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The Restorative Justice Approach in the Practice of Upah-Upah as a form of Local Wisdom in Combating Street Crime

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ABSTRACT

Upah-upah are a settlement of a crime based on the existence of customary law. Restorative justice is a means used to make upah-upah a part of criminal settlement. The purpose of this research is to find the concept of restorative justice in the implementation of upah-upah as local wisdom related to the concept of justice, and to analyze and describe the implementation of the concept of restorative justice in the implementation of upah-upah as local wisdom in overcoming street crime. The research method used is a research specification using analytical descriptive. The approach method uses normative juridical. The data collection technique that will be used in this study is document study. The data analysis method is qualitative normative. The conclusion of this study is first, the concept of restorative justice must be strengthened by the existence of regional regulations based on recognition of the existence of laws that develop in society. Second, making street crime an object of restorative justice which is attached to customary justice and attached to the Tumbaga Holing Letter as its legal basis. The police are positioned as supervisors and monitors of the implementation of customary justice. Apart from that, it also functions as a means of conveying information to the prosecutor's office and judges in court, the final result of which is that customary decisions are made by the court which have legal force in Indonesian positive law.

Keywords: upah-upah; restorative justice; street crime.

INTRODUCTION

Since the enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the New Criminal Code), the state's reinforcement of the existence of customary law communities has been addressed. This is contained in Article 2, which states that the provisions in the New Criminal Code do not eliminate the existence of laws that are factually living and developing within society. This provision indicates the recognition by the state of customary laws alongside the existence of the New Criminal Code.

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One of the customary laws in Indonesia is the customary law of the Batak community, which imposes sanctions on perpetrators of crimes through restitution in the form of certain livestock, as well as medical expenses based on mutual agreement. For example, the tradition of eating sirih satu tepak signifies that the matter is considered settled. The existence of restitution in the resolution of criminal cases is essentially a fundamental concept of restorative justice. Restorative justice as a concept has been around for a long time, dating back to Aristotle, who viewed restitution as one of the essential elements of law—not as punishment or as an extreme way of harming the offender^a. As a restorative concept, it tends to focus on the idea that the object of crime is seen from the perspective of the offender regarding the victim or society, without emphasizing the role of the state^b.

Restorative justice within the criminal justice process scheme, which includes investigations, prosecutions, adjudication, and imprisonment, has been implemented in various countries, such as North America, Australia, and some countries in Europe.^c Restorative justice represents a progressive paradigm within the criminal justice system, emphasizing the restoration of conditions to their original state prior to the commission of a criminal offense. This concept inherently involves not only the victims and their families but also the offenders and their families, as well as stakeholders who possess legitimate interests in the application of restorative justice. These stakeholders are granted access to the restorative justice process due to their potential authority or roles in assessing the extent of harm caused by the offense, or in evaluating the rights that have been violated and must be rectified. Such rights may pertain to either the victim or the offender.^d

The aforementioned explanation conceptually illustrates that restorative justice emphasizes the creation of balance or justice that is inherent to both the offender and the victim. Mediation serves as the primary means through which restorative justice is carried out, including the mechanisms and procedures involved in its implementation. Consequently, the ultimate objective of restorative justice is the establishment of a

^a Abdul Hakim Siagian, et al. (2020). "Alternatif Metode Ganti Kerugian terhadap Korban Tindak Pidana sebagai Wujud Restorative Justice dalam Persepektif RKHUP". *Jurnal Peradilan Indonesia Teropong*, Vol.8, July – December 2020, p. 1.

^b Prayitno, K. P. (2012). Restorative Justice untuk Peradilan di Indonesia (Juridical and Philosophical Perspective in Law Enforcement in Concreto). *Journal of Legal Dynamics*, 12(3), 414.

^c Eriyantouw Wahid. (2009). *Keadilan Restoratif dan Peradilan Konvensional dalam Hukum Pidana*. Jakarta: Universitas Trisakti, p. 1.

