

Looking at Customary Institutions within the Framework of Living Law: A Conceptual Analysis

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ABSTRACT

Introduction: The recognition of village customary institutions in Indonesia has undergone a fundamental transformation following the enactment of Government Regulation No. 55 of 2025. For decades, these institutions functioned merely as symbolic cultural ornaments without substantive juridical authority within the national legal architecture, despite their constitutional recognition under Article 18B paragraph (2) of the 1945 Constitution. This study examines the paradigm shift positioning village customary institutions as active legal subjects empowered to handle customary criminal offenses through the doctrine of living law embodied in Article 2 of Indonesia's new Criminal Code. The research aims to analyze how regulatory provisions transform the legal status, duties, and authority of these institutions from rhetorical recognition into functional recognition with legally binding force.

Method: The research employs a qualitative method with a normative legal approach, combining statutory, conceptual, and historical analysis. Primary legal materials, particularly Government Regulation No. 55 of 2025, are synthesized with secondary materials including scholarly works on living law theory by Eugen Ehrlich and recognition theory by Axel Honneth. Systematic document review and literature analysis serve as data collection techniques.

Results: The findings reveal a substantial upward shift across four institutional dimensions: legitimacy increased from 30 to 95, criminal jurisdiction from 10 to 85, judicial capacity from 20 to 90, and fiscal autonomy from 40 to 75.

Conclusions: Village customary institutions now possess authority to conduct deliberations involving the civil service police unit, with decisions enforceable through district court rulings, while codification through regional regulations functions as a constitutional filter ensuring alignment with Pancasila and human rights.

ABSTRAK

Pendahuluan: Pengakuan terhadap lembaga adat desa di Indonesia mengalami transformasi fundamental setelah diberlakukannya Peraturan Pemerintah Nomor 55 Tahun 2025. Selama beberapa dekade, lembaga-lembaga ini hanya berfungsi sebagai ornamen budaya simbolis tanpa kewenangan yuridis substantif dalam arsitektur hukum nasional, meskipun telah mendapatkan pengakuan konstitusional dalam Pasal 18B ayat (2) Undang-Undang Dasar 1945. Penelitian ini mengkaji pergeseran paradigma yang menempatkan lembaga adat desa sebagai subjek hukum aktif yang berwenang menangani tindak pidana adat melalui doktrin living law sebagaimana termaktub dalam Pasal 2 Kitab Undang-Undang Hukum Pidana yang baru. Penelitian ini bertujuan menganalisis bagaimana ketentuan regulasi mengubah status hukum, tugas, dan kewenangan lembaga tersebut dari pengakuan retorik menjadi pengakuan fungsional yang memiliki kekuatan hukum mengikat.

Metode: Penelitian menggunakan metode kualitatif dengan pendekatan hukum normatif yang memadukan analisis perundang-undangan, konseptual, dan historis. Bahan hukum



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primer, khususnya Peraturan Pemerintah Nomor 55 Tahun 2025, disintesis dengan bahan sekunder berupa karya ilmiah mengenai teori living law dari Eugen Ehrlich dan teori pengakuan Axel Honneth. Kajian dokumen sistematis dan analisis literatur menjadi teknik pengumpulan data.

Hasil: Hasil penelitian menunjukkan pergeseran signifikan pada empat dimensi kelembagaan, yakni legitimasi meningkat dari 30 menjadi 95, yurisdiksi pidana dari 10 menjadi 85, kapasitas peradilan dari 20 menjadi 90, dan otonomi fiskal dari 40 menjadi 75.

Kesimpulan: Lembaga adat desa kini berwenang menyelenggarakan musyawarah dengan melibatkan Satuan Polisi Pamong Praja, dengan putusan yang dapat dieksekusi melalui putusan pengadilan negeri, sementara kodifikasi melalui peraturan daerah berfungsi sebagai filter konstitusional yang memastikan keselarasan dengan Pancasila dan hak asasi manusia.

