

Local Wisdom-Based Social Sanctions in Indonesian Criminal Law: A Legal-Political Analysis

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Submitted: April 12, 2026

Accepted: June 2, 2026

Published: June 24, 2026

Abstract: Indonesian criminal law reform has shifted from a retributive orientation toward a more restorative and socially responsive approach, as reflected in the recognition of living law under Law Number 1 of 2023 on the National Criminal Code. However, local wisdom-based social sanctions, which have long functioned as community-based restorative mechanisms, remain absent from explicit codification in the national penal system. This normative gap raises an important legal-political question concerning the possibility of institutionalizing such sanctions through Regional Regulations (*Peraturan Daerah*) without violating constitutional principles, national criminal law, and human rights standards. This study aims to examine the legal-political basis for such institutionalization and to formulate the normative limits and regulatory model that should govern it. The study employs normative legal research using statutory, conceptual, philosophical, and socio-legal approaches. The findings show that local wisdom-based social sanctions have received indirect normative recognition through restorative justice mechanisms in Law Number 11 of 2012, Prosecutor Regulation Number 15 of 2020, Supreme Court Regulation Number 1 of 2024, and the social work punishment policy in Law Number 1 of 2023. The study also finds that Regional Regulations may serve as derivative policy instruments to accommodate public apology, community service, moral restitution, and customary obligations, provided that they remain participatory, non-repressive, accountable, and consistent with Pancasila and constitutional guarantees. Such institutionalization is legally possible, but it must be limited to restorative measures aimed at restoring social harmony and guiding constitutionally compliant local regulation.

Keywords: Legal Politics, Social Sanctions, Regional Regulations, Restorative Justice, Living Law

Abstrak: Reformasi hukum pidana Indonesia telah bergeser dari orientasi retributif menuju pendekatan yang lebih restoratif dan responsif terhadap realitas sosial, sebagaimana tercermin dalam pengakuan *living law* dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Meskipun demikian, sanksi sosial berbasis kearifan lokal yang telah lama berfungsi sebagai mekanisme restoratif berbasis komunitas masih belum dikodifikasi secara eksplisit dalam sistem hukum pidana nasional. Kesenjangan normatif ini menimbulkan persoalan politik hukum mengenai kemungkinan pelebagaan sanksi tersebut melalui Peraturan Daerah tanpa melanggar prinsip konstitusional, hukum pidana nasional, dan standar hak asasi manusia. Penelitian ini bertujuan untuk mengkaji dasar politik hukum pelebagaan tersebut serta merumuskan batas normatif dan model pengaturan yang harus menjadi acuan. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, filosofis, dan sosio-legal. Hasil penelitian menunjukkan bahwa sanksi sosial berbasis kearifan lokal telah memperoleh pengakuan normatif secara tidak langsung melalui mekanisme keadilan restoratif dalam Undang-Undang Nomor 11 Tahun 2012, Peraturan Kejaksaan Nomor 15 Tahun 2020, Peraturan Mahkamah Agung Nomor 1 Tahun 2024, serta kebijakan pidana kerja sosial dalam Undang-Undang Nomor 1 Tahun 2023. Penelitian ini juga menemukan bahwa Peraturan Daerah dapat berfungsi sebagai instrumen kebijakan turunan untuk mengakomodasi permintaan maaf terbuka, kerja sosial, restitusi moral, dan kewajiban adat, sepanjang bersifat partisipatif, tidak represif, akuntabel, serta selaras dengan Pancasila dan jaminan konstitusional. Pelebagaan tersebut dimungkinkan secara hukum, tetapi harus dibatasi pada sanksi restoratif yang berorientasi pada pemulihan harmoni sosial serta pembentukan regulasi daerah yang konstitusional.

Kata Kunci: Politik Hukum, Sanksi Sosial, Peraturan Daerah, Keadilan Restoratif, Hukum yang Hidup

Introduction

The reform of Indonesian criminal law has entered a decisive phase with the enactment of the National Criminal Code, which reflects a broader effort to move beyond the colonial legacy of punitive legalism toward a criminal law system more closely aligned with Indonesian values and social realities.¹ One of the most significant developments in this reform is the recognition of *living law* as a relevant normative source in criminal law. This development is not merely doctrinal, but also political, because it redefines the relationship between state law and the norms that continue to operate in society. In this context, the question of whether local wisdom-based social sanctions may be institutionalized through Regional Regulations becomes increasingly important.

In many Indonesian communities, social sanctions have long functioned as mechanisms for restoring social harmony after wrongdoing. These sanctions often take the form of public apology, customary compensation, moral restitution, communal obligations, or other restorative measures rooted in local tradition. Their primary

¹Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, <https://doi.org/https://doi.org/10.1080/10383441.2023.2243772>; Tongat Tongat et al., "Hukum Yang Hidup Dalam Masyarakat Dalam Pembaharuan Hukum Pidana Nasional," *Jurnal Konstitusi* 17, no. 1 (2020), <https://doi.org/10.31078/jk1717>; Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Athens: University of Georgia Press, 1993).

orientation is not to retaliate but to recover, be accountable, and re-integrate into society. For this reason, social sanctions have a strong affinity with *restorative justice* and may be understood as part of Indonesia's long-standing normative traditions rather than as foreign legal innovations.²