^d Achmad Ali. (2009). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)*, Jakarta: Kencana Prenada Media, p. 196.

mutual agreement between the offender and the victim. Conceptually, such an agreement constitutes a manifestation of restitution or restoration.^e

Restorative justice is a modern concept of criminal justice, as articulated by Jeff Christian.^f On the other hand, Howard Zher expressed his perspective regarding restorative justice, stating that^g

Restorative justice views that the occurrence of a crime is a factualization of the existence of violations in humans. Based on the existence of these factual facts, there is an obligation for the crime to make improvements to the situation. This will create justice that is obtained by the victim or perpetrator and even the wider community.

In Indonesia, there are numerous regulations governing restorative justice, such as the Supreme Court Circular Letter No. 3 of 2011 concerning the Placement of Victims of Narcotics Abuse in Medical and Social Rehabilitation Institutions. Additionally, there is the Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 regarding the Implementation Guidelines for Restorative Justice, enacted on December 22, 2020. Within the Police institution itself, restorative justice is implemented based on the Chief of Police Circular Letter No. SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, and the Chief of Police Regulation No. 6 of 2019 regarding the Investigation of Criminal Acts. On the other hand, there is also the Prosecutor's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

The existence of regulations on restorative justice issued by several state institutions does not eliminate the inherent problems within restorative justice itself. A concrete example is the application of restorative justice to *upah-upah*, a local wisdom of the Batak community used to resolve street crimes such as theft, snatching, robbery, and other offenses involving violence or threats of violence. If street crimes continue to be neglected and remain unresolved or prolonged, this situation will hinder the community's access to carry out their daily activities. The handling system for street crime seemingly faces challenges, as law enforcement agencies, including the police, find it difficult to trace the perpetrators, which complicates the process of uncovering various criminal cases.

^e Septa Candra. (2013). "Restorative Justice: Suatu Tinjauan terhadap Pembaharuan Hukum Pidana di Indonesia", *Jurnal Rechtsvinding*, Vol. 2 No. August 2, 2013, p. 264.

^f Hadi Supeno. (2010). *Kriminalisasi Anak, Tawaran Gagasan Radikal Peradilan Anak tanpa Pemidanaan*. Jakarta: Gramedia, p. 196.

^g Howard Zehr. (1990). *Changing Lenses: A New Focus for Crime and Justice*, Pennsylvania, Waterloo, Ontario: Scottdale, Herald Press, p. 181.

The aforementioned problem arises because the fundamental regulation governing the implementation of *upah-upah* as part of restorative justice – namely Article 2 of Law Number 1 of 2023 concerning the Criminal Code – has not yet been effectively implemented. This is due to the fact that the criminal justice system for handling street crimes is still based on the general criminal trial process through the common court mechanism. Moreover, *upah-upah* is still perceived as a customary resolution separate from the law enforcement mechanisms carried out by the authorities. The logical consequence of this situation is that *upah-upah* has not yet been recognized by Indonesian criminal law as part of the criminal justice mechanism.

The above circumstances have encouraged the development of the *upah-upah* concept as a means of resolving criminal cases, particularly street crimes, integrated within the Indonesian criminal justice system, while also incorporating law enforcement officers in the case resolution process. Based on this, the author identifies the following issues: first, how is the concept of restorative justice in the implementation of *upah-upah* as local wisdom related to the concept of justice? Second, how is the implementation of restorative justice in the application of *upah-upah* as local wisdom carried out to address street crimes?

RESEARCH METHODS

This study employs a descriptive-analytical method, which involves the utilization and examination of primary legal materials as well as secondary legal materials. The normative juridical approach is used as the methodological framework in this journal, involving the study of legislation that substantially constitutes secondary data. This indicates that both library research and field research are conducted by the author. Additionally, a qualitative juridical approach is applied, relying on qualitative arguments and narratives rather than quantitative data or statistical analysis.