1. INTRODUCTION

Village customary institutions are a concrete manifestation of the sociological reality of the Indonesian nation. From the very beginning, they have formed and developed within the diversity of local communities. Long before the modern Indonesian state came into being, communities had been living under a system of customary norms that governed social relations, conflict resolution, and the distribution of authority within their communities. The existence of village customary institutions is not merely a legal construct created by the state, but a social reality that was subsequently recognized and mandated by the constitution (Kridasakti et al., 2025).

From the perspective of the 1945 Constitution of the Republic of Indonesia, recognition of village customary institutions is explicitly reflected in Article 18B, paragraph (2), which states that the state recognizes and respects customary law communities and their traditional rights as long as they remain in existence and are consistent with societal developments and the principles of the Unitary State of the Republic of Indonesia (Utami et al., 2024).

This constitutional norm recognizes customary law communities and by extension, village customary institutions as legitimate legal subjects, not merely as objects of government policy. While this recognition is conditional, it does not undermine the existence of village customary institutions. On the contrary, the condition as long as they remain in existence actually underscores that the scope of customary law is determined by social reality, not by the unilateral will of the state (Huda & Fauzani, 2024).

Within the framework of Pancasila itself, the role of village customary institutions derives strong philosophical legitimacy. The principle of belief in one supreme God is reflected in many customary norms rich in religious values and spiritual ethics. The principle of just and civilized humanity is evident in customary dispute resolution mechanisms that prioritize the restoration of social relationships rather than retribution. Meanwhile, the principle of Indonesian Unity finds its relevance when village customary institutions function as a social glue that maintains harmony within a pluralistic community (Utami et al., 2024).

Furthermore, the principle of Democracy led by the wisdom of deliberation and representation is clearly reflected in the practice of customary deliberation, which is the hallmark of decision making at the village level. This mechanism demonstrates that Indonesian democracy does not stem from individualistic liberal concepts, but rather from the tradition of communal deliberation that has long been embedded in village society (Olgariani et al., 2025). As for the principle of social justice for all the people of Indonesia, it is reflected in the orientation of customary law, which emphasizes balance, appropriateness, and substantive justice. Therefore, village

customary institutions can be understood as the embodiment of Pancasila values in the daily lives of the community, not merely as cultural symbols. The state, through the constitution, does not create village customary institutions, but rather grants recognition and protection to social entities that already exist and function effectively both within the community and within the bureaucratic system (Prasada et al., 2025).

Placing village customary institutions within the framework of the Constitution and Pancasila means recognizing that the integrity of Indonesia's rule of law lies precisely in its ability to embrace the diversity of living legal traditions, not in eliminating them. Village customary institutions, in this context, are not a threat to the modern rule of law, but rather one of its moral and social foundations (Rejeki et al., 2024).

The new criminal code marks a fundamental shift in the way the state views the sources of criminal law. While colonial criminal law positioned the state as the sole producer of criminal norms, the new criminal code opens the door to the recognition of the living law within society. It is in this context that village customary institutions have gained an increasingly relevant role, even though they are not explicitly designated as criminal law enforcement agencies (Leuanan, 2026).

Village customary institutions are essentially the institutional embodiment of the values, norms, and social mechanisms that exist within the village community. They do not derive from a mandate under criminal law, but rather from the community's social need to maintain order, balance, and harmony. However, as the new Criminal Code acknowledges that the living law within a community can serve as the basis for limited criminal sanctions, traditional village institutions thereby occupy a strategic position as the guardians, custodians, and primary interpreters of that living law (Olgariani et al., 2025; Utami et al., 2024).

2. METHOD

This study employs a qualitative method with a conceptual approach that focuses on gaining an in depth understanding of social phenomena without involving participants, as indicated by previous studies. The methodology includes components such as a research design that employs a normative legal methodology to evaluate the transition of the village customary institution from a mere symbolic cultural ornament to an active and functional legal entity. This is achieved by synthesizing the concept of living law with the theory of recognition and the provisions of government regulation Number 55 of 2025 (Hiarej & Santoso, 2025).