The issue becomes more urgent following the recognition of living law under the new Criminal Code, as this recognition raises the legal-political question of how local norms may be translated into formal legal instruments at the regional level. Regional Regulations can serve as derivative policy instruments through which regional governments may accommodate locally rooted sanctions while remaining subject to constitutional boundaries, national criminal law, and human rights standards. However, this institutionalization must be approached carefully, because it also carries risks of overcriminalization, legal uncertainty, multi-interpretation, and inconsistency between local practice and national guarantees of legality and due process.³

The existing literature on this subject can be classified into three streams. First, studies focusing on the doctrinal reformulation of customary criminal law within the National Criminal Code emphasize the need for systematic inventory and codification of customary norms, yet they tend to treat *living law* as a passive object of state recognition rather than as an active normative source requiring deliberate legal-political design.⁴ Second, research examining the constitutional and human rights dimensions of *living law* recognition highlights the risks of multi-interpretation and potential human rights violations, but stops short of proposing a concrete regulatory framework capable of addressing those risks at the regional legislative level. Third, empirical studies on customary justice practices in specific regions, particularly Aceh, document how community-based sanctions operate within local institutional frameworks, yet remain descriptive and region-specific without generating transferable normative propositions applicable to the broader Indonesian legal

²Nilna Aliyan Hamida, "Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?," *Indonesian Journal of Law and Society* 3, no. 1 (March 2022): 1, <https://doi.org/10.19184/ijls.v3i1.26752>; Rudini Hasyim Rado and Nurul Badilla, "The Concept of Restorative Justice in an Integrated Criminal Justice System," *European Journal of Law and Political Science* 3, no. 2 (2019); Daniel W. Van Ness et al., "Toward a Restorative System," in *Restoring Justice*, 2022, <https://doi.org/10.4324/9781003159773-11>; Arskal Salim, "Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh," *Asia Research Institute, National University of Singapore & Rehabilitation and Construction Executing Agency for Aceh and Nias, Banda Aceh, Indonesia*, 2007, 24–27.

³Mochamad Adib Zain, "Peran Desa Adat Dalam Merumuskan Dan Mengimplementasikan Ketentuan Pidana Berasal Dari Hukum Yang Hidup Dalam Masyarakat Sebagaimana Diatur Dalam KUHP Baru," *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 12, no. 1 (2023), <https://doi.org/10.33331/rechtsvinding.v12i1.1101>.

⁴Muhammad Junaidi and Yoghi Arief Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (February 2025): 43–60, <https://doi.org/10.14710/jphi.v7i1.43-60>; Junaidi and Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation"; Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (July 2025): 255–85, <https://doi.org/10.22437/home.v8i1.502>.

system.⁵ The critical limitation shared by all three streams is their failure to engage with the legal-political question of how *Regional Regulations (Peraturan Daerah)* may serve as legitimate derivative policy instruments for institutionalizing local wisdom-based social sanctions within the constitutional framework of Indonesian criminal law reform. This gap constitutes the primary contribution of the present article.

A number of previous studies have examined customary criminal law, restorative justice, and the place of *living law* in Indonesian legal reform. Some have focused on the reformulation of customary criminal law in the National Criminal Code, while others have emphasized the need to inventory customary norms or to ensure state recognition without sacrificing legal certainty and human rights protection.⁶ Yet these studies generally remain partial in three respects: they do not construct a systematic legal-political framework, they do not specify the normative conditions under which *Regional Regulations* may legitimately accommodate social sanctions, and they do not propose an operational regulatory model linking local wisdom-based sanctions to the formal criminal justice system.

The present article addresses these gaps by responding to two principal research questions: first, what is the legal-political basis for institutionalizing local wisdom-based social sanctions through *Regional Regulations* in Indonesian criminal law; and second, what normative limits and regulatory models should guide such institutionalization so that it remains compatible with *Pancasila*, the Constitution, and human rights guarantees? Three principal contributions are offered: first, a systematic legal-political analysis of *Regional Regulations* as derivative instruments for accommodating local wisdom-based social sanctions within the framework of the 2023 Criminal Code reform; second, a set of normative criteria ensuring compatibility with constitutional guarantees and human rights standards; and third, an operational regulatory model specifying the material scope, procedural safeguards, and institutional mechanisms necessary for legitimate implementation.

This article is theoretically grounded in three interconnected frameworks. The concept of *legal politics (politik hukum)*, as developed by Mahfud MD, is understood as the state's conscious policy direction in selecting, shaping, and developing legal norms in response to social realities, serving as the primary analytical lens through which *Regional Regulations* are examined as instruments of deliberate normative choice rather than mere technical by-products of regional autonomy. This is complemented by *legal pluralism* theory, which recognizes the simultaneous operation of multiple

⁵Rusjdi Ali Muhammad and Dedy Sumardi, *Kearifan Tradisional Lokal: Penyerapan Syariat Islam Dalam Hukum Adat Aceh* (Banda Aceh: Dinas Syariat Islam Aceh, 2011); Badri Badri and Fatmawati Fatmawati, "Pelaksanaan Sanksi Pidana Adat Di Gampong Kampung Paya Kecamatan Kluet Utara Kabupaten Aceh Selatan," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 1 (December 2018): 27, <https://doi.org/10.22373/legitimasi.v7i1.3963>; Gamal Akhyar and Allizana Muzdalifah, "Pertimbangan Pelimpahan Pidana Adat Oleh Aparat Gampong Ke Jalur Peradilan (Studi Kasus Gampong Lamgugob, Kecamatan Syiah Kuala)," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 8, no. 2 (2019): 264, <https://doi.org/10.22373/legitimasi.v8i2.5858>.