DISCUSSION

The Concept of Restorative Justice in the Implementation of Upah-Upah as Local Wisdom in Addressing Street Crime

One of the crimes that deeply concerns the community is street crime. Street crime affects public order and safety. Therefore, street crime must be addressed due to its significant impact on society, such as causing feelings of insecurity and fear when engaging in activities outside the home. Consequently, the law must be strictly enforced

to combat street crime in order to provide a sense of safety and comfort to the community from such disturbances.^h

Street crime is an offense closely related to the environment, making it difficult to address, especially in developing countries such as Indonesia. This difficulty arises because the primary element of street crime is economic, which drives offenders to seek quick profits.ⁱ

There are 12 categories of street crimes commonly committed by offenders, namely:

1. Tire slashing (puncturing vehicle tires)
2. Motorcycle gang crimes
3. "Bajing loncat" (snatch theft or jump robbery)
4. Window smashing
5. Robbery
6. Crimes using the modus operandi of asking for help at night
7. Hypnosis crimes
8. Crimes of pretending to demand compensation from someone for allegedly hitting a relative in an accident that never occurred
9. Theft inside public transport vehicles such as minivans or buses
10. Crimes involving obstructing travel by placing trees or objects on the road to block vehicles
11. Crimes using caustic soda (sodium hydroxide) to steal motorcycles

From the perspective of criminal law, street crimes involve several criminal sanctions, such as theft with violence, which falls under the provisions of Article 363 of the Indonesian Criminal Code (KUHP), theft under Article 265 KUHP, and extortion under Article 368 KUHP. In addition to theft, street crimes can also be subject to criminal sanctions for rape, which falls under the provisions of Article 285 of the Indonesian Criminal Code (KUHP), assault under Article 351 KUHP, and murder under Article 338 KUHP. The numerous laws regulating street crime indicate that street crime is a criminal act that causes public concern.^k

Street crime can be addressed through a new breakthrough by applying the concept of restorative justice, where both the offender and the victim are considered

^h AKBP M Syahirul A. Rambe S.SOS. SH., MH. Jabatan PLT KASUBDIT 1 KAMNEG DITRESKRIMUM POLDA SUMUT.

ⁱ Barda Nawawi Arief. (2014). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Penerbit Kencana Prenadamedia Group, p. 4.

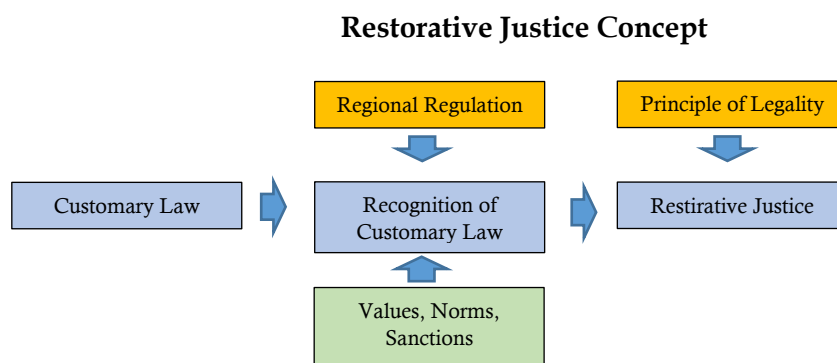
^j Interview with AKBP M Syahirul A. Rambe S.SOS. SH., MH. Jabatan PLT KASUBDIT 1 KAMNEG DITRESKRIMUM POLDA SUMUT on December 12, 2023.

^k Noflanly S.I. Katihokang. (2017). "Kajian Hukum Terhadap Pelaksanaan Program Zero Street Crime dalam Penyalahgunaan Kejahatan Jalanan oleh Kepolisian RI". *Lex Privatum*, Vol. V, No. 6 of 2017, p. 139.

important aspects under the law. The existence of restorative justice is juridically accommodated in the new Criminal Code, which may represent the implementation of legal norms rooted in the community. In other words, restorative justice can be carried out by taking into account local wisdom specific to a region. Therefore, conceptually, it fosters a deliberation system in its implementation, whereby mutual forgiveness or compensation becomes an inseparable part of restorative justice. On the other hand, restorative justice may also be linked to community service imposed on the offender. One important consideration in applying restorative justice to street crimes is that criminal sanctions may be waived when the losses suffered by the victim are deemed minimal.

The concept of restorative justice, which is a new approach in handling criminal acts within the Indonesian criminal justice system, fundamentally differs from the conventional criminal justice system. In restorative justice, the focus is not on the state as the victim but rather on the offender and the victim themselves, who must be addressed. Consequently, the criminal act must be restored to the state as if the crime had never occurred, or in other words, returned to the position before the crime happened. This concept is not inherent in the conventional criminal justice system, where the state is considered the victim and thus has the right and obligation to impose sanctions on the offender.