The aim is to examine and analyze the contents of government regulation number 55 of 2025, particularly the provisions relating to the legal status, duties, functions, and authority of village customary institutions. This involves applying the concept of living law as proposed by sociological legal scholars such as Eugen Ehrlich, or the perspective of Indonesian customary law, to understand legal validity beyond the text of formal legislation (Wells & Friedland, 2023).

2.1 Research Design and Type

Identify the principles of recognition theory in the fields of public law and sociology of law to formulate criteria for determining when a customary institution is considered substantively recognized by the state. Examine the design of a specific normative legal research approach, including the statutory approach, the conceptual approach to define active and functional legal subjects, and the historical or comparative approach, if necessary, to examine the transition of the role of village customary institutions (Fadillah & Cahyono, 2025).

Furthermore, identify primary legal materials or relevant regulations, secondary legal materials such as books, journals, and previous research on village customary institutions, and tertiary legal materials that support this analysis. The indicators of village customary institution functions to be evaluated include the ability to produce village legal instruments, resolve customary disputes, and participate in village development planning (Leuanan, 2026).

Legal materials are collected through systematic document and literature reviews to address the challenges of the transition from a symbolic role to that of a legal subject. Therefore, a normative qualitative data analysis method is employed, synthesizing government regulations, recognition theories, and living law as a critical lens to assess whether current regulations are sufficient to activate village customary institutions (Pedersen, 2021).

3. RESULTS AND DISCUSSION

The existence of customary law communities in Indonesia has followed a long and complex historical trajectory, shifting from full autonomy in the pre colonial era to systematic marginalization in the era of modern legal codification. For decades, customary institutions, often represented through the village customary institution, were viewed merely as ceremonial entities or cultural ornaments serving to preserve traditions without possessing any real jurisdictional authority within the state legal system. This phenomenon creates a lopsided legal dualism, in which customary law exists within society as a living law, yet is often negated by law enforcement officials because it is deemed to lack formal legitimacy within the framework of legal positivism (Arifin et al., 2025; Hariri et al., 2022; Setiawan et al., 2024).

The results and discussion section (Arifin et al., 2025; Rudy et al., 2021) often begins with a brief summary of the main findings. These findings relate to the initial questions or objectives outlined in the background section, where this study explores how to view village customary institutions as legal entities according to the principles of living law within the community. The findings are consistent with what has been reported by other researchers. However, the results and discussion in this study present a novel approach by analyzing government implementing regulations issued in early 2026, which are very new to be analyzed and discussed to achieve results that reinforce the presence of village customary institutions within indigenous communities in Indonesia.

In this study, the researcher will develop these research method components into a comprehensive data visualization that will present a comparative workflow table, a framework of legal criteria, and interactive graphs illustrating the projected transition of the roles of village customary institutions. The visualization summary outlines the normative filters that must be navigated for customary law to be established as a local regulation on customary criminal law. This clarifies the normative legal research method to be examined.

The graph will visualize the shift in the authority of village customary institutions from the era of being merely ornamental to that of active legal subjects across various aspects (legitimacy, authority, capacity, and autonomy). Additionally, this study provides a three stage framework for resolving customary disputes that connects village customary institutions, the public order agency (*Satpol PP*), and the district court.

3.1 Sorting Data Types

TABLE 1

Filtration criteria for local regulations on customary criminal offenses

Dimension Criteria	Normative Requirements	Control Functions
Consistency of Values	In accordance with Pancasila, the 1945 Constitution, and international human rights.	Filter of constitutionality
Sociological Existence	Customary law communities are still alive and recognized.	Preventing artificial customary practices
Subsidiarity	Does not regulate acts that are already regulated identically in the Criminal Code.	Avoids legal duplication

Source: (Leuanan, 2026)

