanapi Bin Mohamad. "Restorative Justice as a Resolution Mechanism for Petty Theft: A Comparative Legal Review of New Zealand and Malaysia." *Indonesian Journal of Advocacy and Legal Services* 7, no. 2 (2025): 297–330. https://doi.org/10.15294/ijals.v7i2.24305.

Schulze, M. "Human Rights Principles in Developing and Updating Policies and Laws on Mental Health." *Global Mental Health* 3 (2016): e10. Cambridge Core. https://doi.org/10.1017/gmh.2016.5.

Sen, Amartya. "What Is the Role of Legal and Judicial Reform in the Development Process?" In *The World Bank Legal Review*. Brill | Nijhoff, 2006. https://doi.org/10.1163/9789047411727_004.

Şener, Mustafa Burak. "A Review of the Meaning and Importance of the Universal Declaration of Human Rights." *Uluslararası Politik Araştırmalar Dergisi* 7, no. 3 (2021): 15–25. https://doi.org/10.25272/icps.962292.

Shidarta. *Hukum Penalaran Dan Penalaran Hukum*. Genta Publishing, 2013.

Siregar, Elfrida Herawati, Cahyo Budi Utomo, and Muh Sholeh. "Pancasila in the Context of Indonesian Legal Reform: A Critical Evaluation and International Debate." *Journal of Law and Legal Reform* 5, no. 4 (2024): 2093–126. https://doi.org/10.15294/jllr.v5i4.18923.

Sordino, Marie-Christine. "Droit Pénal Et Usages: Entre Flux Et Reflux…." In *Customary Law Today*, edited by Laurent Mayali and Pierre Mousseron. Springer International Publishing, 2018. https://doi.org/10.1007/978-3-319-73362-3_11.

Sourdin, Tania, and Archie Zariski. "What Is Responsive Judging?" In *The Responsive Judge: International Perspectives*, edited by Tania Sourdin and Archie Zariski. Springer Singapore, 2018. https://doi.org/10.1007/978-981-13-1023-2_1.

Stolleis, Michael. "Judicial Interpretation in Transition from the Ancien Régime to Constitutionalism." In *Interpretation of Law in the Age of Enlightenment: From the Rule of the King to the Rule of Law*, edited by Yasutomo Morigiwa, Michael Stolleis, and Jean-Louis Halperin. Springer Netherlands, 2011. https://doi.org/10.1007/978-94-007-1506-6_1.

Sulistio, Rian, I. Nyoman Nurjaya, and Abdul Madjid. "The Living Law in Judicial Decisions: Formulation and Implications of the National Criminal Code." *Jurnal Dinamika Hukum* 25, no. 1 (2025): 70–90. https://doi.org/10.20884/1.jdh.2025.25.1.15469.

Suteki. *Desain Hukum Di Ruang Sosial*. Thafa Media, 2013.

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.

Sutrisni, Ni Komang, and I. Nengah Susrama. "Konsep Ideal Penerapan Pidana Kerja Sosial Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Melalui Sistem Kolaborasi." *Jurnal Hukum Saraswati (JHS)* 5, no. 2 (2023): 408–19. https://doi.org/10.36733/jhshs.v5i2.8129.

Tamanaha, Brian Z. *A Realistic Theory of Law*. Cambridge University Press, 2017.

Tamanaha, Brian Z. "A Vision of Social-Legal Change: Rescuing Ehrlich from 'Living Law.'" *Law & Social Inquiry* 36, no. 1 (2011): 297–318. Cambridge Core. https://doi.org/10.1111/j.1747-4469.2010.01232.x.

Tamanaha, Brian Z. "Sociological Jurisprudence Past and Present." *Law & Social Inquiry* 45, no. 2 (2020): 493–520. Cambridge Core. https://doi.org/10.1017/lsi.2019.26.

Taylor, Paul M., ed. "Equality Before the Law Equal Protection of the Law." In *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*. Cambridge University Press, 2020. Cambridge Core. https://doi.org/10.1017/9781108689458.029.

Toatubun, Najarudin, and Djamaludin Djamaludin. "The Dialectics of the Principle of Legality and Living Law in the National Criminal Law System Post-Enactment of Law No. 1 of 2023." *Jurnal Ilmu Hukum Kyadiren* 6, no. 1 (2024): 85–94. https://doi.org/10.46924/jihk.v6i1.253.

Vago, Steven, and Steven E. Barkan. *Law and Society*. Routledge, 2017.

Wardhani, Lita Tyesta Addy Listya, Muhammad Dzikirullah H. Noho, and Aga Natalis. "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.

World Justice Project. "WJP Rule of Law Index 2023 Global Press Release." October 25, 2023. https://worldjusticeproject.org/news/wjp-rule-law-index-2023-global-press-release.

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.

Ziegert, K. Alex. "A Note on Eugen Ehrlich and the Production of Legal Knowledge." *Sydney Law Review* 20, no. 1 (1998): 108–26. https://classic.austlii.edu.au/au/journals/SydLawRw/1998/4.html.

Zulfa, Eva Achjani. *Eksistensi Peradilan Adat Dalam Sistem Hukum Pidana Indonesia*. Badan Pembinaan Hukum Nasional, 2010. https://bphn.go.id/data/documents/lampiran_makalah_dr._eva_achjani,_sh.,mh.pdf.