⁶Junaidi and Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation."

normative orders: state law, customary law, and community norms within a single social field, providing the theoretical basis for understanding why local wisdom-based social sanctions possess independent normative force that the state may selectively recognize without displacing the formal legal order. The third theoretical pillar is *restorative justice*, understood not merely as a procedural alternative to punitive adjudication, but as a normative philosophy emphasizing the repair of harm, the restoration of social relationships, and the reintegration of offenders into the community. Within this integrated theoretical framework, the recognition of *living law* in Indonesian criminal law reflects a conscious legal policy choice to partially accommodate norms that persist in society, while subjecting them to constitutional control and the hierarchy of legislation. Seen from this perspective, *Regional Regulations* are not merely local technical instruments, but sites where national criminal law policy, regional legislative authority, and socially embedded norms intersect, making their examination both legally necessary and theoretically significant.

This study employs normative legal research (*penelitian hukum normatif*) to examine law as a coherent body of norms, principles, and doctrines.⁷ The research is prescriptive-analytical, seeking not only to describe the existing legal framework but also to propose normative solutions. Four approaches are utilized: (1) a statutory approach (*pendekatan perundang-undangan*) analyzing the hierarchy and consistency of relevant legislation; (2) a conceptual approach (*pendekatan konseptual*) clarifying the theoretical foundations of *living law*, social sanctions, and restorative justice; (3) a philosophical approach (*pendekatan filosofis*) examining the alignment of proposed institutionalization with Pancasila as the *grundnorm*; and (4) a socio-legal approach (*pendekatan sosio-legal*) connecting formal norms with living practices in Indonesian communities.

Legal materials comprise three categories: primary materials including the 1945 Constitution, Law Number 1 of 2023 on the Criminal Code, Law Number 23 of 2014 on Regional Government, Government Regulation Number 55 of 2025, Supreme Court Regulation Number 1 of 2024, and Prosecutor Regulation Number 15 of 2020;⁸ secondary materials consisting of scholarly books, peer-reviewed journal articles, and expert commentaries; and tertiary materials including legal dictionaries and encyclopedias. Data analysis employs deductive reasoning, moving from general principles to specific applications, supplemented by systematic and grammatical interpretation of legal texts.⁹

⁷Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2014); Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013).

⁸Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (1945); KUHP, "Undang Undang Nomor 1 Tahun 2023 Tentang Kitab Undang Undang Hukum Pidana," no. UU (2023): 1–345; Republik Indonesia, "Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," 2014; Republik Indonesia, "Peraturan Pemerintah Nomor 55 Tahun 2025 Tentang Tata Cara Dan Kriteria Penetapan Hukum Yang Hidup Dalam Masyarakat," 2025.

⁹Peter Mahmud Marzuki, *Penelitian Hukum*.

The Legal-Political Basis for Institutionalizing Local Wisdom-Based Social Sanctions through Regional Regulations

The recognition of living law in the National Criminal Code marks an important shift in Indonesian criminal law policy. Criminal law is no longer positioned solely as a closed, state-centered codification, but as a legal system that begins to acknowledge norms that persist in society. In this respect, the politics of criminal law reform reflects an effort to reconcile the formal legal order with Indonesia's socio-cultural reality. The recognition of customary obligations and community-based sanctions, therefore, cannot be understood merely as an exception to legality, but rather as part of a broader legal-political project to indigenize criminal law within the framework of Pancasila and the Constitution.¹⁰

The legal-political basis is further strengthened by specific provisions in the new Criminal Code and its implementing regulations. Article 2, paragraph (1) of Law Number 1 of 2023 explicitly states that the provisions of the Criminal Code apply to every person who commits a criminal act in accordance with living law in society (*hukum yang hidup dalam masyarakat*). Article 2, paragraph (2) further clarifies that living law applies insofar as it is in accordance with the values contained in Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the community of nations. Government Regulation Number 55 of 2025 provides operational guidance for the determination and application of *living law*, including criteria for recognition and mechanisms for dispute resolution. These provisions collectively establish that the accommodation of local norms is not merely permissive but constitutes an integral element of Indonesia's contemporary criminal law policy, subject to constitutional and human rights limitations.