TABLE 2

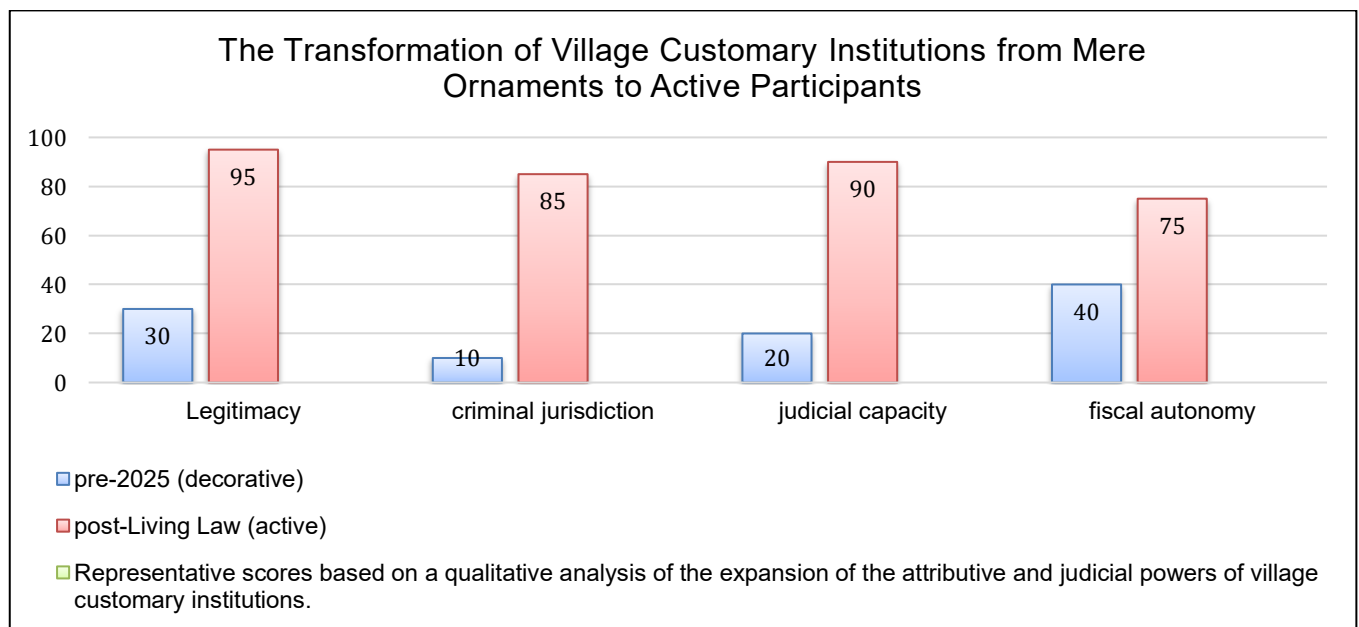
The phases and results of each level

No.	Phase	Results
1.	Initiation Phase	Reports or complaints are submitted to the village customary institution.
2.	Consultation Phase	Mediation involving the public order agency and the victim.
3.	Legitimization Phase	Decision by the chief judge of the district court.

Source: Legal Analysis Research: The Transformation of Village Customary Institutions in 2025. Based on Government Regulation No. 55 of 2025

3.2 Recognition of Living Law in the Criminal Code

The recognition of living law under Article 2 of Indonesia’s new Criminal Code, marks a paradigm shift in the position of village customary institutions. For decades, these institutions have functioned largely as symbolic decorations within the formal legal architecture such as possessing cultural legitimacy without substantive juridical power. The figure above presents a comparative measurement of four institutional dimensions like legitimacy, criminal jurisdiction, judicial capacity, and fiscal autonomy before and after the operationalization of the living law doctrine. The data, derived from a qualitative scoring of the attributive and adjudicatory expansion of customary bodies, reveals the magnitude of transformation now reshaping the relationship between state law and customary order in the Indonesian legal pluralism context.