Factually, restorative justice in Indonesia has been implemented by the National Police (POLRI) through the practice of “peace efforts” in resolving cases by involving both offenders and victims to settle matters through consensus deliberation. This approach is generally applied to minor cases, such as minor assault or minor traffic accidents. However, it is recommended that the restorative justice approach also be conducted during the investigation stage for the sake of efficiency, although its mechanism needs to be clearly regulated. This concept represents the ideal implementation of restorative justice. According to the author, when the restorative justice concept is applied, it can be schematized as follows:



The restorative justice concept above demonstrates that the existence of customary law, which grows and develops within society as a manifestation of the excellence of the Nusantara culture, cannot be separated from the social order. This implies that, fundamentally, every community in Indonesia holds firmly to its cultural values in daily life, including in resolving criminal cases. This encourages recognition of the existence of customary law communities to unify perspectives and simultaneously show respect for customary law communities and the validity of their legal systems.

This recognition encompasses all aspects of the cultural values contained within, including values, norms, and even customary legal sanctions. Such recognition also means that the state, as the highest authority in law-making, acknowledges the existence of customary law. When the state recognizes customary law, it essentially acknowledges and respects the indigenous communities; conversely, when the state recognizes indigenous communities, it grants them high respect through the acknowledgment of their customary law. An important aspect of this recognition is that local governments must legitimize it through the enactment of Regional Regulations (Perda), since with the existence of these regulations, both formally and materially, the customary law of an indigenous community is legally recognized.

This recognition within the framework of criminal law is applied in Article 2 of Law Number 1 of 2023 concerning the Criminal Code, which acknowledges customary law. Thus, customary law is recognized in the administration of criminal law in Indonesia, simultaneously embodying the principle of legality. The recognition of customary law as stipulated in Law Number 1 of 2023 concerning the Criminal Code, reinforced by the existence of regional regulations (Perda) that designate recognized indigenous communities, represents a significant step in the implementation of restorative justice. Essentially, restorative justice serves as a problem-solving approach that does not involve formal judicial processes or conventional legal settlement schemes. The integration of customary law within restorative justice marks a breakthrough in Indonesian criminal law in resolving criminal matters.

The North Sumatra Regional Police (Polda Sumatera Utara), as part of the Indonesian National Police, functions as a subsystem within the criminal justice system, acting as investigators for violations of criminal law rather than customary law offenses. However, with the above concept of restorative justice, the role of the Police extends to supervising the implementation of customary law courts as well as serving as an intermediary to facilitate the enforcement of decisions made by customary courts.

Implementation of the Restorative Justice Concept in the Application of Upah-Upah as Local Wisdom in Combating Street Crime

Upah-upah is a form of living and evolving value in the community related to a compensation system for violations occurring in the North Sumatra region. What law enforcers must consider regarding the existence of upah-upah is to relate the actions taken to the living values that develop within the community, noting that substantively, upah-upah is not part of Indonesia's positive law, despite its recognition in the new Criminal Code. Law enforcers should also view upah-upah as a method or approach to resolving criminal cases by involving the values inherent in society, considering that historically and factually, upah-upah is still practiced by the people of North Sumatra. Therefore, to create legal certainty, upah-upah should be regarded as an innovative approach that can be implemented in Indonesia.

The implementation of upah-upah can be integrated into the restorative justice framework, considering that restorative justice is based on values that live and develop within the community as a form of local wisdom. Therefore, it is appropriate for upah-upah to be considered a part of restorative justice implementation.

When discussing upah-upah as an alternative model for resolving minor criminal offenses, there are at least two models of law enforcement for minor crimes that are considered capable of fulfilling a sense of justice for the offender, the victim, and the community, namely:

1. Formal Model

The formal model is a form of restorative justice that essentially removes the normative elements of the criminal justice system within the criminal justice process. This implies a desire to resolve criminal cases through deliberation in a familial or community-based manner. In this context, restorative justice is positioned as a responsive tool to address complaints from the community who feel that the current criminal justice system does not adequately represent their desire to resolve criminal cases quickly while providing justice to all parties – victims, offenders, and society. The victim is positioned as the party receiving compensation for the crime committed by the offender. On the other hand, the offender is given the understanding that their actions constitute a wrongdoing, and thus, it is unwise for them to repeat such behavior. Meanwhile, the community gains security and comfort from the resolution of issues related to the criminal acts committed. This concept of restorative justice emphasizes the restoration of the situation, fundamentally aiming for environmental stability – conceptually returning the environment to the state it was in before the crime occurred.

