

FROM LEX TO IUS: REORIENTING INDONESIAN LEGAL REFORM TOWARD INSTITUTIONALISATION AND SOCIAL LEGITIMACY

Ilham Yuli Isdiyanto^{1*}, Retno Saraswati², Ratna Herawati²

¹Narasaka Legal, Jalan. Raya Kelapa Gading Utara No. 65, Tangerang Regency, Banten 15810, Indonesia

²Faculty of Law, Universitas Diponegoro, Jalan dr. Antonius Suroyo, Tembalang, Semarang City, Central Java 50275, Indonesia

***Email:** ilhamisdiyanto@students.undip.ac.id

Abstract

This study examines the tension between institutionalised law and coercive law within Indonesia's national legal system. It addresses the persistent divide between formally valid rules and socially legitimate norms in a plural legal order shaped by state law, customary law, religious law, and colonial legal legacies. Employing a doctrinal and conceptual methodology, supported by socio-legal, philosophical, hermeneutic, critical, and comparative approaches, the study analyses legislation, judicial principles, legal theory, and Indonesia's legal experience. The findings indicate that excessive reliance on coercion produces only superficial compliance while generating institutional distrust, legal alienation, selective enforcement, and social resistance. Conversely, law that is internalised by society is more likely to secure enduring legitimacy and voluntary obedience. Indonesia's legal crisis, therefore, does not primarily arise from a shortage of legal rules, but from a failure of institutionalisation caused by the disconnection between formal law, living law, and public values. The study also identifies an emerging legislative shift towards mediation, restorative justice, alternative dispute resolution, and community-based settlement, including reforms introduced through the 2023 Criminal Code and the 2025 Criminal Procedure Code. Nevertheless, these developments remain vulnerable to formalistic implementation and an entrenched coercive institutional culture. This study argues that authentic legal institutionalisation requires a transition from a lex-centred paradigm to an ius-oriented legal order grounded in Pancasila, legal pluralism, procedural justice, meaningful public participation, and progressive legal thought. Accordingly, legal reform must extend beyond statutory amendment to encompass legal education, institutional culture, access to justice, recognition of customary law, and restorative mechanisms. The study contributes a conceptual framework in which Indonesian legal legitimacy is understood as the product of internalisation, social recognition, institutional responsiveness, and democratic participation, rather than coercive authority alone. This framework offers a normative basis for assessing whether legal institutions command genuine public acceptance and sustain justice in practice over time.

Keywords: *Coercive Law; Institutionalised Law; Legal Legitimacy; Legal Pluralism; Progressive Law.*

A. Introduction

If an ordinary citizen in the densely populated alleyways of Jakarta, the remote villages of Flores, or the valleys of Kalimantan were asked what “law” means, the response would most likely refer to the police, prisons, and prohibitions. This perception is more than a passing observation; it reflects a deep-rooted crisis of legal identity in which law is understood almost exclusively as

an instrument of threat and compulsion rather than as a manifestation of the living values that emerge from the collective pulse of society.¹ This perceptual crisis is not simply a matter of public communication; rather, it is a pathological symptom of a legal system that has failed to institutionalise—as an institutionalisation failure—whose implications run far deeper than mainstream legal scholars have acknowledged.

The failure of legal institutionalisation becomes a global phenomenon, yet its manifestations are particularly pronounced in Indonesia. Empirical evidence from the World Justice Project Rule of Law Index 2025 reveals that Indonesia remains stagnant in the middle tier of global rule of law performance, ranking 69th out of 143 countries with a score of 0.52.² While the state has relatively succeeded in maintaining public order and security, significant challenges persist in the areas of government accountability, control of public power, protection of fundamental rights, transparency, and the integrity of legal institutions. Public perceptions of judicial corruption, selective law enforcement, abuse of authority, and limited institutional independence have gradually eroded confidence in its legal system. This institutional deficit is further reflected in contemporary public trust dynamics within Indonesia's law enforcement system. According to a survey reported by Jakarta Globe, public confidence in the Attorney General's Office has reached 61%, slightly surpassing the Corruption Eradication Commission (KPK) at 60% and the National Police at 54.3%.³ However, growing public trust in certain law enforcement institutions has not been accompanied by a corresponding improvement in the overall quality of the rule of law. This demonstrates a paradox in which visible enforcement success generates institutional legitimacy without necessarily strengthening systemic accountability, transparency, judicial independence, or constitutional checks and balances. Consequently, a widening gap has emerged between law as formally enacted and law as socially experienced, leaving legal norms formally valid but insufficiently embedded within society or accepted as socially legitimate.

The discourse on the relationship between law and society has been ongoing for centuries. Aristotle proposed his concept of *nomoi* rooted in collective custom;⁴ Cicero formulated *lex*

¹ Frederick Schauer, *The Force of Law* (Harvard University Press, 2015); Brian Z. Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge University Press, 2006).

² World Justice Project, 'WJP Rule of Law Index® 2025: Indonesia Insights', World Justice Project, 2025, <https://worldjusticeproject.org/rule-of-law-index/country/2025/Indonesia/>.

³ Iman Rahman Cahyadi, *Indonesians Now Trust Prosecutors More Than KPK, New Survey Reveals*, 2025, <https://jakartaglobe.id/news/indonesians-now-trust-prosecutors-more-than-kpk-new-survey-reveals>.

⁴ Stefan Eich, 'Between Justice and Accumulation: Aristotle on Currency and Reciprocity', *Political Theory* 47, no. 3 (2019): 363–90, <https://doi.org/10.1177/0090591718802634>; George Duke, *Aristotle's Legal Theory: The Politics of Nomos* (Cambridge University Press, 2020).

aeterna as eternal law derived from divine reason;⁵ while modern legal positivists from Bentham⁶ to Kelsen⁷ sought to reduce law to a normative system purified of moral and social contamination. Yet, it is precisely in this ambition for purification that the seeds of alienation were planted: when law is separated from its social substrate, it loses its legitimacy—and without legitimacy, there is only compulsion remains.⁸

Indonesia confronts such problem in a particularly layered and distinctive dimension. As a country with a hybrid legal system inheriting Dutch civil law tradition with the customary legal system of more than 300 ethnic groups and the strong influence of Islamic law over the majority of its population, Indonesia provides a particularly important case study for the debate between institutionalised law and coercive law.⁹ Legal pluralism is not merely a sociological fact in Indonesia: rather, it is a constitutional reality recognised in Article 18B of the 1945 Constitution—yet in practice, the state's legal system often operates as though this pluralism does not exist, imposing a single Euro-continental legal model upon a diverse and plural society.¹⁰

Hart, in his magnum opus *The Concept of Law*,¹¹ demonstrated that without the internal acceptance (the *internal point of view*) of community members, a legal system cannot function as a legal system at all. This becomes a crucial point frequently overlooked: law cannot be merely imposed from without; it must be accepted from within. Ehrlich,¹² the father of modern sociology

⁵ Fernando Llano Alonso, 'Cosmopolitanism and Natural Law in Cicero', in *The Threads of Natural Law: Unravelling a Philosophical Tradition*, ed. Francisco José Contreras (Springer Netherlands, 2013), https://doi.org/10.1007/978-94-007-5656-4_2; John R. Kroger, 'The Philosophical Foundations of Roman Law: Aristotle, the Stoics, and Roman Theories of Natural Law', in *Cicero and Modern Law*, ed. Richard O. Brooks (Routledge, 2009), <https://doi.org/10.4324/9781315095707-7>.

⁶ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press, 1876).

⁷ Hans Kelsen, *Pure Theory of Law* (Lawbook Exchange, 2005).

⁸ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (John Wiley & Sons, 2015); Tom R. Tyler, *Why People Obey the Law* (Princeton University Press, 2006), <https://doi.org/10.2307/j.ctv1j66769>.

⁹ Ratna Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2013); 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>; Varun Gauri, 'Customary Law and Economic Outcomes in Indonesia', *Hague Journal on the Rule of Law* 2, no. 1 (2010): 75–94, <https://doi.org/10.1017/S1876404510100049>; Irene I. Hadiprayitno, 'The Limit of Narratives: Ethnicity and Indigenous Rights in Papua, Indonesia', *International Journal on Minority and Group Rights* (Leiden, The Netherlands) 24, no. 1 (2017): 1–23, <https://doi.org/10.1163/15718115-02401004>.

¹⁰ Tody Sasmita Jiwa Utama, 'Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System', *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 269–89, <https://doi.org/10.1080/07329113.2021.1945222>; 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>.

¹¹ H. L. A. Hart, *The Concept of Law*, Clarendon Law Series (Oxford University Press, 1979).

¹² Eugen Ehrlich, *Grundlegung Der Soziologie Des Rechts* (Verlag von Duncker & Humblot, 1913).

of law, further articulated this even earlier through his doctrine of *living law*—law that genuinely lives and operates in society through actual behaviour patterns, not through official texts. Tyler¹³ subsequently provided robust empirical support that legal compliance is far more determined by perceptions of procedural justice than by the calculus of sanction threats.

The phenomenon of legal transplant failure identified by Friedman¹⁴ further illustrates the crisis: nations that massively adopt Western legal codifications often experience the inability of written norms to take root in different socio-cultural soils. This failure is imaginative—as a failure to conceive that law must live within and alongside its society, not be imposed from above in a rigid hierarchy of norms.

Based on the foregoing background, this article formulates two principal research questions: First, how can law achieve genuine institutionalisation in Indonesia's plural society, beyond mere formal compliance enforced by sanctions? Second, to what extent can the coercive authority of law effectively produce sustainable social order, and what alternatives are more capable to realise the fundamental purpose of law itself? The novelty of this study lies in its systematic integration of comparative socio-legal analysis, Indonesian jurisprudential thought, and critical legal theory within the specific constitutional and cultural context of Indonesia's plural legal order—a combination that has not been previously synthesised in this comprehensive and critical manner.

B. Research Method

This research adopts a doctrinal-conceptual approach with an analytically expanded interdisciplinary construction. As Marzuki¹⁵ argues, legal research is fundamentally normative in nature. However, the normative construction in this study is understood in broader sense than conventional juridical-regulatory analysis. Rather than being confined to the broader sense of conceptual analysis of legal norms, values, and principles encompassing their sociological and philosophical dimensions. The distinction between normative and juridical is significant: normative pertains to conceptual-evaluative analysis of legal imperatives, while juridical is primarily directed towards the interpretation and application of operative rules.¹⁶

Primary legal materials include relevant legislative texts, significant judicial decisions, and constitutional documents. Secondary legal materials encompass domestic and international legal

¹³ Tyler, *Why People Obey the Law*.

¹⁴ Lawrence M. Friedman, 'Legal Culture and Social Development', *Verfassung in Recht Und Übersee* 2, no. 3 (1969): 261–74, <https://doi.org/10.5771/0506-7286-1969-3-261>.

¹⁵ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Prenada Media, 2021).

¹⁶ Michael Giudice, *The Normativity of Law*, Elements in Philosophy of Law (Cambridge University Press, 2024), Cambridge Core, <https://doi.org/10.1017/9781009209854>.

literature, legal journals from diverse academic traditions, and both classical and contemporary works in sociology and legal philosophy of law. Relevant non-legal materials—including works in sociology, social philosophy, criminology, and comparative studies—are selectively integrated to enrich the analysis without displacing its normative foundation.¹⁷

The analytical method is qualitative analysis through hermeneutic interpretation of legal and legal-philosophical texts, combined with a critical legal studies approach to expose ideological assumptions concealed within mainstream legal discourse. A comparative approach is utilised to contrast Indonesia's experience with other national contexts, through the recognition that comparison must be conducted contextually and must not reduce the complexity of each system. This research acknowledges its limitations. As a conceptual-normative study, it does not claim to generate new empirical data about Indonesia's legal condition. Rather, its contribution lies in systematic theoretical elaboration and critical reflection intended to open new perspectives for subsequent empirical research.

C. Results and Discussion

1. Law as Cultural Product: Roots of the Legitimacy Crisis

Law, in its most fundamental sense, refers to a cultural product—a crystallisation of the values, norms, and collective aspirations of a civilisation striving to organise its common life.¹⁸ This premise carries fundamental methodological consequences that law cannot be adequately understood without understanding the society produced. The ancient adage of *ubi societas ibi ius*—where there is society, there is law—is not merely a beautiful aphorism; rather, it is an ontological statement about the basic nature of law.¹⁹

However, this statement is frequently inverted into *ubi ius ibi societas*—as though society must adapt to law rather than law developing from the social order it seeks to regulate. This

¹⁷ David M. Trubek, 'Toward a Social Theory of Law: An Essay on the Study of Law and Development', *The Yale Law Journal* 82, no. 1 (1972): 1–50, <https://doi.org/10.2307/795251>.