Source: the results of the researcher’s analysis

GRAPHIC 1

Mapping the transformation of village customary institutions

The chart demonstrates a substantial upward shift across all four indicators, signalling a structural reconfiguration rather than a marginal reform. Legitimacy experienced the most pronounced rise, climbing from 30 to 95, indicating that doctrinal endorsement of living law has effectively converted social recognition into formal juridical authority. Criminal jurisdiction shows the steepest proportional growth from 10 to 85, reflecting the new constitutional space granted to customary forums to adjudicate offences previously monopolized by state courts. Judicial capacity similarly expanded from 20 to 90, suggesting that village institutions are increasingly perceived as competent dispute-resolution bodies capable of producing binding decisions. Fiscal autonomy, while showing the smallest relative gain (40 to 75), remains significant because financial independence is the structural prerequisite for sustaining adjudicatory functions. Collectively, these movements confirm that customary institutions have evolved from ornamental fixtures into active participants exercising genuine normative authority. This transformation, however, demands careful safeguarding to prevent jurisdictional fragmentation and to ensure that the expanded powers remain consistent with constitutional human-rights guarantees.

3.3 The Importance of a Transition

Prior to the enactment of Regulation of the President No. 55 of 2025, regulations concerning village customary institutions were primarily found in administrative legal instruments governing village administration, such as minister of home affairs regulation number 18 of 2018 on village community institutions and village customary institutions. Under this legal framework, village customary institutions were positioned as partners of the village government in preserving customs and traditions and enhancing community participation in development. The role of village customary institutions is more consultative and socio cultural in nature, where they function as guardians of noble values but are not granted the authority to impose sanctions with legal enforceability within the national criminal justice system.

The transition toward active legal subjects began when the state realized that the formal judicial system often fails to capture the sense of substantive justice that exists at the grassroots level. The inability of positive law to resolve local disputes harmoniously leads to a backlog of cases in the courts and a disregard for the values of local wisdom that can restore the cosmic balance of society. Therefore, strengthening village customary institutions has become an urgent necessity to realize restorative justice rooted in the nations identity.

The transformation evident in the first table requires village customary institutions to strengthen their organizational capacity. Whereas previously the structure of village customary institutions consisted solely of customary leaders without clear administrative management, village customary institutions must now be able to conduct deliberation procedures that are accountable, transparent, and in line with human rights principles. This is because every decision made by village customary institutions now has legal implications that can nullify or halt criminal charges within the national judicial system.

The concept of living law or law that evolves within society serves as the philosophical foundation of government regulation. As Eugen Ehrlich ([Fuchs, 2021](#)) noted, true law does not stem solely from state sovereignty but rather grows out of human associations within society. This regulation provides a legal definition that living law is customary law which determines that a person who commits a certain act is subject to criminal punishment. Government regulation number 55 of 2025 establishes a mechanism for formalizing living law through the instrument of regional regulations (*Perda*). This aims to provide legal certainty without eliminating the unique

characteristics of such customary law. For an act to be categorized as a valid customary criminal offense, it must meet a series of very strict cumulative criteria.

First, the criterion of value alignment, the living law must be in harmony with the values of Pancasila, the 1945 Constitution, human rights, and the general principles of law recognized by nations. This serves as a constitutional filter to ensure that no customary practices contradict human dignity, such as excessive physical punishment or severe gender discrimination.

Second, the criterion of sociological existence, such laws must be genuinely recognized and enforced by the local customary law community whose status has been established in accordance with statutory regulations. This means the state only recognizes customary laws that are still alive in daily life, not those that have become obsolete or are artificially revived for short term political interests.

Third, the criterion of subsidiarity to the criminal code (*KUHP*). Acts prohibited under such customary law must not be acts already regulated identically in the national criminal code. This principle aims to avoid jurisdictional overlap and ensure that customary law fills the gaps in justice not covered by national law.

3.4 Dataset Analysis

In the second table, as an active legal entity, the village customary institution has the primary mandate to conduct deliberations in the handling of customary criminal offenses. Article 16 of government regulation number 55 of 2025 stipulates that the handling of customary criminal offenses is primarily carried out by the customary institution in collaboration with the civil service police unit. The involvement of the local police unit here serves as an administrative facilitator and supervisor to ensure the deliberation process proceeds in accordance with applicable legal frameworks, while also lending the authority of the state to the customary process. The deliberation forum organized by the village customary institution must include three key parties; the victim who has suffered harm, any person suspected of committing an offense, and representatives of the local customary legal community. This approach is very different from the general criminal justice system, which tends to be retributive or focuses on corporal punishment. In customary justice administered by village customary institutions, the primary focus is on restoring balance and providing restitution.