Moreover, the concept of restorative justice also emphasizes the joint resolution of criminal acts by both the offender and the victim, focusing on the impact inherent in the commission of the crime. Overall, this concept of restorative justice forms the fundamental basis for the existence of *upah-upah*; therefore, when *upah-upah* are incorporated as part of restorative justice and receive legal recognition under positive Indonesian law, essentially *upah-upah* can be implemented immediately, given that its concept aligns with that of restorative justice. The new Criminal Code (KUHP) should embrace *upah-upah* as part of the Indonesian criminal justice system by incorporating restorative justice.

2. Optimization of Customary Institutions

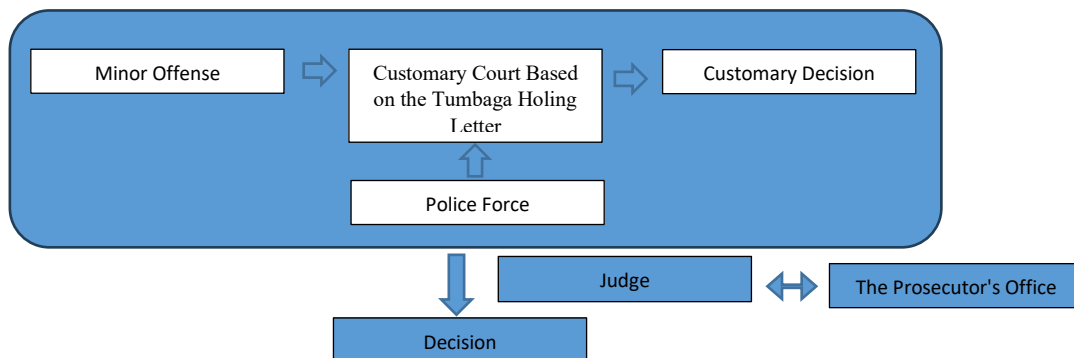
Customary institutions are essentially established based on the existence of traditional customs and practices. It is important to understand that when the use of customary institutions is incorporated, substantively, an innovation in the law enforcement concept has occurred. The argument to support this notion is, firstly, that justice achieved through the application of customary law is often perceived as more just by the local community. This is because customary law is deeply embedded in the social life and culture of the community, thus reducing the likelihood of rejection by the community. Furthermore, deliberation (*musyawarah*) plays a crucial role in resolving disputes. This deliberative process philosophically implies the involvement of all parties concerned in seeking mutually agreeable solutions to the problems at hand. Such an approach naturally leads to reconciliation and peace between the disputing parties. When peace is achieved, fundamentally justice has also been created. Secondly, considering the vast geography of Indonesia, relying solely on formal law enforcement agencies is not proportional or sufficient. The large and diverse territory makes it difficult for formal law enforcement to effectively reach and resolve all cases.

Therefore, utilizing customary institutions, which are more accessible and embedded within local communities, becomes an essential innovation in law enforcement. Therefore, law enforcement can be “delegated” to customary institutions, which act as the implementers of case resolution at the community level. However, customary institutions are still required to report to law enforcement officers and may involve law enforcement as supervisors or parties participating in the case resolution process. Normatively, this concept is formulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, especially related to Article 1 point 10, which states that there is a possibility for the community to resolve a case through implementations such as negotiation, conciliation, mediation, consultation, or the establishment and use

of customary courts. Essentially, this is where *upah-upah* can emerge as part of the Indonesian criminal justice system, reflecting the existence of customary law within a customary community.