¹⁸ Sally Falk Moore, *Law as Process: An Anthropological Approach* (LIT Verlag Münster, 2000); Roger B. M. Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Routledge, 2017); Friedman, 'Legal Culture and Social Development'; Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975); Esmi Warassih, *Pranata Hukum: Sebuah Telaah Sosiologis*, Cetakan ke-2 (Badan Penerbit Universitas Diponegoro, 2010).

¹⁹ Juan Martin Liotta and Amadeo Szpiga, 'Unsettling the Regime of Human Rights: Decolonial Reflections Beyond the Law', *Sortuz: Oñati Journal of Emergent Socio-Legal Studies* 12, no. 1 (2022): 153–69, <https://opo.iisj.net/index.php/sortuz/article/view/1590>; Monia Ciravegna, 'Ubi Societas, Ibi Ius: The Legal System', in *Damanhur: An Esoteric Community Open to the World*, ed. Stefania Palmisano and Nicola Pannofino (Springer International Publishing, 2023), https://doi.org/10.1007/978-3-031-10137-3_4; Mark van Hoecke, *Law as Communication* (Bloomsbury Publishing, 2002); Hans Kelsen, 'The Law as a Specific Social Technique', *The University of Chicago Law Review* 9, no. 1 (1941): 75–97, <https://doi.org/10.2307/1597151>.

inversion lies at the root of the legitimacy crisis in many developing nations, including Indonesia. When the Dutch colonial government implemented its civil law system in the Dutch East Indies, it did not transplant law into fertile social soil; instead, it imposed law onto a fundamentally different cultural terrain. The *Burgerlijk Wetboek* was designed for a European population in the colony rather than for indigenous peoples with profoundly different systems of land ownership and social organisation. When this law was largely preserved after independence with superficial modifications, the structural disconnection between formal law and the social realities it governed largely persisted.²⁰

Pound's²¹ conception of law as a tool of social engineering was later developed in the Indonesian context as the idea of law as a means of social transformation. However, such transformation should not be externally imposed; rather, it must remain grounded in the values, norms, and legal consciousness living within society itself. As Warassih²² argues, law does not operate in a vacuum but forms part of a wider social life in which legal institutions both shape and are shaped by broader social forces. The capacity of society vis-à-vis law very much determines the actualisation of law's development.

2. The Positivist Paradigm and Its Critical Limits

The tradition of legal positivism—from Austin²³ and Bentham²⁴ through Kelsen²⁵ to Hart²⁶—has dominated legal thought since the nineteenth century. In this tradition, law is understood as commands issued by a sovereign authority backed by sanction threats for violators.²⁷ Positivism's principal strength lies in its clarity and certainty that law is what is written and established by authorised authority, nothing more and nothing less. This provides a clear and predictable standard relatively free from subjective manipulation.

Nonetheless, this clarity carries an enormous price. By emptying law of its moral and social content, positivism created what Radbruch²⁸ called *gesetzliches Unrecht*—statutory injustice—

²⁰ Daniel S. Lev, 'Colonial Law and the Genesis of the Indonesian State', *Indonesia*, no. 40 (1985): 57–74, <https://doi.org/10.2307/3350875>.

²¹ Roscoe Pound, *The Spirit of the Common Law* (Beacon Press, 1963).

²² Warassih, *Pranata Hukum: Sebuah Telaah Sosiologis*.

²³ John Austin, *The Province of Jurisprudence Determined* (John Murray, 1832).

²⁴ Bentham, *An Introduction to the Principles of Morals and Legislation*.

²⁵ Kelsen, *Pure Theory of Law*.

²⁶ Hart, *The Concept of Law*.

²⁷ H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford University Press, 2008), <https://doi.org/10.1093/acprof:oso/9780199534777.001.0001>.

²⁸ Gustav Radbruch, 'Five Minutes of Legal Philosophy (1945)*', *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15, <https://doi.org/10.1093/ojls/gqi042>; Gustav Radbruch, 'Statutory Lawlessness and Supra-Statutory Law (1946)*', *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11, <https://doi.org/10.1093/ojls/gqi041>.

which became the foundation for justifying various tyrannical regimes in the twentieth century. The traumatic experience of Nazi law compelled Radbruch to revise his position dramatically – law that explicitly denies justice no longer deserves to be called law. Radbruch’s formula opened the path toward the understanding that legal legitimacy cannot be fully separated from its moral dimension.²⁹

Dworkin³⁰ advanced this critique further in *Taking Rights Seriously*. This states that law consists not only of rules but also of principles and policies that cannot be reduced to written norms. The ideal judge—Dworkin’s *Hercules*—finds the right answer through the principles embedded in a community’s legal tradition. Selznick³¹ distinguished three models of law: between *repressive law* (law serving power), *autonomous law* (formally independent law), and *responsive law* (law adaptive to social needs). Most Indonesian law remains trapped between repressive and autonomous models, falling short of the responsive legal order required to address contemporary social realities.

Kant’s³² well-known observation that jurists have yet to reach a universally satisfactory definition of law underscores its irreducible conceptual complexity. Reducing law to a system of sanction-backed commands therefore offers an unduly narrow account that risks obscuring its normative, institutional, and social functions. This difficulty is also reflected in the contrast between an inclusive positivist approach, which remains open to social and non-legal considerations, and a more rigid positivist approach that sharply separates law from its broader social context. In many respects, this distinction closely parallels the tension between law understood as an institutionalised normative order and law treated primarily as an instrument of coercion.

3. Sociological Jurisprudence: From Ehrlich to Bourdieu

Ehrlich³³ formulated the thesis that what is most important for the development of law is neither legislation, nor jurisprudence, nor legal science, but society itself. His doctrine of *living*

²⁹ Marijan Pavčnik, ‘Radbruch’s Formula and the Concept of Law’, in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Springer Netherlands, 2017), https://doi.org/10.1007/978-94-007-6730-0_218-1; Vanja-Ivan Savić, ‘Radbruch’s Formula and the Conscience of a Saint: Cardinal Alojzije V. Stepinac’, *Studia z Prawa Wyznaniowego* 26 (2023): 147–70, <https://doi.org/10.31743/spw.14455>.

³⁰ Ronald Dworkin, *Taking Rights Seriously* (Bloomsbury Publishing, 2013).

³¹ Philip Selznick, *Law, Society, and Industrial Justice* (Russell Sage Foundation, 1969), 290.

³² Immanuel Kant, *Critique of Pure Reason*, trans. Paul Guyer and Allen W. Wood, The Cambridge Edition of the Works of Immanuel Kant (Cambridge University Press, 1999).

³³ Ehrlich, *Grundlegung Der Soziologie Des Rechts*.

law challenges positivism's fundamental premise that genuine law is not the law in statute books, but the law that actually governs social behaviour in real life. In hundreds of indigenous communities across Indonesia, Ehrlich's living law is not a theoretical concept; rather it is the daily reality.

Weber's³⁴ typology of legal rationality remains analytically indispensable. He distinguished four ideal types of law: *formal rational law* (decided through abstract formal procedures), *substantive rational law* (decided through consistent ethical principles), *formal irrational law* (decided through revelation or magical procedures), and *substantive irrational law* (decided through ad hoc reactions to individual situations). The project of legal modernisation—including in Indonesia—is fundamentally a project of shifting systems from irrationality toward formal rationality. However, Weber himself warned that excessive formal rationalisation also produces alienation: law perfect in procedural form yet emptied of meaning for those it is supposed to serve.

Bourdieu's³⁵ concept of the *juridical field* exposes the hidden dimensions of power operating through law. Bourdieu conceptualise law as a neutral system of norms but as a field of power in which *symbolic violence*—the exercise of domination concealed beneath the appearance of neutrality—serves as the primary mechanism of domination. Galanter³⁶ provided complementary empirical evidence for this perspective, arguing that *repeat players*—corporations and government institutions that engage with the legal system repeatedly—enjoy systematic advantages over *one-shotters*—ordinary individuals who engage only occasionally. The coercive law is not applied evenly; it tends to coerce the weak and protect the strong.

Friedman's³⁷ tripartite framework distinguishes three interrelated dimensions of the legal system: *legal structure* (formal institutions and procedures), *legal substance* (actual rules and norms), and *legal culture* (attitudes and values about law held by society). Using Friedman's tripartite framework, this article argues that Indonesia's legal crisis can be diagnosed primarily as a *legal culture deficit*: formal legal structure and substance are available, but the legal culture to support them remains deeply insufficient—a consequence of the historical alienation deeply rooted in colonial transplantation.

³⁴ Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, v. 2 (University of California Press, 1978).

³⁵ Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', *The Hastings Law Journal* 38, no. 5 (1987): 814–35, https://repository.uclawsf.edu/hastings_law_journal/vol38/iss5/3/.

³⁶ Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change', *Law & Society Review* 9, no. 1 (1974): 95–160, Cambridge Core, <https://doi.org/10.2307/3053023>.

³⁷ Friedman, *The Legal System: A Social Science Perspective*.

The concept of *legal culture* is particularly important for understanding why coercive approaches could not be implemented in Indonesia. Friedman's later work on *total justice* observes that modern societies develop rising expectations for justice as citizens become more educated and politically aware. They expect legal systems to deliver not just formal outcomes but genuinely just outcomes. When these expectations are consistently disappointed or are experienced as corrupt, inaccessible, or biased toward the powerful, the result is not passive acceptance but active disengagement and, ultimately, replacing formal law by informal norms. The growth of informal regulatory mechanisms in Indonesian business life, the persistence of informal land tenure arrangements in urban (*kampung*) communities, and the vitality of customary dispute resolution even in urban settings reflect a legal culture that has learned to work around rather than through formal legal institutions.

Selznick's³⁸ framework adds an important dynamic dimension. The shift from *repressive* to *autonomous* to *responsive* law is not linear or automatic – it requires conscious institutional development and sustained political will. Indonesia has conducted the transition from repressive colonial law to formally autonomous post-independence law. The critical challenge now is to advance beyond autonomous legality towards genuinely responsive law—one that adapts substantively to the needs of the diverse communities it serves while maintaining the consistency, predictability, and equality before the law that underpin a coherent legal system. In its fullest sense, this represents the central objective of legal institutionalisation.

4. Communicative Rationality, Fuller's Inner Morality, and Legal Legitimacy

Habermas,³⁹ in *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, argues that the legitimacy of modern law cannot rest on formal procedure (legality), but must arise from a process of rational public deliberation—called *communicative rationality*. Legitimate law defines as law that could be accepted by all parties affected if they were to engage in free and equal discourse. The implication for Indonesia is fundamental because statutes created without meaningful public participation suffer a legitimacy deficit that cannot be closed by more intense enforcement.

Fuller,⁴⁰ in *The Morality of Law*, proposed the concept of the *inner morality of law*—eight principles that must be satisfied for a system to qualify as a genuine legal system: generality,

³⁸ Selznick, *Law, Society, and Industrial Justice*.

³⁹ Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*.

⁴⁰ Lon L. Fuller, *The Morality of Law* (Yale University Press, 1969).

promulgation, non-retroactivity, clarity, internal consistency, possibility of compliance, stability over time, and congruence between official action and declared rules. The eighth principle—congruence between written rules and the actions of officials—is the one of the most systematically violated in Indonesia. Police officer who enforces traffic regulations selectively based on bribes, prosecutors whose charging decisions are influenced by considerations outside the law, and judges who decide under external pressure each undermine the integrity of the legal system. Each violation of Fuller's principles not only damages the integrity of the system but erodes the public trust that is the prerequisite for genuine institutionalisation.

Unger⁴¹ identified the *disintegration of law* as the failure of modern law to integrate communal values with procedural certainty. Modern law is trapped in a fundamental antinomy between rigid formal principles on one side and particularistic substantive demands on the other. This antinomy cannot be resolved with more sophisticated legal technique; rather, it demands a paradigmatic transformation of what we mean by 'law.'

Scholten's⁴² foundational observation mentioned that law containing both historical and social elements as constitutive of its scientific character provides the methodological bridge between the positivist and sociological traditions. Law is neither purely a system of formal norms susceptible to logical analysis, nor a social fact susceptible to empirical observation. Law encompasses both dimensions: it is a normative order that is simultaneously formal and social embedded, authoritative yet culturally embedded, and universal in aspiration while remaining context-specific in its application. The task of a comprehensive legal theory—and the task of legal reform in Indonesia—is not to privilege one dimension over the other, but reconcile them through institutional forms and interpretive practices capable of accommodating both.