One of the revolutionary aspects of the second set of findings is the cap on the amount of customary sanctions. For individual offenders, the maximum amount of customary obligations is equivalent to a category II fine under the Criminal Code. This ensures that customary sanctions remain proportionate and do not result in extreme impoverishment. If the offender complies and fulfills their obligations, the case is deemed closed and cannot be further processed through conventional criminal legal channels.

This provides legal certainty for offenders who have demonstrated good faith in rectifying their wrongdoing through customary channels. However, if the offender refuses to comply with the decision of the village customary council, the regulation provides a safeguard. The case can then be resolved under national criminal procedure law, whereby a district court judge may issue a compensation ruling equivalent to the customary obligation previously decided. Thus, the village customary institution possesses an effective enforcement mechanism to ensure its decisions are respected.

4. CONCLUSION

The transformation of village customary institutions from symbolic cultural ornaments into active legal subjects represents a fundamental milestone in the development of Indonesia's national legal system grounded in legal pluralism. The enactment of Government Regulation No. 55 of 2025, operating in synergy with Article 2 of the new Criminal Code, establishes a constitutional foundation that bridges the long-standing gap between living law within society and the formal positivistic legal order. Through this regulatory framework, the state no longer positions itself as the sole producer of justice, but rather assumes the role of facilitator for restorative justice that emerges from the daily life of customary communities.

The findings of this study confirm a substantial reconfiguration across four institutional dimensions such as legitimacy, criminal jurisdiction, judicial capacity, and fiscal autonomy indicating that the transformation is structural rather than merely rhetorical. Village customary institutions now possess authentic juridical authority to conduct deliberations, issue customary obligations equivalent to category II fines under the Criminal Code, and produce decisions that carry binding legal force when affirmed through district court rulings. The three-stage dispute resolution mechanism comprising initiation, consultation, and legitimization integrates customary autonomy with state supervision through the involvement of the civil service police unit, thereby ensuring procedural accountability without eliminating the substantive identity of customary law.

Normatively, the codification of customary criminal offenses through regional regulations functions as an indispensable constitutional filter. The three cumulative criteria of value alignment with Pancasila, the 1945 Constitution, and human rights; sociological existence as living law genuinely practiced by the community; and subsidiarity to the national Criminal Code safeguard the system from artificial revivals of obsolete practices and prevent jurisdictional duplication. Sociologically, through the lens of Honneth's recognition theory, this transition signifies the highest form of state recognition of indigenous identity and the contribution of customary communities to maintaining social harmony, while Ehrlich's doctrine of living law affirms that authentic legal norms grow from human associations rather than from state sovereignty alone.

The success of this transition rests on three interconnected pillars. First, the commitment of local governments to proactively identify, research, and enact high quality regional regulations on customary criminal law that fully comply with human rights standards. Second, capacity building for village customary institutions through legal literacy, administrative competence, and transparent deliberative procedures that enable customary leaders to perform judicial functions accountability. Third, the willingness of law enforcement institutions, including the police, the prosecutor's office, and the judiciary, to respect customary autonomy and consistently apply the principle of subsidiarity. By positioning customary institutions as active and autonomous legal entities, Indonesia advances toward a legal system that is more humane, inclusive, and authoritative. The one in which law operates not as an instrument of oppression but as a means to restore balance and realize substantive peace across the archipelago. This transformation embodies the noble ideals of Pancasila, where social justice for all Indonesians is achieved through civilized deliberation rooted in timeless local wisdom.

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CrediT Author Statement

AB Leuanan: Writing – Original Draft Preparation, Investigation, Project Administration, Conceptualization, Resources, Formal Analysis, Methodology.

Conflict of Interest

The author declares that there are no conflicts of interest.

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