The constitutional and statutory basis for institutionalizing local wisdom-based social sanctions through *Regional Regulations* must be stated explicitly. Constitutionally, the recognition of customary communities and their traditional rights provides the foundational justification for acknowledging norms that continue to live in society, so long as such recognition remains compatible with the constitutional order and the development of the Unitary State of the Republic of Indonesia. Statutorily, *Regional Regulations* occupy a valid place within the hierarchy of Indonesian legislation and may regulate local governmental affairs within the scope of regional authority. Nevertheless, this authority is not unlimited. Regional governments may not create penal norms that contradict the principle of legality, exceed delegated authority, or undermine national criminal law uniformity. Therefore, the legal basis for *Regional Regulations* in this field must be read in a restrictive manner: not as a mandate to

¹⁰Tody Sasmitha 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 (May 2021): 269–89, <https://doi.org/10.1080/07329113.2021.1945222>; Tody Sasmitha Jiwa Utama, "Hukum Yang Hidup' Dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP): Antara Akomodasi Dan Negasi," *Masalah-Masalah Hukum* 49, no. 1 (January 2020): 14, <https://doi.org/10.14710/mmh.49.1.2020.14-25>; Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?"

establish autonomous criminal systems, but as authority to structure limited restorative sanctions rooted in local wisdom, provided that they remain subordinate to the Constitution, the Criminal Code, and human rights guarantees.¹¹

From the perspective of legal politics, the institutionalization of local wisdom-based social sanctions through *Regional Regulations* is closely related to the state's attempt to mediate between national legal unification and legal pluralism. The issue is not whether local norms may exist, because sociologically they have long existed, but whether and how the state may provide formal channels for their limited recognition. In this context, *Regional Regulations* become relevant as derivative policy instruments because regional governments possess the authority to regulate matters related to local governance, social order, and the preservation of local values, provided such regulation remains subordinate to higher norms and does not conflict with national criminal law.¹² Therefore, the legal-political basis of institutionalization lies in the combination of criminal law reform, regional autonomy, and the constitutional recognition of social and cultural plurality.

However, the formal accommodation of local wisdom-based sanctions does not mean that regional governments are free to create independent criminal regimes detached from the national system. The legal politics of *living law* in Indonesia is not directed toward replacing state criminal law with customary law, but toward opening a carefully limited space for restorative, community-based sanctions that complement formal justice mechanisms. In this sense, the role of *Regional Regulations* should be understood as regulatory mediation: they translate local values into administrable, legally accountable norms while preserving alignment with legality, constitutionalism, and human rights. Such a model also reflects the state's selective recognition of social sanctions, namely recognition conditioned by public accountability, proportionality, and compatibility with national law.¹³

This legal-political construction is strengthened by contemporary scholarship that argues for the reformulation and inventory of customary criminal norms within the framework of national legislation, yet such scholarship also reveals a critical tension that regional legislators must consciously address. Butt's analysis of Indonesia's new Criminal Code demonstrates that the indigenization of criminal law through *living law* recognition simultaneously opens productive normative space and

¹¹Enggar Wijayanto and Muhammad Haris Makarim, "Politik Hukum Living Law Dan Hak Asasi Manusia Terhadap Rancangan Perda Tindak Pidana Adat Dalam KUHP," *Jurnal Legislasi Indonesia* 22, no. 2 (June 2025): 176, <https://doi.org/10.54629/jli.v22i2.1354>.

¹²Republik Indonesia, "Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah"; Zain, "Peran Desa Adat Dalam Merumuskan Dan Mengimplementasikan Ketentuan Pidana Berasal Dari Hukum Yang Hidup Dalam Masyarakat Sebagaimana Diatur Dalam KUHP Baru."

¹³Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah* 5, no. 1 (2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>; Simon Albertian Redy, Abdul Aziz Alsa, and Idha Apriliana Sembiring, "Kedudukan Living Law Sebagai Pranata Hukum Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang- Undang Hukum Pidana," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 10, no. 4 (2025): 3197–3206, <https://doi.org/10.54443/sibatik.v4i10.3478>.

generates serious risks of legal uncertainty, particularly when local governments are granted authority to enact *Regional Regulations* without sufficiently clear national guidelines.¹⁴ Masyhar et al. further demonstrate that the prospects of *living law* under the 2023 penal reform depend critically on the availability of a normative design capable of converting unwritten customary norms into legally certain and constitutionally accountable provisions.¹⁵

The challenge identified in the literature is therefore not the absence of social sanctions in society, because empirically they have long existed and functioned, but the absence of a clear legal design for their institutionalization that satisfies both the demands of *legal certainty* and the imperatives of *restorative justice*. Faisal et al. argue that the genuine paradigm of criminal justice reform in Indonesia requires not merely the formal recognition of community-based values, but a structural reorientation of the entire penal system toward substantive justice, of which the accommodation of local wisdom-based sanctions through *Regional Regulations* constitutes one concrete expression.¹⁶ Without such a comprehensive legal design, social sanctions remain either socially effective but legally uncertain or formally acknowledged but vulnerable to arbitrary interpretation, thereby undermining the very constitutional legitimacy that regional institutionalization is intended to secure. The political task of regional legislation is accordingly to convert diffuse customary practices into a limited and reviewable normative framework, without destroying their restorative essence.¹⁷

The indirect recognition of social sanctions in Indonesian law can also be observed through several contemporary legal instruments, and a comparative analytical reading of these instruments reveals a coherent, albeit still incomplete, normative trajectory toward the formal accommodation of community-based restorative mechanisms. Law Number 11 of 2012 on the Juvenile Criminal Justice System introduces *diversion* and restorative settlement, opening normative space for apologies, restitution, and community-based responsibility as alternatives to formal adjudication. Prosecutor Regulation Number 15 of 2020 on termination of prosecution based on restorative justice similarly allows the settlement of certain criminal cases through reconciliation and restoration rather than punitive adjudication, reflecting a prosecutorial policy shift away from *retributivism* toward community accountability.