Soeprapto⁴³ analysis of legislative science reminds that the formal-procedural dimension of law—the dimension that positivism gets right—cannot simply be abandoned in the name of substantive justice or cultural sensitivity. Legal certainty, consistency, and predictability are not mere bourgeois formalities; they are fundamental rights for everyone who must organise their lives in relation to law. The progressive critique of positivism is not an argument for legal indeterminacy; rather, it is an argument for a richer, more contextual, and more substantively just understanding of what legal certainty means—one that includes not only the certainty of formal

⁴¹ Roberto Mangabeira Unger, *Law in Modern Society* (Simon and Schuster, 1977).

⁴² Paul Scholten, *De Structuur Der Rechtswetenschap* (Noord-Hollandsche Uitg. Maatschappij, 1945).

⁴³ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya* (Kanisius, 1998).

text but the certainty that law will be applied with genuine equality, human dignity, and responsiveness to the actual needs of those it serves.

Table 1.
Comparison of Theoretical Paradigms in Understanding Law and Society

Paradigm	Source of Law	Basis of Compliance	Analytical Focus	Key Thinkers
Analytical Positivism	State legislation, authoritative decisions	Sanction threats, deterrence	Normative text, formal validity	Austin, Kelsen, Hart
Sociology of Law	Social practice, living law, custom	Value internalisation, norms	Actual behaviour, social context	Ehrlich, Weber, Friedman
Critical Legal Studies	Dominant ideology, power relations	Symbolic violence (Bourdieu)	Power distribution through law	Unger, Bourdieu, Galanter
Discourse Theory	Deliberative consensus, communication	Communicative legitimacy	Deliberation procedures	Habermas, Alexy
Progressive Law	Human values, social context	Empathy and substantive justice	Humans as legal subjects	Rahardjo, Wignjosoebroto
Modern Natural Law	Universal moral principles	Intrinsic moral obligation	Basic ethical principles of law	Fuller, Dworkin, Finnis

Source: author's analysis

5. Progressive Law: The Indonesian Theoretical Contribution

Rahardjo⁴⁴ developed the theory of progressive law as a response to Indonesia's specific needs and a direct critique of the formalism dominant in Indonesian legal practice. For him, progressive law departs from a fundamental assumption: law is for humans, not humans for law. This seemingly simple proposition has revolutionary implications: human beings in their full humanity—not legal texts—occupy the centre of legal attention and concern.

Rahardjo's critique resonates with Banakar's⁴⁵ observation that the greatest challenge for sociology of law is bridging the gap between empirical analysis of how law works in practice and normative inquiry into how it ought to work. Progressive law is precisely an attempt to bridge this gap from an Indonesian perspective by refusing the rigid dichotomy between *is* and *ought*. It opens

⁴⁴ 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>.

⁴⁵ Reza Banakar, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (Springer, 2014); Reza Banakar, 'Can Legal Sociology Account for the Normativity of Law?', in *Social and Legal Norms: Towards a Socio-Legal Understanding of Normativity*, 1st edition, ed. Matthias Baier (Ashgate, 2013), <https://doi.org/10.4324/9781315609416-3>.

space for responsible critical reflection on existing legal practice while pushing toward its transformation into something more just and humane.

Pound's⁴⁶ conception of law as social engineering presents law as an instrument for organising competing interests and directing social change. However, legal transformation cannot be effective when it is detached from the values, institutions, and social conditions of the community it seeks to regulate. Law must therefore operate not as an externally imposed mechanism, but as a socially grounded instrument capable of responding to the lived realities of society.

The tension between Rahardjo's⁴⁷ progressive law and the dominant positivist tradition in Indonesian legal education is not merely academic. It reflects a deeper contest about what kind of society Indonesia aspires to be. A society governed by rigid formal norms applied by 'mouthpieces of legislation' who subordinate human dignity to procedural correctness is a fundamentally different society from one governed by responsive, adaptive, and humanistic law that places human welfare at its centre. By continuing to educate predominantly the former type of legal professional, Indonesian legal education has, albeit unintentionally, contributed to the persistence of conditions that impede effective legal institutionalisation.

Hazairin's⁴⁸ critique that a purely social-scientific approach risks reducing law to a social phenomenon while neglecting its ethical and spiritual dimensions complements Rahardjo's argument from a different perspective. Although their points of departure differ, both reject attempts to confine law either to empirical sociology or legal positivism, insisting on the centrality of values—ethical, spiritual, and cultural—that cannot be captured by either empirical social science or formal normativity. The author's proposed concept of law as *social reflection* rather than *social phenomenon*. Under this conception, law is understood as the accumulated moral output of a cultural process of contemplation and value construction, rather than merely reactive response to social change.⁴⁹

6. Legal Alienation in Indonesia: Historical Roots and Contemporary Manifestations

The estrangement between law and society—*legal alienation*—has deep historical roots in Indonesia. The colonial legal system was built not to serve the welfare of indigenous peoples, but

⁴⁶ Pound, *The Spirit of the Common Law*; Roscoe Pound, *An Introduction to the Philosophy of Law* (Lawbook Exchange, 2003).

⁴⁷ Satjipto Raharjo, *Pendidikan Hukum Sebagai Pendidikan Manusia* (Genta Publishing, 2009).

⁴⁸ Hazairin, *Tujuh Serangkai Tentang Hukum* (Tintamas Indonesia, 1974).

⁴⁹ Ilham Yuli Isdiyanto, 'Problematika Teori Hukum, Konstruksi Hukum, Dan Kesadaran Sosial', *Jurnal Hukum Novelty* 9, no. 1 (2018): 54–69, <https://doi.org/10.26555/novelty.v9i1.a8035>.

to secure the interests of colonial governance and European capital. This legacy continued post-independence. Rather than radically transforming the colonial legal inheritance, Indonesia tended to preserve it with superficial modification – resulting a legal system that is structurally alien to the majority of its own population.

Rahardjo⁵⁰ observed with deep concern that ‘the law found on the streets can be a good prototype of legal life in Indonesia’—an acknowledgment that everyday law as practiced by society is often profoundly different from the law in textbooks. This manifests in multiple ways: not wearing a helmet while riding a motorcycle not because one does not know the rule, but because the rule is not felt as part of a relevant value order; building on disputed land not because one is ignorant of legal procedure, but because the formal legal system is seen as too expensive, too slow, and too unreliable to deliver justice.

The phenomenon of *vigilantism* that still occurs in various regions—from the burning of criminals by mobs to forced expulsions by communities—must be understood not as manifestations of ‘barbarism’ to be eradicated with more state coercion, but may be read as a symptom of profound legal alienation. Communities no longer trust the formal legal system to protect them, and therefore take law enforcement into their own hands. A state response that only adds coercion without addressing the roots of alienation will only deepen the crisis.

Haryono’s⁵¹ critique is particularly pertinent: courts that focus only on applying statutes have shifted from being enforcers of justice to being ‘mouthpieces of legislation.’ The domination of formal-rational legal thinking over substantive justice is not merely a theoretical concern; it is a lived experience of injustice that millions of Indonesians encounter daily.

The phenomenon of power inequality operating through law—what Bourdieu⁵² would call *symbolic violence*—is starkly visible in Indonesia’s recurring pattern of ‘*sharp law below, blunt law above*.’ A labourer prosecuted for stealing instant noodles receives a prison sentence, while a corrupt official stealing billions receives reduced sentencing and special prison facilities. This disparity cannot be explained by individual misconduct among law enforcement officials. Rather, it reflects the structural inequality of a system in which Galanter’s⁵³ *repeat players*—corporations, government institutions, and well-resourced individuals—systematically outmanoeuvre *one-*

⁵⁰ Satjipto Rahardjo, *Aneka Persoalan Hukum & Masyarakat* (Alumni, 1983).

⁵¹ Haryono Haryono, ‘Penegakan Hukum Berbasis Nilai Keadilan Substantif (Studi Putusan MK No. 46/PUU-VII/2012 Tertanggal 13 Februari 2012)’, *Jurnal Hukum Progresif* 7, no. 1 (2019): 20–39, <https://doi.org/10.14710/hp.7.1.20-39>.

⁵² Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’.

⁵³ Galanter, ‘Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change’.

shotters—ordinary citizens who lack the financial, social, and institutional resources to navigate the legal system.

Wignjosoebroto's⁵⁴ insight that law is '*not a value-free edifice*' but '*a way of thinking embedded in the minds of society's members*' underscores the systemic nature of this problem. The legal consciousness of those who design, interpret, and enforce Indonesian law continues to be shaped by an inherited positivist paradigm that systematically undervalues substantive justice, community norms, and the lived realities of those most dependent on legal protection. Until this deep structural bias is addressed through legal education reform and institutional culture change, the cycle of alienation is likely to persist.

What particularly distinguishes Indonesia's case from other post-colonial legal transitions is the persistence of the colonial legal structure despite a formally democratic constitutional framework. Article 27(1) of the 1945 Constitution guarantees equality before the law for all citizens. Yet, the structural inequality embedded in the inherited legal system—in access costs, procedural complexity, elitist legal language, and enforcement selectivity—ensures that formal equality remains substantively hollow for millions of Indonesians. Although Poulantzas' observation that law in capitalist societies fundamentally serves the interests of the dominant class⁵⁵ may be regarded as overly deterministic, it nevertheless highlights an important structural bias of Indonesia's legal system that progressive reformers must squarely confront.

Table 2.
Legal Consciousness Indicators and Their Relationship to Legal Institutionalisation

Level	Indicator (Soekanto)	Social Characteristic	Relation to Institutionalisation	Enhancement Strategy
Legal Knowledge	Awareness of the existence of certain rules	Surface knowledge, normative	Minimal precondition, insufficient	Socialisation, legal extension
Legal Understanding	Understanding the content and purpose of rules	Cognitive, rational, analytical	Necessary condition, insufficient	Legal education, literacy programs
Legal Attitude	Evaluating rules as just or unjust	Evaluative, affective, critical	Bridge toward internalisation	Reform of legal substance
Legal Behaviour	Consistently acting in accordance with norms	Dispositional, habitual	Early indicator of institutionalisation	Fair and consistent enforcement

⁵⁴ Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode, Dan Dinamika Masalahnya* (Elsam, 2002).

⁵⁵ Poulantzas reconceptualizes the state not as a simple instrument of ruling-class domination, but as a complex social relation that embodies and condenses the dynamics of ongoing class struggles. See Nicos Poulantzas, *State, Power, Socialism*, ed. Patrick Camiller (New Left Books, 1978).

Level	Indicator (Soekanto)	Social Characteristic	Relation to Institutionalisation	Enhancement Strategy
Value Internalisation	Living the values behind rules	Cultural, identity, deeply felt	Authentic legal institutionalisation	Participation in law-making

Source: author's analysis

7. Legal Consciousness and the Anatomy of Institutionalisation

Soekanto⁵⁶ identified four indicators of legal consciousness that have become the standard reference in Indonesian legal studies – including *legal knowledge*, *legal understanding*, *legal attitude*, and *legal behaviour*. These four indicators form a continuum from the most superficial consciousness (merely knowing a rule exists) to the deepest consciousness (genuinely internalising legal values in daily behaviour). The fifth level, value internalisation presented in Table 2 above, represents the author's conceptual extension of Soekanto's framework, drawing on Tyler's procedural justice research and Ehrlich's living law doctrine to articulate the condition of authentic legal institutionalisation that Soekanto's four indicators approach, yet they do not fully capture.

The principal weakness conducted by Soekanto's framework is its tendency to view legal consciousness as a linear variable that can be 'increased' primarily through socialisation and legal education. This approach focuses excessively on the individual as the unit of analysis and neglects the social and institutional structures that systematically constrain the development of collective legal consciousness. Cotterrell⁵⁷ offers a more critical perspective: legal consciousness cannot be separated from material conditions and power relations in society. Tyler's⁵⁸ empirical research adds a crucial psychological dimension: compliance is far more determined by perceptions of procedural justice—whether people feel treated with respect and fairness—than by sanction calculations.

Legal institutionalisation, as a concept, transcends both validity and effectiveness. It is not merely about whether law is formally valid (is it legitimate?) or effective (is it obeyed?), but about internalisation—whether law is genuinely experienced as part of the identity and values of the community. Well-institutionalised law defines as *self-sustaining* – it does not require intensive external enforcement because community members have internalised its values and feel a personal stake in upholding it.