Based on the explanation above, it can be stated that minor criminal offenses can potentially be resolved through the use of *upah-upah* by involving customary institutions as a representation of law enforcement, as well as a representation of restorative justice, and a reflection of the new Criminal Code and Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. When schematized, this concept would be as follows:

Implementation of the Upah-Upah Concept as Restorative Justice



Minor criminal offenses that become the object of restorative justice are also the object of customary court processes in North Sumatra, with the *Surat Tumbaga Holing* serving as their legal foundation. Essentially, the customary court held is a crystallization of the indigenous community's trust in resolving societal issues. This represents both a significant recognition and respect for customary justice, where the decisions made are honored and obeyed by the indigenous community.

The implementation of the restorative justice concept in the form of *upah-upah* positions the police as supervisors and observers of the customary court proceedings. This is, of course, preceded by a customary invitation from traditional elders to the local police (at the resort police level, given the authority and responsibilities they carry, which allows for direct coordination with the regional police headquarters – Polda).

On the other hand, the police also serve as a conduit of information or liaison to the prosecutor's office and judges in court, where the final outcome results in the customary court's decision being formalized by the state court. This judicial determination is what grants the customary court decision legal force within the framework of Indonesia's positive law.

The above argument is applied by the author specifically to minor criminal offenses that frequently occur in street crimes, and not to serious criminal offenses, as the conceptual approach differs significantly when dealing with serious crimes, such as murder, rape, or especially corruption. According to the author, serious criminal offenses should remain under the jurisdiction of formal criminal justice proceedings, considering the necessity for law enforcement authorities to uncover the *modus operandi*, possible involvement of other parties, and to explore the background and motivation behind the commission of such serious crimes. Hence, formal criminal proceedings are deemed more suitable for handling serious criminal offenses.

In response to the existence of customary institutions which, in practice, will serve as an extension of law enforcement in resolving minor criminal offenses, it is essential to reconstruct the administrative system within these customary courts in order to prevent deviations in their judicial practices. This reconstruction may be directed toward the establishment of systematic and recorded documentation of customary rulings, in addition to the inventory of relevant international provisions or human rights regulations that are related to customary values and can serve as references or sources in resolving disputes. Therefore, customary institutions must possess a responsive nature toward the circumstances occurring within society, enabling them to understand the conditions and situations within their respective regions. Furthermore, customary institutions must also serve as agents of law enforcement by promoting awareness and discouraging any attempts to evade the application of positive law. This approach will demonstrate the synergy between the existence of positive law and customary law operating side by side.

CONCLUSION

Based on the discussion above, it can be concluded that the concept of *restorative justice* as applied through *upah-upah*—a form of local wisdom—is closely tied to the concept of justice and the recognition of customary law, as outlined in Law Number 1 of 2023 concerning the Indonesian Penal Code. This is further reinforced by the existence of regional regulations (Perda) that formally designate and recognize customary law communities. This represents a significant step in implementing *restorative justice* as a means of achieving justice, particularly as it seeks to resolve disputes outside the formal judicial process by recognizing the legal norms that organically develop within society.

This also indicates that criminal law in Indonesia provides space and fairness for the acknowledgment of customary law. The application of *restorative justice* that involves customary law constitutes a groundbreaking advancement in Indonesia's criminal justice system in resolving criminal matters. Through this concept, the role of the police

becomes one of oversight over the implementation of customary justice, as well as a mediator facilitating the transmission of customary decisions into formal judicial rulings (by judges).

The implementation of the restorative justice concept in the settlement of customary fines as a form of local wisdom in addressing street crimes is by making street crimes the object of restorative justice as well as the object of the customary judicial process in North Sumatra, based on the Tumbaga Holing Letter as its legal foundation. The implementation of the restorative justice concept in the form of customary fines positions the police as both supervisors and monitors of the customary judicial process. On the other hand, the police also serve as a conduit for information or communication to the prosecutor's office and the judges in court, with the final result being that the customary court decisions are formalized by the court. These court decisions give the verdicts of customary trials legal force within Indonesian positive law.

Based on the conclusions obtained, the suggestions in this writing include providing a framework for the implementation of customary law within the positive legal system of Indonesia, or at least an explanation within Law Number 1 of 2023 concerning the Indonesian Civil Code regarding the mechanism for the recognition of customary law in criminal cases. Additionally, regional regulations should be created to represent the handling of criminal acts through the use of customary law.

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