Supreme Court Regulation Number 1 of 2024 strengthens this trajectory by providing judicial guidance for deciding criminal cases on the basis of restorative justice, institutionalizing restorative considerations within the formal adjudicative

¹⁴Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?"

¹⁵Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform."

¹⁶Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (December 2024), <https://doi.org/10.1080/23311886.2023.2301634>.

¹⁷Junaidi and Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation."; Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform."

process itself. Meanwhile, Law Number 1 of 2023, particularly through the policy of *social work punishment (pidana kerja sosial)*, confirms that Indonesian penal reform has moved decisively toward non-custodial and socially responsive sanctions. Rozah and Yudistira demonstrate that the formulation of customary law within the 2023 Criminal Code reflects a deliberate penal policy choice to expand the normative boundaries of formal criminal law beyond purely state-centered responses.¹⁸ Ismail, Mantali, and Moha further argue that the revitalization of traditional institutions within the criminal law system constitutes a structurally necessary condition for the realization of restorative justice at the community level.¹⁹ Mansar and Lubis observe that harmonizing Indonesian criminal law toward a more humane framework requires integrating community-based mechanisms that reflect local values without sacrificing constitutional uniformity.²⁰ Collectively, these instruments and scholarly analyses do not yet formalize social sanctions as a distinct penal category, but they establish the normative entry points through which such sanctions have gained indirect recognition, providing a coherent legal-political foundation upon which *Regional Regulations* may build a more structured and accountable institutionalization framework.

Thus, the legal-political basis for institutionalizing local wisdom-based social sanctions through *Regional Regulations* lies in four interconnected elements: the shift of Indonesian criminal law reform toward a more socially responsive orientation, the recognition of living law within the new Criminal Code, the constitutional acknowledgment of legal and cultural plurality, and the regional legislative authority to regulate local affairs within the national legal hierarchy. These findings indicate that institutionalization is not an extralegal deviation but a conditional legal policy possibility within Indonesia's contemporary criminal law reform.²¹

Normative Limits and Regulatory Model for Regional Regulations on Social Sanctions

Although *Regional Regulations* may serve as instruments for institutionalizing locally rooted social sanctions, their legitimacy depends on strict normative limits. First, the sanctions accommodated through regional legislation must remain restorative rather than retributive. Their main function should be to restore social harmony, repair victim-offender-community relations, and affirm responsibility

¹⁸Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review*, January 2023, 87–104, <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>.

¹⁹Dian Ekawaty Ismail, Avelia Rahmah Y. Mantali, and Mohamad Rivaldi Moha, "The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice," *Jambura Law Review* 5, no. 2 (2023).

²⁰Adi Mansar and Ikhsan Lubis, "Harmonization of Indonesian Criminal Law Through the New Criminal Code Towards Humane Law," *Journal of Law and Sustainable Development* 11, no. 12 (December 2023): e2381, <https://doi.org/10.55908/sdgs.v11i12.2381>.

²¹Redy, Alsa, and Sembiring, "Kedudukan Living Law Sebagai Pranata Hukum Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."; Junaidi and Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation."

through non-custodial measures such as public apology, community service, moral restitution, or customary obligations. Once social sanctions are transformed into humiliating, discriminatory, or excessive punishments, they cease to represent restorative justice and instead reproduce informal violence under the cover of local legitimacy.²²

Regional institutionalization must comply with constitutional guarantees and human rights principles, a requirement that imposes substantive rather than merely procedural constraints on the design of *Regional Regulations* that accommodate locally wisdom-based social sanctions. This means that *Regional Regulations* may not legalize sanctions that violate human dignity, discriminate on the basis of religion, ethnicity, gender, or social status, or deny procedural fairness. Putri's critical analysis of moral offenses under the 2023 Criminal Code demonstrates that incorporating community-based norms into formal criminal law carries a structural risk of disproportionate impact on religious and social minorities, whose conduct may be judged against majority customary standards rather than universally applicable constitutional principles.²³

The state's recognition of customary norms is therefore conditional, not absolute. Such recognition must ensure that local institutions operate within clear constitutional limits, that sanctions are imposed through participatory deliberation, and that affected parties have access to supervision or review when abuse occurs. This limitation is essential because one of the principal risks identified in the development of *living law* is *multi-interpretation (multitafsir)*, especially when oral and flexible social norms are translated into written legal provisions without adequate constitutional filtering. The human rights dimension of regional institutionalization, therefore, demands not only that the content of sanctions be non-degrading and non-discriminatory, but also that the process through which they are imposed satisfies the minimum standards of *due process*, *informed consent*, and *equal protection* that the 1945 Constitution guarantees to all Indonesian citizens regardless of their regional, ethnic, or religious background.²⁴

The regulatory model of *Regional Regulations* should not be directed at expanding criminalization, but at structuring restorative responses to minor and socially embedded conflicts, a design imperative that must be understood within the

²²Eva Achjani Zulfa, "Restorative Justice In Indonesia: Traditional Value," *Indonesia Law Review* 1, no. 2 (August 2011): 33–43, <https://doi.org/10.15742/ilrev.v1n2.81>; - Sukardi, "Legitimacy of the Restorative Justice Principle in the Context of Criminal Law Enforcement," *Indonesia Law Review* 4, no. 2 (October 2014): 196, <https://doi.org/10.15742/ilrev.v4n2.111>.