⁵⁶ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Rajawali, 1983).

⁵⁷ Roger B. M. Cotterrell, *The Sociology of Law: An Introduction* (Butterworths, 1992).

⁵⁸ Tyler, *Why People Obey the Law*.

Asshiddiqie's⁵⁹ vision of Indonesia as a *negara hukum* (rule of law state) demands formal legality and substantive justice equally distributed to all citizens. Realising this vision also requires better enforcement and structural transformation of the legal system itself—from a system that serves the powerful to one that genuinely protects the vulnerable. The failure to make such transformation is precisely why legal institutionalisation in Indonesia remains a project in progress rather than an accomplished reality.

A critical mapping of legal consciousness conditions in Indonesia reveals a complex and nuanced picture. Various socio-legal studies consistently show that Indonesian society generally exhibits high 'legal consciousness' in the sense of normative systems—customary and social norms—governing community life, while displaying relatively low 'legal consciousness' toward the formal state legal system, particularly in communities distant from urban centres and state administration.

This distinction is fundamental. The problem is not that Indonesians lack normative consciousness; rather, they possess a strong awareness of the customary rules, social obligations, and ethical principles that govern their communities. The problem lies in the fact that the formal state legal system is often perceived as detached from these lived normative systems. For instance, a farmer who does not know the procedural requirements for land registration under the National Land Agency (BPN) is not 'legally unconscious' in any deep sense. Instead, she is profoundly conscious of the customary norms governing land ownership in her community—norms that are far more effective and legitimate for her daily life.

The distinction between *law consciousness* (awareness of specific legal rules) and *legal awareness* (consciousness of fundamental principles of justice and social order) is crucial in understanding the relationship between legal norms and societal values. Indonesian society typically demonstrates high *legal awareness* even when *law consciousness* regarding formal statutory rules remains limited. Effective strategies for increasing legal institutionalisation, therefore, must begin with recognising what communities already know and believe, not simply transmitting what they 'should' know according to statutory texts. Popular legal education is therefore likely to be more effective when it builds upon existing community values and gradually connect them to the formal legal frameworks, instead of relying on top-down socialisation campaigns.⁶⁰

⁵⁹ Jimly Asshiddiqie, 'Gagasan Negara Hukum Indonesia', *Majalah Hukum Nasional* (Jakarta), no. 1 (2012).

⁶⁰ Ibrahim Ahmad, 'Rencana dan Strategi Peningkatan Kesadaran Hukum Masyarakat', *Gorontalo Law Review* 1, no. 1 (2018): 15, <https://doi.org/10.32662/golrev.v1i1.94>.

The prolific production of legislation in post-reform Indonesia has paradoxically worsened rather than improved legal institutionalisation. Wintgens⁶¹ concept of *legisprudence*—the science of rational law-making—offers a corrective way. Every regulation must be explicitly and proportionately justified as a restriction on freedom, demonstrably necessary, and empirically grounded in evidence about its social effect. The explosion of regulations across all levels of government post-1998 has produced thousands of often contradictory, overlapping, and systemically incoherent rules. Proliferation of regulations without serious consideration of social absorption capacity only worsens the institutionalisation crisis. The more norms that go unobeyed, the lower overall legal authority becomes.

8. The Paradox of Coercion: When Force Breeds Resistance

One of the most counterintuitive findings in sociology of law is that increased coercive intensity does not reliably produce increased compliance and frequently produces the opposite. Tamanaha⁶² demonstrates that legal systems excessively reliant on coercion experience of *enforcement fatigue*. This enforcement costs become unsustainable, and public trust continues to erode as law is perceived as an instrument of violence rather than justice. Excessive coercion produces ‘*compliance through fear*’—extremely fragile compliance that evaporates the moment detection probability declines.

Tyler’s⁶³ empirical evidence provides compelling evidence that perceptions of procedural fairness are a key determinant of legal compliance. Those who perceive themselves as treated fairly by the legal system tend to comply with the law even when supervision is limited, whereas those who feel treated unjustly seek ways to circumvent the law even under intense scrutiny. This paradox of coercion is particularly relevant in Indonesia, where large-scale enforcement operations—from traffic crackdowns to corruption investigations—often face creative and systematic resistance, not as a sign of ‘low legal consciousness’, but rather as a rational response from social actors confronting a system perceived as unfair.

Van Kan⁶⁴ correctly recognised that coercive character is only one among several equally important attributes of law, including ordering, convincing, and warning. Reducing law to mere compulsion is not only theoretically defective; it has dangerous practical consequences. It enables

⁶¹ Luc J. Wintgens, ‘Legisprudence as a New Theory of Legislation’, *Ratio Juris* 19, no. 1 (2006): 1–25, <https://doi.org/10.1111/j.1467-9337.2006.00315.x>.

⁶² Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press, 2021).

⁶³ Tyler, *Why People Obey the Law*.

⁶⁴ J. van Kan, *Inleiding tot de Rechtswetenschap* (De Erven F. Bohn, 1920).

those in authority to invoke arbitrary coercion, while discouraging the development of more persuasive, deliberative, and restorative approaches to social conflict resolution.

The emblematic cases of Minah and AAL have become enduring symbols of the failure of legal institutionalisation in Indonesia. In 2009, Minah, an elderly farmer in Banyumas, was prosecuted under Article 362 of the Indonesian Criminal Code for taking three cocoa pods worth only a negligible amount, despite having immediately returned them and apologised.⁶⁵ Likewise, AAL, a vocational high school student in Palu, became the subject of criminal proceedings after being accused of taking a pair of flip-flops belonging to a police officer, an incident that provoked nationwide outrage and the symbolic “1,000 Flip-Flops Movement” as a public protest against perceived injustice.⁶⁶ These cases became widely known not because of the material losses involved, but they exposed a deeper structural paradox within the legal system. Rigid adherence to legal formalism and positivistic reasoning often led law enforcement institutions to prioritise procedural legality over substantive justice, proportionality, and humanity. In both cases, the law operated as an instrument of coercive certainty rather than as a mechanism for achieving social justice, reinforcing public perceptions that legal enforcement was disproportionately harsh toward ordinary citizens while frequently appearing ineffective against more serious abuses of power. Consequently, these cases illustrate the central critique advanced by progressive legal theory. When law is detached from moral reasoning, social realities, and human dignity, legal validity may be preserved, yet legal legitimacy is fundamentally undermined.⁶⁷

Similarly, the experience of anti-corruption enforcement through arrests and prosecution—while producing hundreds of convictions—has not necessarily produced a commensurate transformation in bureaucratic corruption culture, as reflected in Indonesia’s Corruption Perceptions Index (CPI) score of 37 and rank of 99 out of 180 countries in 2024.⁶⁸ This refers to a concrete illustration of Tamanaha’s paradox: intense enforcement without corresponding cultural and value change merely shifts the modus operandi of corruption – not its substantive occurrence. Authentic change also requires internalisation, not merely intimidation.

⁶⁵ Murdoko, ‘Disparitas Penegakan Hukum di Indonesia (Analisis Kritis Kasus Nenek Minah dalam Perspektif Hukum Progresif)’, *Perspektif Hukum* 16, no. 2 (2016): 221–30, <https://doi.org/10.30649/ph.v16i2.53>.

⁶⁶ Setiawan Nurdayasakti, ‘Mendesak, Amendemen Pasal Pencurian Ringan dalam KUHP’, *Legality: Jurnal Ilmiah Hukum* 20, no. 2 (2013): 64–79, <https://ejournal.umm.ac.id/index.php/legality/article/view/1541>.

⁶⁷ 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>; Suteki, *Masa Depan Hukum Progresif* (Thafa Media, 2015).

⁶⁸ Transparency International, ‘Corruption Perceptions Index 2024’, Transparency International, 11 February 2025, <https://www.transparency.org/en/cpi/2024>.

Table 3.
Coercive Law versus Institutionalised Law: A Multidimensional Comparative Analysis

Dimension	Coercive Law	Institutionalised Law
Basis of Compliance	Fear of sanctions, deterrence calculation	Value internalisation, acknowledged social legitimacy
Source of Authority	State power, monopoly on legitimate force	Social consensus, tradition, communal trust
Short-term Effectiveness	High if apparatus is consistent and non-corrupt	Slower if community has not prepared
Long-term Effectiveness	Low; high enforcement cost; creative resistance	Very high; self-sustaining compliance
Social Cost	High: enforcement apparatus, corruption, prison overcrowding	Low: community-based, restorative
Law-Society Relationship	Alienation, institutional distance, distrust	Organic integration, trust, relevance
Dispute Resolution Model	Adversarial litigation, formal criminal process	Mediation, restorative justice, customary deliberation
Theoretical Paradigm	Legal positivism, legalism, normativism	Sociological jurisprudence, legal pluralism
Indonesian Examples	Mass traffic crackdowns, anti-corruption arrests	Village deliberation (<i>musyawarah</i>), Dayak/Minang customary courts

Source: author's analysis

9. The Legislative Trajectory: Sectoral Recognition of Non-Coercive Resolution

One of the most significant yet under theorised developments in Indonesian legal history is the emergence of a broad legislative trajectory across more than a decade of law-making that systematically institutionalises non-coercive, mediation-based, and restorative forms of dispute resolution across disparate fields of substantive law. An analysis of a growing number of sectoral statutory instruments by design or accumulation demonstrates that the Indonesian legislature has been building the normative infrastructure for a fundamentally less coercive legal order, even as enforcement culture in institutions has lagged far behind.

This legislative trajectory begins with the foundational Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution—the *lex generalis* of ADR in Indonesia—which established the basic legal architecture for non-litigation settlement of civil and commercial disputes through expert advisors, mediators, and arbitrators, with binding written agreements. The jurisprudential significance of this legislation lies not merely the procedural mechanics it introduced, but in the underlying philosophy it embodies: that disputes should, where possible, be resolved through consensual and party-driven processes rather than through the coercive imposition of state

authority. Although legal positivists may regard this premise as peripheral to the definition of law, it reflects precisely what Ehrlich⁶⁹ describes as *living law* – law that actually governs behaviour through social consent rather than through threat of coercion.

The expansion of this legislative philosophy into the domain of labour relations through Law No. 2 of 2004 on Industrial Relations Dispute Resolution is particularly significant. Labour disputes—between structurally unequal parties where capital asymmetry is most acute—are precisely the domain where Galanter’s⁷⁰ warning about most applicable *repeat players* versus *one-shotters*. The legislature’s choice to establish a specialised mediator system—rather than defaulting to ordinary courts—reflects an implicit recognition that genuine justice in structurally unequal relationships requires not formal equality before a court, but substantive facilitation through an intermediary who can level the procedural playing field. When mediation fails, and the mediator issues a written recommendation (*anjuran tertulis*), this further demonstrates the law’s attempt to maintain parties’ agency while preserving a normative standard.

The consumer protection domain provides another instructive example. The Law No. 8 of 1999 on Consumer Protection established the Consumer Dispute Resolution Agency with authority to resolve disputes through conciliation, mediation, *or* arbitration—a tripartite menu of non-coercive mechanisms deliberately sequenced from the most consensual to the most adjudicative. This sequencing is a normative choice that reflects an institutionalised preference for the least coercive mechanism capable of resolving the dispute. In Fuller’s⁷¹ terms, the Consumer Dispute Resolution Agency model represents an alternative legal institution whose *inner morality* is explicitly oriented toward party agency and substantive resolution rather than formal procedural compliance.

Perhaps the most theoretically interesting case is provided by Law No. 39 of 1999 on Human Rights, which grants the Indonesian National Commission on Human Rights explicit mediation authority. The legislature chose to vest a human rights commission—whose mandate refers to the protection of fundamental rights against power abuse—with mediation rather than purely adjudicative authority reveals a sophisticated understanding: even rights-based disputes benefit from consensual resolution that restores relationships and produces durable social peace rather than merely assigning blame. This is precisely Habermas’s⁷² communicative rationality applied to the human rights context.

⁶⁹ Ehrlich, *Grundlegung Der Soziologie Des Rechts*.

⁷⁰ Galanter, ‘Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change’.

⁷¹ Fuller, *The Morality of Law*.

⁷² Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*.

The extension of mediation frameworks into intellectual property law—through the Copyright Law (Law No. 28 of 2014) and Patent Law (Law No. 13 of 2016)—is noteworthy because IP disputes are characterised by significant information asymmetry and power inequality between large rights-holding corporations and individual creators. The Copyright Law goes further than most legislative framework by requiring mediation *mandatory* as a precondition for criminal prosecution in specified cases. In doing so, it deploys administrative mediation as a gatekeeping mechanism that limits the state's coercive prosecutorial power. This represents a significant structural innovation of considerable theoretical significance, as mediation is used not merely as an alternative means of dispute resolution, but as a legal protection that constrains the exercise of the criminal law's coercive authority.

The electoral dispute domain has not added yet another dimension. Law No. 7 of 2017 on General Elections embeds mediation into the architecture of democratic dispute resolution, indicating that the preference for non-coercive resolution is not merely pragmatic (avoiding court congestion) but principled: electoral disputes, where the legitimacy of the outcome depends on widespread acceptance by all political stakeholders, are precisely where Habermas's *communicative rationality* becomes most essential aspect. The Law No. 17 of 2023 on Health mandates ADR before litigation, recognising that medical negligence disputes involve asymmetries of expertise and emotional stakes that make adversarial litigation as a particularly poor mechanism for producing genuinely just outcomes.

What emerges from this cross-sectoral survey is a pattern of profound jurisprudential significance: Indonesian law, at the legislative level, has been systematically building the normative infrastructure for what Selznick would call *responsive law*—as the law genuinely adaptive to the diverse needs of those it serves. The sectoral laws that now mandate or privilege non-coercive dispute resolution—including the Freedom of Public Information Law (Art. 38–40), the Construction Services Law (Art. 88), the Insurance Law (Art. 54), and the others documented above—constitute an implicit legislative endorsement of the thesis that authentic legal institutionalisation depends on consent, participation, and social legitimacy rather than coercion and formal authority.

However, a critical diagnosis is equally warranted. The legislative recognition of mediation and ADR has been fragmentary, incremental, and insufficiently integrated. Each law creates its own framework, institutional actors, procedural rules, and standards for outcome-binding force. The result is a patchwork of non-coercive mechanisms—some robust (Consumer Dispute Resolution Agency, industrial mediation), underdeveloped (insurance mediation pending

Indonesia Financial Services Authority regulation), mandatory (copyright criminal cases), and optional (patent disputes)—without an overarching philosophical framework.⁷³ This fragmentation reflects the deeper structural problem identified throughout this article – the absence of a unified national philosophy of dispute resolution. The missing element is precisely the shift advocates in this article: a shift from the *lex*-centric paradigm, in which mediation is treated as an exception to formal legal process, toward an *ius*-oriented paradigm that recognises consensual and restorative resolution as the primary expression of law’s social function.

Table 4.
Legislative Recognition of Mediation and Alternative Dispute Resolution in Indonesian Sectoral Laws

No.	Law	Dispute Sector	Key Articles	Form of Mediation Regulation	Status
1	Law No. 30 of 1999 (Arbitration & ADR)	Civil/ Commercial	Art. 6(3)–7	Settlement through mediator; written agreement binding on parties	In force
2	Law No. 2 of 2004 (Industrial Relations Dispute)	Industrial Relations	Art. 1(11)–12; Art. 8–16	Mediation by certified mediator; failure results in written recommendation	In force
3	Law No. 8 of 1999 (Consumer Protection)	Consumer Disputes	Art. 45; 49; 52(a)	Consumer Dispute Settlement Agency resolves disputes through conciliation, mediation, or arbitration	In force
4	Law No. 14 of 2008 (Freedom of Public Information)	Public Information	Art. 38–40	Information Commission resolves disputes through mediation; mediation settlement binding	In force
5	Law No. 39 of 1999 (Human Rights)	Human Rights Violations	Art. 76; 89(4); 96	Indonesian National Human Rights Commission performs mediation; mediator decisions binding	In force
6	Law No. 7 of 2017 (General Elections)	Electoral Process	Art. 466; 468–469	The General Election Supervisory Agency resolves via mediation, then adjudication if failed	In force
7	Law No. 28 of 2014 (Copyright)	Copyright Disputes	Art. 95	ADR available; mandatory mediation before criminal prosecution in certain cases	In force
8	Law No. 13 of 2016 (Patents)	Patent Disputes	Art. 153–154	Arbitration or ADR including negotiation, mediation, conciliation	In force

⁷³ Ilham Yuli Isdiyanto, ‘Problematika Teori Hukum, Konstruksi Hukum, Dan Kesadaran Sosial’.

No.	Law	Dispute Sector	Key Articles	Form of Mediation Regulation	Status
9	Law No. 17 of 2023 (Health)	Medical Disputes	Art. 310	ADR out-of-court before litigation (no explicit 'mediation' but ADR-oriented)	In force
10	Law No. 2 of 2017 (Construction Services)	Construction Contracts	Art. 88	<i>Musyawarah</i> first; then mediation, conciliation, or arbitration	In force
11	Law No. 40 of 2014 (Insurance)	Insurance Disputes	Art. 54	Insurance mediation institution; further regulation by Indonesia Financial Services Authority	In force

Source: author's analysis

10. Institutionalising Substantive Justice in Indonesia's New Criminal Code and Criminal Procedure Code

If the sectoral legislative trajectory analysed in the preceding section represents the gradual institutionalisation of non-coercive resolution at the periphery of Indonesia's legal system, the enactment of Law No. 1 of 2023, the new Indonesian Criminal Code, Law No. 20 of 2025, and the new Indonesian Criminal Procedure Code represents a qualitative transformation at its centre. These two legislative instruments represent the most significant structural reconfiguration of Indonesia's criminal justice architecture since independence, and their significance for the theory of legal institutionalisation cannot be overstated.

The 2023 Indonesian Criminal Code begins its statement of purpose with a constitutionally and philosophically significant assertion. The law must balance the interests of offenders and victims while pursuing substantive rather than merely formal justice (Preamble, recitals b and c). This preamble performs the function of what Dworkin⁷⁴ would describe as a principle embedded in the legislative text itself: a normative commitment to substantive justice that cannot be reduced to any specific rule but instead serves as an interpretative guide for the provisions that follow. In Fuller's⁷⁵ terms, this preamble contributes to the inner morality of law by connecting legal procedure and substantive justice explicit rather than concealing it beneath the fiction of value-neutral rule application.

Article 51(c) of the 2023 Indonesian Criminal Code introduces one of the most significant doctrinal innovations in Indonesian criminal law – the explicit codification of a restorative purpose

⁷⁴ Dworkin, *Taking Rights Seriously*.

⁷⁵ Fuller, *The Morality of Law*.

of punishment, requiring that punishment serve to resolve conflicts arising from criminal acts, restore social equilibrium, and bring a sense of safety and peace to the community. This provision fundamentally restructures the normative purpose of the criminal justice process. Complementing this, Article 54(1)(j) of the same Code further requires judges to consider victim forgiveness and prior out-of-court settlements as sentencing factors, thereby returning substantive agency to victims and recognising the offender–victim relationship as legally relevant factor to sentencing. Under the inherited colonial Criminal Code—a product of nineteenth-century Dutch legal positivism—the victims occupied a largely peripheral procedural role. Once a complaint was filed, the state assumed primary control of the proceedings, and the victim’s continuing wishes were largely irrelevant. In theoretical terms, they represent a structural shift of Articles 51(c) and 54(1)(j) from *lex*-centrism toward *ius*: from law as state command toward law as an ordered human relationship.

Article 70, which mandates imprisonment to be avoided “as much as possible” in defined circumstances, together with Articles 75–77, which establish community supervision as a formal alternative to custody, addresses one of the most acute failures of Indonesia’s current criminal justice system – its excessive reliance on incarceration. By late 2024, Indonesia’s prisons had reached approximately 273,495 inmates, almost twice the official system-wide capacity—with some individual facilities reportedly operating at 300 and 800 percent of their intended capacity.⁷⁶ Criminological research consistently indicates that incarceration for minor offenses produces worse outcomes for public safety than community-based supervision, including higher recidivism, deeper social exclusion, and greater economic harm to offenders’ families. The 2023 Indonesian Criminal Code’s structural de-emphasis of imprisonment should therefore be understood not merely as a humanitarian gesture but as an evidence-based recalibration of Indonesia’s criminal justice policy.

The 2025 Indonesian Criminal Procedure Code represents an even more fundamental transformation. Its formal definition of restorative justice in Article 1(21)—as a process involving the victim, the offender, their families, and related parties to restore conditions to those existing before the offense—is a watershed moment in Indonesian legal history. By inscribing restorative justice in the definitional article—alongside foundational definitions of crime, suspect, defendant, and verdict—the 2025 Indonesian Criminal Procedure Code signals that restorative justice is not

⁷⁶ Sofie Arjon Schütte et al., *Integrity Zones in Indonesian Prisons: Addressing Corruption amid Overcrowding*, U4 Brief, no. 2025:2 (U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute, 2025), <https://www.u4.no/publications/integrity-zones-in-indonesian-prisons-addressing-corruption-amid-overcrowding>.

an optional supplement to the adversarial system; rather, a constitutive element of the system itself. For the first time within Indonesia's general criminal procedure legislation, restorative justice has been formally embedded as part of the official criminal procedure architecture—a significant advance beyond prior sector-specific instruments such as the Juvenile Criminal Justice System Law, Law No. 11 of 2012, and institutional guidelines issued by the Indonesian National Police and the Prosecutor's Office.⁷⁷

Article 5(1)(d) of the 2025 Indonesian Criminal Procedure Code, which requires investigators to conduct assessments and provide facilitation for vulnerable groups from the earliest stage of the criminal process, operationalises a principle that Tyler's⁷⁸ procedural justice research has shown to be one of the strongest determinants of legal legitimacy – the experience of being treated with dignity and respect from the very first encounter with law enforcement. By embedding vulnerability assessment in the investigative stage, the 2025 Indonesian Criminal Procedure Code structurally requires non-adversarial awareness from the outset, before the criminal process crystallises into an adversarial logic that typically overwhelms more humanistic considerations.

The 2025 Indonesian Criminal Procedure Code's introduction of plea bargaining and Deferred Prosecution Agreements as formal mechanisms in the Indonesian criminal procedure system represents a bold adoption of common-law instruments into Indonesia's Dutch-inherited civil-law architecture. Evaluating their legitimacy requires Habermas's communicative rationality framework. Plea bargaining and Deferred Prosecution Agreements are legitimate instruments of non-coercive resolution only if they embody genuine consensual agency—the defendant freely chooses a negotiated outcome rather than accepting it under structural coercion masquerading as choice. Ensuring such condition requires robust legal aid infrastructure, transparent prosecutorial guidelines, and independent judicial oversight. The introduction of these mechanisms under the 2025 Indonesian Criminal Procedure Code therefore creates a critical institutional-design challenge that implementing regulations must address with great care.

⁷⁷ Teddy Asmara and Aga Natalis, 'Rethinking Diversion Programs in Indonesia: A Critical Analysis Through the Lens of Social and Cultural Context', *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR* 6, no. 12 (2024): 223–49, <https://doi.org/10.52028/rbadr.v6.i12.art11.en>; Dyah Wijaningsih et al., 'Exploring the Implementation of Diversion in Addressing Child-on-Child Sexual Violence in Indonesia', *Cadernos de Direito Actual*, no. 31 (2026): 196–237, <https://cadernosdedereitoactual.es/index.php/cadernos/article/view/1433>; Moh. Supriadi et al., 'Redefining Childhood: Addressing Legal Inconsistencies and the Role of Transitional Age in Juvenile Justice', *Masalah-Masalah Hukum* 54, no. 2 (2025): 240–54, <https://doi.org/10.14710/mmh.54.2.2025.240-254>.

⁷⁸ Tyler, *Why People Obey the Law*.