²³Nella Sumika Putri, "Moral Offenses Under Indonesian Criminal Code 2023 in Perspective of Religious Minority," *Jurnal HAM* 16, no. 1 (May 2025): 61, <https://doi.org/10.30641/ham.2025.16.61-76>.

²⁴Muhammad Fadli, "Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia," *Majalah Hukum Nasional* 54, no. 2 (December 2024): 283–314, <https://doi.org/10.33331/mhn.v54i2.896>; Zein Novita Dahili, "Penerapan Living Law (Pasal 597 KUHP Baru): Antara Pengakuan Hukum Adat Dan Risiko Multitafsir Dalam Reformasi Hukum Pidana Indonesia 2026," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 6239–6250, <https://doi.org/10.61104/alz.v4i1.4129>.

theoretical framework of *restorative justice* as a normative philosophy rather than merely a procedural alternative. Kurniawan's comparative study of restorative justice and customary law in juvenile cases demonstrates that the effectiveness of community-based sanctions depends not on their punitive intensity, but on their capacity to restore relational harm, reintegrate offenders, and affirm community values through deliberative participation.²⁵

This theoretical foundation implies that a *Regional Regulation* functioning as a restorative instrument must be designed around the *relational* rather than the *retributive* axis of justice: its normative logic should prioritize the repair of victim-offender-community relationships over the imposition of state-sanctioned consequences. Adhari et al.'s analysis of customary delicts in Penglipuran Bali further demonstrates that the tension between *living law* and the *principle of legality* can only be resolved through a regulatory design that specifies, in advance, in writing, and with sufficient clarity, the categories of conduct, the types of permissible sanctions, and the procedural conditions under which local restorative mechanisms may operate.²⁶

In normative terms, a regional legal framework should therefore regulate at minimum: the category of cases eligible for social sanctions; the kinds of sanctions that may be imposed; the institutions authorized to facilitate deliberation; the procedural requirement of informed consent and active participation by the offender, victim, and community; monitoring and documentation mechanisms; and the relationship between local settlement and the formal criminal justice system. Wulandari et al.'s study of *penal mediation* based on Dayak Ngaju customary wisdom similarly confirms that the legitimacy of community-based criminal case settlement depends on the clarity of its institutional design and its formal connection to the national criminal justice system.²⁷ In this model, *Regional Regulations* do not constitute autonomous penal codes but rather serve as derivative instruments that organize the implementation of restorative sanctions rooted in local wisdom within a constitutionally bounded normative framework.²⁸

A workable model of institutionalization through *Regional Regulations* requires clearer operational boundaries, particularly with respect to the material scope of cases eligible for restorative settlement through local wisdom-based mechanisms. Such

²⁵Ashari Kurniawan, "Restorative Justice And Customary Law Studies In Juvenile Cases: Why Should Indonesia Learn From Various Countries," *Lex Localis - Journal of Local Self-Government* 23, no. S5 (August 2025): 2843–53, <https://doi.org/10.52152/801673>.

²⁶Ade Adhari et al., "Customary Delict of Penglipuran Bali in the Perspective of the Principle of Legality: A Dilemma and Arrangements for the Future," *Journal of Indonesian Legal Studies* 6, no. 2 (November 2021): 411–36, <https://doi.org/10.15294/jils.v6i2.50555>.

²⁷Cahya Wulandari et al., "Penal Mediation: Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju," *Lex Scientia Law Review* 6, no. 1 (June 2022): 69–92, <https://doi.org/10.15294/lesrev.v6i1.54896>. Wulandari et al.

²⁸Deni Pramono et al., "Penyelesaian Tindak Pidana Ringan Melalui Upaya Nonpenal," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 12, no. 1 (June 2023): 68, <https://doi.org/10.22373/legitimasi.v12i1.17966>; Ahmad Ubbe, "Peradilan Adat Dan Keadilan Restoratif," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 2 (August 2013): 161, <https://doi.org/10.33331/rechtsvinding.v2i2.70>.

regulations should be restricted to *minor offenses (tindak pidana ringan)* and socially embedded conflicts suitable for restorative settlement, including disputes involving defamation, minor assault, neighborhood conflicts, or disturbances of communal harmony.²⁹ Pramono et al.'s empirical study of the settlement of minor offenses through non-penal measures (*upaya non-penal*) confirms that community-based resolution of *tindak pidana ringan* is not only practically effective but normatively justified, given that the formal criminal justice system's punitive responses to minor wrongdoing frequently generate disproportionate social costs relative to the harm caused.³⁰

The restriction of *Regional Regulations* to minor and socially embedded cases, therefore, reflects not a pragmatic compromise but a principled normative judgment: the formal criminal justice system's coercive apparatus should be reserved for serious offenses where state-imposed punishment remains necessary for the protection of fundamental rights and public order, while community-based restorative mechanisms are better suited to address the relational harms that characterize minor and socially embedded conflicts. Serious crimes, repeat offenses, and conduct directly threatening life, bodily integrity, or public security must therefore be expressly excluded from the scope of local regulation. This limitation ensures that the institutionalization of social sanctions does not expand into domains where formal criminal adjudication and state-imposed punishment remain necessary for protecting fundamental rights and public order, thereby preserving the structural integrity of the national criminal justice system while simultaneously creating a legitimate space for locally grounded restorative responses.