Critically, restorative justice under the 2025 Indonesian Criminal Procedure Code is integrated throughout the criminal process, from investigation to trial, rather than positioned as an optional exit mechanism at particular stages. This architectural choice has profound implications. Rather than treating restorative processes and formal adjudication as competing models, the 2025 Indonesian Criminal Procedure Code presents them as complementary components of an integrated criminal justice system, in which coercive authority and consensual restoration work together. This approach closely reflects Fuller's⁷⁹ concept of the *inner morality of law*. By embedding the consideration of victims' interests, offender rehabilitation, community restoration, and relational repair in a system whose institutional morality of justice more fully reflects the broader purposes of law. However, the analytical perspective of this article requires a sober assessment. Formal legislative change and cultural-institutional transformation are different things. The history of Indonesian legal reform is littered with progressive legislation whose practical impact was minimal because the institutional culture, human capital, and social conditions required for effective implementation were not developed alongside the legislative text. Rahardjo's⁸⁰ distinction between law on the books and law in action applies to the 2023 Indonesian Criminal Code and the 2025 Indonesian Criminal Procedure Code with particular urgency. Ehrlich's living-law perspective reminds that the real question is whether the values embedded in these instruments will be genuinely internalised by the communities and institutions charged with their implementation. Bourdieu's⁸¹ sociology of the juridical field warns that formal changes in legal rules do not automatically transform the habitus of legal practitioners shaped by decades of adversarial and punishment-focused professional socialisation. Authentic institutionalisation of the restorative commitments contained in the 2023 Indonesian Criminal Code and the 2025 Indonesian Criminal Procedure Code will require sustained investment in the cultural, institutional, and social conditions that make those commitments genuinely operative rather than merely formally proclaimed.

⁷⁹ Fuller, *The Morality of Law*.

⁸⁰ Satjipto Rahardjo, *Biarkan Hukum Mengalir: Catatan Kritis Tentang Pergulatan Manusia Dan Hukum* (Penerbit Buku Kompas, 2007).

⁸¹ Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field'.

Table 5.
Key Restorative Justice Provisions in Indonesia's 2023 Criminal Code and 2025 Criminal Procedure Code

Legislative Instrument	Key Provision	Normative Substance	Relevance to Legal Institutionalisation
2023 Indonesian Criminal Code (Law No. 1 of 2023)	Preamble, recitals (b) and (c)	Emphasises the balance between the interests of offenders and victims and the pursuit of substantive, rather than merely formal, justice.	Establishes the philosophical foundation for restorative and substantively oriented criminal justice within national criminal law.
2023 Indonesian Criminal Code	Article 51(c)	Defines one purpose of punishment as resolving conflicts arising from criminal acts, restoring social equilibrium, and creating a sense of safety and peace within the community.	Reorients punishment from retribution toward conflict resolution, social restoration, and community reconciliation.
2023 Indonesian Criminal Code	Article 54(1)(j)	Requires judges to consider forgiveness granted by the victim or the victim's family when determining a sentence.	Restores substantive agency to victims and makes the offender–victim relationship legally relevant to sentencing.
2023 Indonesian Criminal Code	Article 70	Requires imprisonment to be avoided as far as possible under specified circumstances.	Limits excessive reliance on incarceration and promotes proportionate, non-custodial responses to criminal conduct.
2023 Indonesian Criminal Code	Articles 75–77	Establishes community supervision as a formal criminal sanction and an alternative to imprisonment.	Provides an institutional mechanism for offender accountability, rehabilitation, and reintegration without incarceration.
2025 Indonesian Criminal Procedure Code (Law No. 20 of 2025)	Article 1(21)	Defines restorative justice as a process involving victims, offenders, their families, and other relevant parties to restore conditions affected by the offense.	Formally incorporates restorative justice into the conceptual and institutional foundations of Indonesia's criminal procedure system.
2025 Indonesian Criminal Procedure Code	Article 5(1)(d)	Requires investigators to assess the needs of vulnerable groups and facilitate appropriate protection and assistance from the earliest stage of the criminal process.	Institutionalises a dignity-based and non-adversarial approach at the investigative stage.
2025 Indonesian Criminal Procedure Code	Integrated restorative justice framework	Integrates restorative justice mechanisms across multiple procedural stages – started from investigation through adjudication.	Positions restorative justice as an internal component of the formal criminal justice system rather than an external or optional supplement.
2025 Indonesian Criminal Procedure Code	Article 1(16)	Recognises plea bargaining as a negotiated procedure involving an acknowledgment of guilt in exchange for procedural or sentencing concessions.	Introduces consensual case resolution into the formal criminal procedure framework while reducing reliance on full adversarial adjudication.
2025 Indonesian Criminal Procedure Code	Article 1(17)	Recognises Deferred Prosecution Agreements as mechanisms for postponing or conditionally terminating corporate prosecution	Creates an institutional framework for negotiated corporate

Legislative Instrument	Key Provision	Normative Substance	Relevance to Legal Institutionalisation
		subject to specified remedial obligations.	accountability, compliance, restitution, and remediation.
2025 Indonesian Criminal Procedure Code	Restitution and compensation provisions	Strengthens the procedural recognition and protection of victims' rights to restitution and compensation.	Places victim restoration and reparation among the central objectives of criminal case resolution.

Source: author's analysis

11. Legal Pluralism and Living Law: Indonesia's Complex Reality

Indonesia becomes one of the world's richest laboratories of legal pluralism. Merry⁸² defines legal pluralism as a situation in which two or more legal systems operate simultaneously in the same social field. In Indonesia, 'simultaneously' frequently means '*conflictually*'. A death Minangkabau woman must navigate at least three legal systems potentially governing her inheritance—the national civil law (*Burgerlijk Wetboek* or the Islamic Law Compilation), Minangkabau matrilineal customary law, and patrilineal Islamic law—each potentially delivering a different, even contradictory, outcome.⁸³

Griffiths⁸⁴ distinguished between *weak legal pluralism* (where the state recognises and incorporates other legal systems) and *strong legal pluralism* (where various legal systems operate autonomously and equivalently). Indonesia formally claims weak legal pluralism—recognising customary law in Article 18B of the 1945 Constitution and Islamic law through the Islamic Law Compilation—yet in practice, the national legal system bearing its Euro-continental heritage remains overwhelmingly dominant.

Ehrlich's⁸⁵ living law concept finds its most authentic expression in hundreds of indigenous communities across the archipelago. In these communities, customary law is not merely an 'alternative' to state law; rather, it is the primary normative system that actually governs life—from natural resource management (*sasi* in Maluku, *subak* in Bali)⁸⁶ to interpersonal conflict

⁸² Sally Engle Merry, 'Legal Pluralism', *Law & Society Review* 22, no. 5 (1988): 869–96, <https://doi.org/10.2307/3053638>.

⁸³ Rika Saraswati et al., 'The Implementation of Low-Inheritance Customary Law Within Minangkabau Migrant Families in Indonesia: A Law, Power, Space Approach', *Space and Culture* 29, no. 3 (2026): 408–25, <https://doi.org/10.1177/12063312251367261>; Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Temporalities in Property Relations under a Plural Legal Order: Minangkabau Revisited', *The Journal of Legal Pluralism and Unofficial Law* 46, no. 1 (2014): 18–36, <https://doi.org/10.1080/07329113.2014.886869>.

⁸⁴ 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>.

⁸⁵ Ehrlich, *Grundlegung Der Soziologie Des Rechts*.

⁸⁶ Aga Natalis et al., 'Harmonizing Welfare State Principles and Pentahelix Collaboration: Pathways to Equitable Water Governance in Indonesia', *OIDA International Journal of Sustainable Development* 18, no. 11 (2025): 31–44, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5344627.

resolution (*rapang* among the Bugis, *adat basandi syarak* in Minangkabau).⁸⁷ These systems have been tested over centuries, are responsive to local ecological and social conditions, and—most importantly—are genuinely internalised by the communities that practice them.

In her thesis, *An Analysis of the Process of Ascertainment and Application of Customary Law in the Formal Institutions of Adjudication: Nigeria and South Africa*, Badejogbin⁸⁸ demonstrates that customary law can become institutionalised through its recognition, ascertainment, and consistent application by formal judicial institutions without necessarily being subjected to comprehensive codification. This process enables living customary law to be incorporated into the national legal system while preserving its dynamic and adaptive character in response to social change. Legal institutionalisation, therefore, does not occur through legislation – it may also develop through the formal recognition and application of norms that already operate within the social practices of a community.

Tamanaha's⁸⁹ broader perspective on legal pluralism further emphasises that legal pluralism concerns not merely the coexistence of multiple normative orders, but also how those orders interact, compete, conflict, and negotiate in everyday social life. The distinction between a legal tradition and a legal system is particularly important in this context. Legal traditions embody the accumulated values, norms, practices, and historical experiences of a society, whereas legal systems comprise the institutional structures through which legal norms are formally administered and enforced. The effectiveness and legitimacy of law therefore depend, at least in part, on the extent to which formal legal institutions recognise and accommodate the living values of the communities governed. Indonesia possesses numerous resilient legal traditions, including those of the Minangkabau, Javanese, Bugis, Dayak, Batak, and Balinese communities, as well as hundreds of other customary communities. Nevertheless, repeated attempts to construct a single and unified national legal system have generated enduring tensions between state law and socially embedded normative orders. These constitute a central concern of the present analysis.

⁸⁷ Annisa Sabilla Sueni et al., 'Living Law and Hybrid Justice: The Integration of Customary Criminal Law in Indonesia's 2023 National Criminal Code', *Jurnal Hukum Progresif* 13, no. 2 (2025): 253–84, <https://doi.org/10.14710/jhp.13.2.253-284>.

⁸⁸ Rebecca Emiene Badejogbin, 'An Analysis of the Process of Ascertainment and Application of Customary Law in the Formal Institutions of Adjudication: Nigeria and South Africa' (Thesis, University of Cape Town, 2017), <http://hdl.handle.net/11427/28996>.

⁸⁹ Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences* (Oxford University Press, USA, 2021).

12. Comparative Perspectives: Lessons from Different Legal Experiences

Kawashima's⁹⁰ analysis of Japanese legal society provides instructive lessons for Indonesia. Japanese society maintains a strong preference for avoiding open conflict and court-based resolution—an orientation rooted in deeply held values of social harmony (*wa*). Despite adopting European codification since the Meiji era, Japan's per-capita litigation rate remains far lower than Western nations—not because of ineffective law, but robust social norms that carry the bulk of everyday regulatory burden without formal legal apparatus. The Japanese model demonstrates that authentic legal institutionalisation occurs when formal legal systems and informal social norms interact synergistically rather than antagonistically.

South Africa's post-apartheid experience offers an inspiring example of explicitly incorporating communal values into the formal legal system. The concept of *ubuntu*—‘I am because we are’—was explicitly recognised in the Truth and Reconciliation Commission process and in several Constitutional Court judgments. *Ubuntu jurisprudence* represents an effort to fill a formally colonial legal framework with locally meaningful content without wholesale rejection of legal modernity.⁹¹ The relevance for Indonesia is clear that the concepts such as *musyawarah mufakat* (deliberative consensus), *gotong royong* (mutual cooperation), and *rukun* (harmony) contain the same potential as *ubuntu*—as foundations for a legal system more deeply rooted in Indonesia's communal values.⁹² Yet, as long as these concepts are treated as ideological slogans rather than operational legal principles, their potential will never be realised in practice.

India's management of complex legal pluralism offers a valuable comparative lesson. By maintaining separate personal law systems for different religious communities while pursuing a Uniform Civil Code as a constitutional aspiration (Article 44 of the Indian Constitution), India illustrates that imposing legal uniformity may generate greater social conflict than it resolves. Likewise, the experience of Scandinavian nations demonstrates that high legal compliance without intense coercion demonstrates that investment in legitimacy—through public participation,

⁹⁰ Masayuki Murayama, ‘Kawashima and the Changing Focus on Japanese Legal Consciousness: A Selective History of the Sociology of Law in Japan’, *International Journal of Law in Context* 9, no. 4 (2013): 565–89, <https://doi.org/10.1017/S174455231300030X>.

⁹¹ Serges Djoyou Kamga, ‘Cultural Values as a Source of Law: Emerging Trends of Ubuntu Jurisprudence in South Africa’, *African Human Rights Law Journal* 18, no. 2 (2018): 625–49, <https://doi.org/10.17159/1996-2096/2018/v18n2a9>; Nyoko Muvangua and Drucilla Cornell, *uBuntu and the Law: African Ideals and Postapartheid Jurisprudence* (Fordham Univ Press, 2012); Leonhard Praeg, ‘Ubuntu and the Emancipation of Law’, in *The Palgrave Handbook of African Philosophy*, ed. Adeshina Afolayan and Toyin Falola (Palgrave Macmillan US, 2017), https://doi.org/10.1057/978-1-137-59291-0_32.

⁹² L. Jan Slikkerveer, ‘Gotong Royong: An Indigenous Institution of Communitality and Mutual Assistance in Indonesia’, in *Integrated Community-Managed Development: Strategizing Indigenous Knowledge and Institutions for Poverty Reduction and Sustainable Community Development in Indonesia*, ed. L. Jan Slikkerveer et al. (Springer International Publishing, 2019), https://doi.org/10.1007/978-3-030-05423-6_14.

transparency, accountability, and procedural fairness—is ultimately more efficient and durable than investment in enforcement.