Regarding sanction typology, permissible sanctions should include public apology (*permintaan maaf terbuka*), community service (*kerja sosial*), moral restitution (*restitusi moral*), customary compensation (*ganti rugi adat*), and fulfillment of customary obligations (*pemenuhan kewajiban adat*).³¹ Conversely, degrading, discriminatory, or physically harmful punishments must be expressly prohibited. The typology of sanctions must reflect the restorative rather than retributive orientation of local wisdom-based justice, focusing on restoring social harmony, fostering victim-offender reconciliation, and reintegrating offenders into the community.³² This orientation aligns with the broader trajectory of Indonesian criminal law reform, which increasingly recognizes non-custodial and community-based responses to minor wrongdoing.

²⁹Pramono et al., "Penyelesaian Tindak Pidana Ringan Melalui Upaya Nonpenal."; Zain, "Peran Desa Adat Dalam Merumuskan Dan Mengimplementasikan Ketentuan Pidana Berasal Dari Hukum Yang Hidup Dalam Masyarakat Sebagaimana Diatur Dalam KUHP Baru."

³⁰Pramono et al., "Penyelesaian Tindak Pidana Ringan Melalui Upaya Nonpenal."

³¹Nur Rochaeti, "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (2023): 89.

³²Sukardi, "Legitimacy of the Restorative Justice Principle in the Context of Criminal Law Enforcement."

Furthermore, the regulatory model must address institutional designation, procedural safeguards, and oversight mechanisms. The regulation must clearly identify facilitative institutions, whether customary institutions (*lembaga adat*), village deliberation forums (*musyawarah desa*), or specially designated local restorative bodies, and define their relationships with police, prosecutors, and courts.³³ Procedurally, the process must require informed consent and active participation of the victim, offender, and community representatives, with all proceedings documented in writing to ensure transparency and reviewability.³⁴ Finally, implementation must remain subject to administrative review, prosecutorial oversight, or judicial control, where necessary, ensuring compliance with human rights standards and preventing the abuse of local authority.³⁵ Without such comprehensive safeguards, the institutionalization of social sanctions risks transforming legal pluralism into legal fragmentation, or local legitimacy into unchecked coercion under the guise of tradition.

Experiences from Aceh and other customary communities may serve as illustrations of this institutional possibility, but they must be read critically rather than celebratorily. Rochaeti et al.'s empirical study of restorative justice practices among indigenous peoples in Indonesia demonstrates that community-based sanctions can be effective mechanisms for harm repair and social reintegration, but only when embedded within structures of social legitimacy, procedural mediation, and external accountability.³⁶ The Acehnese experience with *peradilan adat*, documented across multiple studies, reveals both the normative strength and the institutional vulnerability of customary justice: while *adat* sanctions enjoy strong community acceptance and restorative efficacy, their implementation has also been marked by inconsistency, gender-based disparities, and inadequate integration with formal oversight mechanisms.

Tamanaha's global analysis of *legal pluralism* across the Global South further cautions that the colonial origins of state-endorsed pluralism have frequently produced not genuine normative inclusivity, but selective instrumentalization of customary norms to serve dominant power interests, a risk that remains structurally present in any regional institutionalization of *living law* without robust constitutional

³³Akhyar and Muzdalifah, "Pertimbangan Pelimpahan Pidana Adat Oleh Aparat Gampong Ke Jalur Peradilan: Studi Kasus Gampong Lamgugob, Kecamatan Syiah Kuala."

³⁴Fadli, "Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia."

³⁵Wijayanto and Makarim, "Politik Hukum Living Law Dan Hak Asasi Manusia Terhadap Rancangan Perda Tindak Pidana Adat Dalam KUHP."

³⁶Sumardi, Lukito, and Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia."; R. Michael Feener, "Social Engineering through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh," *Islamic Law and Society* 19, no. 3 (2012): 275–311; Nur Rochaeti and Nurul Muthia, "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021); Nur Rochaeti, "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (2023): 89; Sita Hidayah, "From Unity in Diversity to Culture Wars? Aceh Women's Mastery over Adat, Islam, and the State Inheritance Laws," *Women's Studies International Forum* 103 (2024).

safeguards.³⁷ Utama's critical analysis of the illusion of customary law incorporation into the Indonesian penal system similarly warns that formal state recognition of *adat* norms does not automatically translate into genuine respect for their restorative logic; rather, the process of formalization tends to strip customary sanctions of their contextual, relational, and restorative character, reducing them to bureaucratic compliance obligations.³⁸

The value of comparative illustrations, therefore, lies not in their wholesale replication but in the lesson that the success of institutionalization depends less on the symbolic invocation of local wisdom and more on the normative design that ensures *proportionality, voluntariness, transparency, and harmony with national law*. The proper legal-political orientation of *Regional Regulations* is accordingly not to formalize all customary reactions, but only those sanctions that genuinely embody restorative justice and constitutional responsibility, as confirmed by their demonstrated capacity to restore social harmony, reintegrate offenders, and satisfy the legitimate interests of victims and communities.³⁹