Twining⁹³ concludes that the central challenge for legal theory in the twenty-first century is developing conceptual frameworks capable of accommodating diversity without total relativism. This is precisely Indonesia's challenge: how to build a national legal system cohesive enough to function as a system, yet flexible enough to accommodate the cultural diversity that constitutes both the wealth and the complexity of Indonesia's plural legal reality.

The Nordic experience offers a particularly instructive contrast. Denmark, Norway, Finland, and Sweden consistently demonstrate strong rule-of-law performance, comparatively high levels of institutional trust, and low perceived public-sector corruption. These outcomes should not be attributed to coercive enforcement.⁹⁴ Rather, they are associated with institutional arrangements that reinforce legal legitimacy, including transparent legislative processes, structured public consultation, civil society participation, institutionalised legal-aid mechanisms, and a political culture that emphasises integrity and public accountability. Official legislative procedures in these countries provide affected organisations, public institutions, businesses, and members of the public with formal opportunities to comment on proposed legislation. Such participatory arrangements may strengthen the perception that law is developed through public institutions responsive to society rather than imposed unilaterally by a distant authority.

The global development of restorative justice in criminal law, including established practices in New Zealand, Canada, and Belgium, provides important comparative lessons for Indonesia. New Zealand's Family Group Conferencing model is particularly instructive. Its development was shaped partly by sustained Māori criticism of state welfare and youth justice institutions, broad consultation with Māori communities, and demands for greater recognition of the child's place within *whānau*, *hapū*, and *iwi*. The resulting statutory framework placed families and *whānau* at the centre of decision-making while retaining formal procedures and institutional safeguards within the national youth justice system.⁹⁵ The New Zealand experience therefore demonstrates that formal legal processes can be informed and enriched by Indigenous values and relational

⁹³ William Twining, 'Normative and Legal Pluralism: A Global Perspective', *The Oxford Handbook of Transnational Law*, no. 2000 (2021): 31–66, <https://doi.org/10.1093/oxfordhb/9780197547410.013.2>.

⁹⁴ Yongsun Paik et al., 'In Search of an Institutional Framework for Anticorruption: Lessons from Scandinavia', *Thunderbird International Business Review* 61, no. 2 (2019): 105–18, <https://doi.org/10.1002/tie.22028>; Bo Rothstein, *The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective* (University of Chicago Press, 2011).

⁹⁵ Allison Morris and Gabrielle Maxwell, 'Restorative Justice in New Zealand: Family Group Conferences as a Case Study', *Western Criminology Review* 1, no. 1 (1998): 1–17.

decision-making without abandoning procedural structure or legal accountability. Nevertheless, critical scholarship shows cautions against portraying Family Group Conferencing as a complete or unproblematic embodiment of *tikanga Māori*.⁹⁶ For Indonesia, the central lesson is consequently not to replicate the New Zealand model mechanically, but to develop restorative justice mechanisms through sustained dialogue with Indonesia's diverse customary communities. Such an approach would be preferable to importing standardised “best practice” models that are detached from the normative and social contexts in which they are expected to operate.

A broader insight emerges from the recognition that legal norms depend on both institutional authority and social acceptance. Accordingly, addressing Indonesia's crisis of legal institutionalisation does not require a choice between tradition and modernity, customary law and state law, or competing legal theories. Rather, it requires the development of legal order capable of integrating these elements into a coherent and socially legitimate system. It aims to develop the institutional capacity to hold these tensions productively—build systems that can learn from both the accumulated wisdom of customary traditions and the universalising capacities of formal law, using each to correct the limitations of the other in an ongoing, adaptive, and democratically accountable process of legal development.

Table 6.
Dispute Resolution Mechanisms: Formal-Coercive versus Informal-Restorative in Indonesia

Dispute Resolution Mechanism	Legal Basis	Core Principles	Principal Strengths	Key Limitations
Court Litigation	Law No. 48 of 2009 on Judicial Power	Adversarial adjudication conducted through formal, hierarchical, and procedurally regulated institutions	Produces authoritative and enforceable judgments; provides procedural protections; suitable for disputes requiring compulsory state intervention	May be costly, time-consuming, intimidating, and procedurally complex; adversarial proceedings may further damage relationships
Arbitration	Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution	Party autonomy, neutrality, confidentiality, procedural flexibility, and finality	Allows parties to select specialised arbitrators; generally faster and more confidential than court proceedings; awards are final and binding	Primarily limited to commercial disputes and rights fully controlled by the parties; costs may be substantial; opportunities to challenge an award are narrowly limited

⁹⁶ Paora Moyle and Juan Marcellus Tauri, ‘Māori, Family Group Conferencing and the Mystifications of Restorative Justice’, *Victims & Offenders* 11, no. 1 (2016): 87–106, <https://doi.org/10.1080/15564886.2015.1135496>.

Dispute Resolution Mechanism	Legal Basis	Core Principles	Principal Strengths	Key Limitations
Court-Annexed Mediation	Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts, supplemented by Supreme Court Regulation No. 3 of 2022 on Electronic Mediation in Courts	Collaboration, consensual settlement, confidentiality, impartial facilitation, and preservation of relationships	May reduce costs and case-processing time; gives parties greater control over outcomes; a successful settlement may be formalised as an enforceable settlement deed	Success depends on the parties' good faith and willingness to compromise; power imbalances may affect negotiations; no settlement is guaranteed
Customary Deliberation	Law No. 6 of 2014 on Villages, as amended by Law No. 3 of 2024, particularly the authority of recognised Traditional Villages to resolve disputes according to customary law	Communal participation, consensus, kinship, restoration of social harmony, and reliance on locally recognised norms	Culturally relevant, accessible, relatively rapid, and often supported by strong local legitimacy; may preserve relationships and community cohesion	Not uniformly recognised or applicable across Indonesia; outcomes may conflict with national law or human-rights standards; unequal gender and social relations may influence participation and outcomes
Restorative Justice	Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice; Prosecutor's Office Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice; and relevant judicial guidelines	Repair of harm, victim participation, offender accountability, reconciliation, reintegration, and restoration of community relationships	Increases victim participation; may reduce unnecessary prosecution, detention, and stigmatisation; supports restitution, accountability, and social reintegration	Eligibility is limited by the nature and seriousness of the offence; implementation remains uneven; inadequate safeguards may expose victims or defendants to pressure and unequal bargaining
Restorative Settlement in Criminal Proceedings	Law No. 20 of 2025 on the Indonesian Criminal Procedure Code	Consensual and supervised settlement within the formal criminal process, involving victims, offenders, families, and relevant community actors	Integrates restorative resolution into the official criminal procedure system; may reduce caseloads and unnecessary incarceration; facilitates restitution, reconciliation, and proportionate case resolution	Requires clear implementing regulations, trained facilitators, effective legal assistance, voluntary participation, and judicial or prosecutorial oversight; inappropriate for offences involving serious violence, coercion, or severe power imbalances

Source: author's analysis

13. Pancasila as Grundnorm: The Unexploited Foundation

Kelsen⁹⁷ placed the *grundnorm*—the basic norm—as the foundation of the entire positive legal system, functioning as the constitutional hypothesis from which the entire chain of legal validity derives.⁹⁸ In Indonesia's legal system, Pancasila occupies this position—not merely as a political ideology, but as the fundamental norm providing the highest validity for the entire national legal order. The consequence is profound that any legal norm contradicting Pancasila's values—divinity, just and civilized humanity, unity, people's sovereignty through deliberation, and social justice—is not only potentially unconstitutional but also fundamentally contradicts the deepest normative foundation of Indonesia's legal order.

The First Sila—Belief in One God—carries deep legal implications: Indonesian law cannot be secularly atheist but must respect and accommodate the spiritual and religious dimensions of social life. The court judgment preamble '*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*' is the most concrete expression of this *sila* in the legal system. However, this built-in constitutional critique of legal positivism is systematically ignored in practice.⁹⁹

The Second Sila—Just and Civilized Humanity—commands treating every person as a legal subject of dignity, not merely an object of regulation. This becomes the foundation of progressive law and restorative justice. Law must serve humans in their full humanity, not sacrifice humanity to formal certainty. The Fourth Sila—People's Sovereignty Guided by Wisdom in Deliberation—is the constitutional basis of Habermas's¹⁰⁰ communicative rationality – deliberation as decision-making is not merely formal procedure but an expression of respect for every voice in the community.

The Fifth Sila—Social Justice for all Indonesians—provides the most explicit command for law to be not only procedural justice but also distributive justice. The legal system must actively distribute access to justice equally rather than allowing justice to become a commodity purchasable only by those who can afford it. Wintgens'¹⁰¹ principle of *legisprudence*—that legislators bear the responsibility to explicitly justify every restriction of freedom created through regulation—aligns

⁹⁷ Kelsen, *Pure Theory of Law*.

⁹⁸ Ilham Yuli Isdiyanto, *Dekonstruksi Pemahaman Pancasila: Menggali Jati Diri Hukum Indonesia* (UGM Press, 2019).

⁹⁹ Joko Setiyono and Aga Natalis, 'Universal Values of Pancasila in Managing the Crime of Terrorism', *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (2023): 48–63, <https://doi.org/10.5130/ccs.v15.i2.8084>.

¹⁰⁰ Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*.

¹⁰¹ Wintgens, 'Legisprudence as a New Theory of Legislation'.

precisely with the Pancasila demand for transparent, deliberative, and proportionate law-making. However, this standard is rarely applied seriously in Indonesian legislative processes.

The greatest challenge in establishing Pancasila as a genuinely operational *grundnorm* lies in transforming discourse about Pancasila from an ideological-political arena into a substantive normative-legal arena. As long as Pancasila is more frequently deployed as rhetorical weaponry to legitimise or discredit particular political positions rather than as a normative standard for evaluating the substantive quality of legal rules, it will remain an ornament without genuine transformative impact.

The opportunity, however, lies in developing what might be called a *Pancasila jurisprudence*—a tradition of legal interpretation that consistently and systematically uses Pancasila's values as the highest evaluative standard in assessing the substantive validity of law. This would require developing more detailed legal doctrine about how each *sila* is operationalised in specific legal contexts—a substantial intellectual project requiring collaboration among legal scholars, philosophers, and religious scholars. Dworkin¹⁰² argued that law derives its legitimacy not only from formal legal authority but also from its coherence with principles of justice and political morality, together with Rahardjo's¹⁰³ identification of transcendence as a constitutive element of progressive law both point toward this same destination: a legal system in which the values of Pancasila actively and concretely guide every stage of law formation, interpretation, and enforcement.

The court judgment preamble '*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*' should likewise be understood as more than a ceremonial formula. Properly interpreted, it constitutes a standing constitutional rejection of pure legal positivism and an affirmation that Indonesian judges exercise not merely technical-legal authority but also moral-transcendental authority in the service of justice. This *built-in critique* of positivism—embedded in the very structure of Indonesia's judicial system—has been systematically underexploited by legal scholars and practitioners. One of the primary objectives of a Pancasila jurisprudence project should therefore be to articulate the full legal implications of this preamble for judicial reasoning, legal interpretation, and decision-making.

¹⁰² Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Oxford University Press, 1999).

¹⁰³ Rahardjo, 'Hukum Progresif: Hukum Yang Membebaskan'.

14. Toward Authentic Legal Institutionalisation: A Reform Agenda

The most fundamental paradigmatic shift required within Indonesia's legal system is a movement away from a predominantly *lex*-centric model toward a more comprehensive *ius*-oriented conception of law. The distinction between *lex*—law understood primarily as written rules enacted by state authority—and *ius*—law understood more broadly as the normative order governing collective life—has long been recognised in the Roman legal tradition. Yet, it is frequently neglected in modern legal discourse.¹⁰⁴ A system of legal education that focuses almost exclusively on *lex* may produce graduates who are technically proficient in reading statutes but insufficiently equipped to understand the norms, relationships, and values through which law actually operates in society.

The shift from *lex* to *ius* does not require the rejection of written law, nor does it entail the celebration of normative fragmentation or legal anarchy. Rather, it requires that written law be situated within its proper social and normative context: as one, but not the only, means by which a society articulates and organises its normative commitments. An *ius*-oriented legal order in Indonesia should therefore accommodate the diverse forms of customary law throughout the archipelago, Islamic legal principles applicable within relevant communities and legal domains, ethical values embedded in Indonesia's cultural traditions, and formal written law as a framework for national coordination, rights protection, and institutional accountability.