In this framework, the institutionalization of local wisdom-based social sanctions through *Regional Regulations* may be justified as part of Indonesia's plural yet constitutional criminal law reform. Such institutionalization is legally possible because it draws on recognition of living law, developments in restorative justice within Indonesian legal policy, and regional autonomy. At the same time, it is normatively acceptable only if it remains limited to participatory, non-repressive, accountable, and rights-compatible sanctions. The real challenge, therefore, is not whether regional legislation may recognize local sanctions, but whether it can do so without turning legal pluralism into fragmentation or local legitimacy into unchecked coercion.⁴⁰

Thus, the normative limits of *Regional Regulations* on local wisdom-based social sanctions must include at least five elements: a restorative orientation, compliance with constitutional and human rights, restriction to minor and socially embedded cases, clear procedural safeguards, and institutional supervision linking local

³⁷Brian Z. Tamanaha, "Legal Pluralism across the Global South: Colonial Origins and Contemporary Consequences," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 2021): 168–205, <https://doi.org/10.1080/07329113.2021.1942606>; Tom G. Svensson, "Interlegality, a Process for Strengthening Indigenous Peoples' Autonomy: The Case of the Sámi in Norway," *Journal of Legal Pluralism and Unofficial Law* 37, no. 51 (2005): 51–77, <https://doi.org/10.1080/07329113.2005.10756587>.

³⁸Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System."

³⁹Badri and Fatmawati, "Pelaksanaan Sanksi Pidana Adat Di Gampong Kampung Paya Kecamatan Kluet Utara Kabupaten Aceh Selatan."

⁴⁰Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023; Republik Indonesia, "Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah."; Republik Indonesia, "Peraturan Pemerintah Nomor 55 Tahun 2025 Tentang Tata Cara Dan Kriteria Penetapan Hukum Yang Hidup Dalam Masyarakat."

settlement with the formal criminal justice system.⁴¹ These findings demonstrate that the legitimacy of institutionalization depends not merely on the existence of local sanctions but on the legal design that transforms them into accountable and rights-compatible restorative mechanisms.

Conclusion

The legal politics of institutionalizing local wisdom-based social sanctions through *Regional Regulations* reflects Indonesia's broader attempt to reconcile criminal law reform with the social realities of legal pluralism. The recognition of *living law* in the National Criminal Code indicates that Indonesian criminal law is no longer constructed solely as a rigid and centralized state project, but as a system that begins to acknowledge the normative force of values that continue to live within society. In this context, *Regional Regulations* may serve as derivative legal-policy instruments for accommodating local wisdom-based social sanctions, particularly where such sanctions function as restorative measures aimed at public accountability, reconciliation, and the recovery of social harmony.

However, such institutionalization cannot be understood as an unlimited delegation of penal authority to regional governments. The accommodation of social sanctions through *Regional Regulations* is legally defensible only when it remains subordinate to the Constitution, national criminal law, and human rights guarantees. Therefore, the proper model is not the creation of autonomous regional criminal systems, but the limited regulation of participatory, non-repressive, and accountable sanctions such as public apology, community service, moral restitution, and customary obligations. In this way, *Regional Regulations* may function as bridges between *living law* and formal law, while preserving legality, proportionality, and procedural fairness.

Based on these findings, this study offers the following recommendations. *First*, the Ministry of Home Affairs should issue technical guidelines (*pedoman teknis*) for regional governments drafting *Regional Regulations* on local wisdom-based social sanctions, specifying minimum standards for material scope, sanction types, procedural requirements, and oversight mechanisms. *Second*, regional governments intending to institutionalize such sanctions should conduct participatory consultations with customary communities, legal experts, and human rights organizations to ensure that proposed regulations reflect genuine local values while maintaining constitutional compliance. *Third*, the Supreme Court should develop judicial guidelines for courts reviewing the implementation of social sanctions under *Regional Regulations*, clarifying the relationship between local settlement and formal criminal adjudication. *Fourth*, further empirical research is needed to evaluate the implementation of existing restorative mechanisms in various regions, providing evidence-based input for future regulatory development.

⁴¹Fadli, "Pengakuan Dan Perlindungan Negara Terhadap Hukum Adat Dalam Mendorong Kepatuhan Hukum Berbasis Nilai-Nilai Budaya Lokal Di Indonesia."

Accordingly, this study concludes that the institutionalization of local wisdom-based social sanctions through *Regional Regulations* is legally possible and politically relevant within the current trajectory of Indonesian criminal law reform, yet its legitimacy depends on clear normative limits, careful regulatory design, and consistent orientation toward restorative justice rather than punitive expansion. Three principal contributions of this study merit explicit recognition: first, a systematic legal-political framework establishing *Regional Regulations* as legitimate derivative policy instruments within the 2023 Criminal Code reform; second, an original set of normative criteria restorative orientation, constitutional compliance, restriction to minor offenses, procedural safeguards, and institutional supervision ensuring compatibility with *Pancasila* and human rights guarantees; and third, an operational regulatory model specifying the material scope, sanction typology, and oversight mechanisms necessary for accountable regional implementation. Future research should pursue empirical evaluation of existing restorative mechanisms under *Regional Regulations* across various regions, comparative analysis of derivative regulatory models in other pluralist legal systems, and doctrinal examination of the relationship between Government Regulation Number 55 of 2025 and regional legislative authority regarding *living law* recognition.

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