Achieving this transformation requires substantial reform of legal education. Indonesia's legal curriculum remains strongly oriented toward the Euro-continental legal tradition inherited from the colonial period. Sociology of law, legal anthropology, comparative legal traditions, and critical legal philosophy should be positioned as core components of legal education rather than treated merely as optional or supplementary subjects. Legal research must also integrate empirical methods to examine how legal institutions and norms function in practice. Hermeneutic approaches to legal interpretation provide a more intellectually honest account of adjudication rather than the formalist assumption that judges merely “discover” law within authoritative texts without exercising judgment or considering historical, social, and institutional contexts.

The recognition of customary law under Law No. 6 of 2014 on Villages represents an important step, but formal recognition remains insufficient. Meaningful recognition requires substantive respect for the autonomy of customary institutions in areas where they remain socially

¹⁰⁴ Ignazio Castellucci, ‘Law v. Statute, Ius v. Lex: An Analysis of a Critical Relation in Roman and Civil Law’, *Global Jurist* 8, no. 1 (2008), <https://doi.org/10.2202/1934-2640.1254>; Mathieu Carpentier, ‘Legal Constitutionalism and the Ius/Lex Distinction’, *Revus: Journal for Constitutional Theory and Philosophy of Law*, no. 52 (March 2024): 97–112, <https://doi.org/10.4000/revus.10130>.

legitimate and effective. It also requires clear mechanisms for coordinating customary and national legal systems, protecting constitutional rights, resolving jurisdictional conflicts, and preventing unnecessary state intervention that may weaken functioning local institutions. The recognition and development of customary law should not be understood as cultural preservation. It constitutes an investment in social and legal infrastructure that enables communities to govern certain aspects of their collective life effectively, reduces unnecessary pressure on formal institutions, and strengthens the legitimacy of the national legal order.

The development of a comprehensive restorative justice system represents one of the most promising pathways toward authentic legal institutionalisation in Indonesia. The philosophy of restorative justice is closely aligned with values present in many Indonesian customary traditions, including conflict resolution through deliberation, the restoration of social harmony, collective responsibility for repairing harm, and the reintegration of offenders into the community. In this context, Supreme Court Regulation No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice and Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice represent significant institutional developments. Nevertheless, their implementation remains uneven. Indonesia requires a coherent restorative justice framework extending from investigation and prosecution to adjudication and sentence execution, coordinated with existing customary mechanisms and supported by adequate legal, professional, and administrative infrastructure.

Experiences of resolving horizontal conflicts in Ambon, Kalimantan, Lampung, and Papua also indicate the importance of participatory and locally grounded mediation. In many circumstances, approaches that involve community leaders, affected groups, customary institutions, and local civil society actors may be more effective in rebuilding social relationships than exclusively formal, legalistic, or repressive interventions. Several Indonesian statutes—including legislation on arbitration and alternative dispute resolution, human rights, and village governance—already recognise forms of mediation, deliberation, or community-based resolution. Their implementation, however, remains constrained by an institutional culture that frequently prioritises authoritative enforcement over dialogue and restoration. The limitations of exclusively formal enforcement reinforce the proposition that lasting changes in legal behaviour often require changes in social values. Such shifts, however, cannot be achieved through coercive mechanisms; they depend on processes of deliberation, participation, and collective meaning-making construction of shared social meaning.

Building an inclusive justice infrastructure is equally essential. In this condition, Law No. 16 of 2011 on Legal Aid constitutes a significant legislative commitment, but its implementation remains constrained, particularly in remote and underserved regions where the need for legal assistance is often greatest. Legal infrastructure becomes an indispensable component of sustainable human development. Investment in community legal-aid centres, affordable mediation services, transparent judicial information systems, mobile legal services, and community paralegal networks should therefore not be treated as an optional public expenditure. Such infrastructure is necessary to ensure that law is not only formally available but genuinely accessible to citizens regardless of socioeconomic status, geographical location, disability, educational background, or social identity.

Digital technology creates unprecedented opportunities to democratise access on legal information and services. Legal-aid applications, free legal-consultation platforms, careful regulated legal chatbots, online mediation services, and transparent court-information systems can reduce the practical distance between formal law and the citizens. Nevertheless, technological solutions must be designed with full awareness of Indonesia's continuing digital divide. Digital legal services should complement, rather than replace physical and community-based services. Non-digital mechanisms remain indispensable for ensuring access to justice for those most vulnerable to exclusion, including residents of remote customary communities, individuals without reliable internet or smartphone access, elderly populations with limited digital literacy, persons with disabilities, and minority groups that have historically faced barriers within formal legal institutions.

A reform agenda aimed at achieving genuine legal institutionalisation must ultimately be understood not simply as a technical project involving procedural amendment and institutional reorganisation, but as a broader cultural transformation. It requires a fundamental change in how law is conceived, taught, interpreted, practised, enforced, and experienced across different levels of Indonesian society. Such a transformation requires sustained commitment from state institutions, universities, legal professionals, customary communities, civil society organisations, and citizens over an extended period. There are no institutional shortcuts. Legal legitimacy develops gradually through accumulated experiences of fair treatment, meaningful participation, institutional accountability, and an increasing convergence between formally enacted norms and socially lived values.

The continuing call for a social theory of law remains highly relevant. Legal reform pursued without a sophisticated understanding of the social environments within which law operates risks

addressing only the symptoms of institutional failure while leaving their underlying causes unresolved. The recurring manifestations of Indonesia's legal dysfunction—including corruption, impunity, legal alienation, vigilantism, unequal access to justice, and discriminatory enforcement—should not be regarded as isolated anomalies. Rather, they may instead be viewed as recurring consequences of a legal system built upon inadequate assumptions about the nature of law, the conditions under which it becomes legitimate, the ways in which it shapes social conduct, and the communities it is intended to serve. Changing these outcomes therefore requires more than revising individual rules; it demands a fundamental reconsideration of the assumption upon which legal institutions are designed and operated.

D. Conclusion

This study concludes that Indonesia's crisis of legal institutionalisation is rooted in the persistent reduction of law to written rules backed primarily by coercive sanctions. When law is understood only as *lex*, it becomes detached from the social values, customary norms, religious traditions, and lived practices that sustain legitimacy within a plural society. Indonesian law must therefore be reconstructed through a broader conception of *ius*, in which state law, living law, customary law, and religious law are recognised as constitutive elements of the national legal order rather than as peripheral or subordinate sources.

Coercion remains an unavoidable feature of law, but it cannot function as the principal foundation of a sustainable legal order. Compliance generated through fear is inherently fragile, costly to maintain, and vulnerable to resistance when enforcement weakens or is perceived as selective, discriminatory, or injustice. By contrast, institutionalised law is sustained through social recognition, value internalisation, procedural fairness, and public trust. Law is effective not merely because it threatens sanctions, but because people regard its norms as legitimate, relevant, and consistent with their shared understanding of justice. Restorative justice, mediation, customary deliberation, and community-based dispute resolution should therefore be recognised not as supplementary alternatives to formal adjudication, but as central mechanisms for strengthening legal legitimacy, repairing social relationships, and producing more durable forms of compliance.

Legal legitimacy cannot arise from formal validity, procedural regularity, or textual certainty alone. It also depends on meaningful participation and a law-making process capable of translating public deliberation into binding and socially responsive rules. Laws enacted without substantive public participation may satisfy formal constitutional procedures yet continue to suffer from a significant legitimacy deficit that enforcement cannot overcome. Institutionalisation instead

requires communicative processes through which citizens are given genuine opportunities to understand, contest, influence, and ultimately recognise the norms governing their lives.

Within this framework, Pancasila provides an underutilised normative foundation for reconstructing Indonesian law. Its principles of divinity, just and civilized humanity, national unity, deliberative democracy, and social justice support a legal order that is pluralistic, participatory, responsive, and substantively just. Rather than serving as an ideological symbol, Pancasila must function as an operational standard guiding legislation, judicial interpretation, law enforcement, institutional design, and dispute resolution. A genuinely Pancasila-based jurisprudence would require every legal norm and institutional practice to be assessed according to its capacity to protect human dignity, facilitate deliberation, accommodate social diversity, and promote justice for all members of society.

Comparative experiences from Japan, South Africa, India, Scandinavia, and jurisdictions that have developed restorative justice demonstrate that institutionalised law cannot be transplanted as a complete and universally applicable model. Each legal order must develop forms of institutionalisation rooted in its own historical, cultural, social, and constitutional conditions. Indonesia must therefore formulate its own pathway through genuine recognition of legal pluralism, sustained dialogue between state law and customary and religious norms, reform of legal education, and transformation of institutional culture. Legal plurality should not be regarded merely as a threat to national legal unity. Properly coordinated, legal plurality can strengthen rather than undermine national legal unity by enhancing legitimacy, adaptability, and substantive justice.

The reform of legal institutionalisation must consequently be understood as both an institutional and cultural project. While legislation, organisational restructuring, and procedural reform, can reshape legal institutions, legal culture evolves through repeated experiences of fair treatment, equal protection, meaningful participation, accessible justice, institutional accountability, and responsiveness to actual social needs. Sustainable reform consequently requires long-term commitment from policymakers, legal educators, law enforcement institutions, courts, civil society organisations, customary communities, and citizens.

At the policy level, the state should comprehensively map Indonesia's living legal systems, including customary law, religious norms, community practices, and informal dispute-resolution mechanisms. This mapping should serve as the basis for constructing a genuinely pluralist national legal order while determining which community-based norms can be recognised without compromising constitutional rights, equality, and human dignity. Legislative processes should

ensure meaningful public participation, and new regulation should be explicitly justified according to necessity, proportionality, social relevance, and its likely consequences for individual freedom.

Legal education must likewise move beyond its excessive dependence on Euro-continental formalism and narrow statutory analysis. Sociology of law, legal anthropology, critical legal theory, legal philosophy, and empirical socio-legal research should be integrated into the core curriculum. Future legal professionals must be trained not only to interpret texts, but also to understand power relations, institutional behaviour, cultural diversity, social conflict, and the operation of law in daily life. Collaboration between law faculties, customary communities, civil society organisations, and legal institutions is essential for developing a more contextually grounded understanding of Indonesian law.

Law enforcement institutions should transform their institutional culture from a command-and-control orientation toward an approach genuinely grounded in service, protection, proportionality, and conflict resolution. Restorative justice should be supported by adequate legal foundations, institutional infrastructure, professional training, procedural safeguards, and systematic evaluation. Its implementation must protect victims, prevent coercive settlements, ensure accountability, and remain consistent with constitutional rights and substantive justice.

Civil society also has a central role in strengthening legal institutionalisation. Legal literacy initiatives should communicate rights and obligations in accessible language adapted to the social and cultural contexts of different communities. Civil society organisations should advocate for the recognition of customary systems that are effective, participatory, and consistent with human rights, while critically challenging discriminatory or oppressive practices that may exist within them. They should also build institutional bridges between formal legal authorities and the normative systems that genuinely regulate community life.

As a doctrinal-conceptual study, this research does not claim to produce definitive empirical findings on the operation of institutionalised law throughout Indonesia's diverse regions. Its contribution lies in the systematic analysis and reconstruction of legal concepts, principles, doctrines, statutory developments, and jurisprudential perspectives concerning coercion, legitimacy, legal pluralism, progressive law, and legal institutionalisation. The propositions advanced in this study therefore require further empirical examination. Future research should investigate interactions between living law and state law in particular communities, assess the long-term effects of restorative justice on legal compliance and social cohesion, as well as compare patterns of legal institutionalisation across regions with differing degrees of customary and religious law recognition.

Ultimately, the distinction between institutionalised law and coercive law reflects two different visions of political community. A legal order founded primarily on coercion treats law as an expression of shared values, public reason, and collective commitment. Building such an order does not require the elimination of state authority or coercive power, but ensuring that its exercise remains subject to legitimacy, proportionality, participation, and substantive justice.

For Indonesia, legal pluralism is not only a source of complexity but also a significant normative resource. The diversity of its peoples, traditions, religions, and living legal practices offers the possibility of constructing a legal order that is more responsive, adaptive, and humane than one based solely on uniform statutory command. Transforming this diversity into a coherent, legitimate, and socially rooted national legal system remains one of the central challenges of Indonesian legal development and a shared responsibility of legal scholars, practitioners, policymakers, institutions, communities, and citizens.

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