www.bircu-journal.com/index.php/birci
Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
Budapest Institute

Opportunities of Traditional Law Communities to Resolve Criminal Cases in Indonesia (Response to the Long Crisis of Legality Issues in the Principles of Criminal Law)

Irma Fatmawati
Universitas Pembangunan Panca Budi, Indonesia
irmafatmawati@dosen.pancabudi.ac.id

Abstract
The formalization of law in Indonesia is the climax of the reification process. This reification occurs because it is controlled and nominated by the ruling class in the interpretation of the law. Legal arguments are made in a repressive condition because they must be supported by a legal arrangement that seems to explain social conditions comprehensively. On the other hand, each law is a system; that is, the rules are unanimous based on the mind's unity. Legal entities in Indonesia (as incarnations in customary law) are a system that is based on the basics of the Indonesian nation's reason, which is not the same as the mind that controls the western legal system. To be aware of the legal entity system in Indonesia, one must explore the essential nature of the reason that exists in Indonesian society. However, the principle of concordance seems to have been ingrained among legal experts in this Republic, so that the legal system is not adopted unequally, the Western legal system dominates the national legal system, so that the religious and customary law systems have less room to be enforced by the state. That is why The familiar law system and the Islamic legal system in Indonesia are not developed and are not well absorbed in the national legal system; this indication can be seen from the percentage of statutory legal products produced by the state which adopt more Western legal strategies such as the Civil Code, the Criminal Code. Commercial Code, Human Rights (HAM) law. In the context of the development of Indonesian law, demands to revise and even replace various laws and regulations originating from the Dutch colonial such as the Criminal Code, the Civil Code, which are no longer by the identity of the Indonesian nation, the renewal of these provisions is a historical necessity and a non-negotiable constitutional imperative. This research is library research.. The method used in this research is the method of philosophical hermeneutics, with the following elements: interpretation, description, and comparison. The study results indicate that, in reality, today, the practice of applying the small claim court mechanism in positive Indonesian criminal law has been widely used in various disputes that occur in society, especially against crimes that are light and not difficult to prove.

Keywords
Society; customary law; criminal

I. Introduction

Customary law communities in Indonesia have the mechanisms and capacities to create their laws and justice. In everyday life, state law is not the only reference that monopolizes our behavior. State institutions, including state courts, are not the only bodies administering justice. In everyday life, many other legal authorities work more synergistically, rooted in the community's legal culture, which is closely related to religious law, customs, customs, and

DOI: *https://doi.org/10.33258/birci.v4i3.2248*

other social agreements. If it is not possible to call it "law" because it does not meet the attributes of "formal" law in the perspective of the general flow, then let us name the non-state law as hybrid law or unnamed law.

The lack of sensitivity to see the reality of legal pluralism in the legal development movement, both Law and Development and the Rule of Law Orthodoxy, has caused its failure. The existing laws and community justice mechanisms have never been touched and promoted. Law and community justice is the potential for a great power to assist the government in administering justice for the community. The pile of cases in state courts, the excessive workload of judges and other law enforcers, and corruption within the judicial bodies have proven the limitations of the state's performance in providing legal and justice services.

The term social justice or social justice is not a foreign term in the Indonesian legal system, considering that this term is explicitly mentioned in the fundamental sources of Indonesian law, whether it is Pancasila, namely Sila V, which reads: "Social Justice for All Indonesian People," as well as in the text The opening of the 4th aliens of the 1945 Constitution.

No one can be sentenced or subject to action unless the act committed has been determined as a criminal offense in the laws and regulations in force when the show was dedicated. In determining the existence of a crime, it is prohibited to use analogies. As referred to in paragraph (1), the provisions do not reduce the enactment of the law that lives in a society that determines that a person deserves to be punished even though the act is committed. Is not regulated in the legislation. The application of the law that lives in society is referred to in paragraph (3) as long as it is by the values of Pancasila and general legal principles recognized by the people of nations.

Some criminal law experts consider that the regulation is an extension of the principle of legality. However, some consider the regulation a setback, especially Article 1 paragraph (3). As a result, a debate arose among Indonesian jurists, even Dutch jurists. This debate seems to repeat the old debate when the Kingdom of the Netherlands was going to enforce the Criminal Code in the Dutch East Indies, namely whether it would apply to all levels of society in the Dutch East Indies or not. However, Van Vollenhoven strongly opposes if the Criminal Code is also applied to indigenous people.

Through the explanation above, there are at least two important issues that need to be discussed, namely: the issue of the principle of legality and 'laws that live in society'. From the main problem, there are several problems that arise, including:

- Is the regulation of the principle of legality in the Draft Criminal Code not conceptually contradictory to the principle of legality itself;
- If the legality principle in the Draft Criminal Code is accepted, what are the consequences that can arise in the criminal law order;
- What are the consequences that can arise from the accommodation of 'The Living Law' into the principle of legality; and How should 'The Living Law' be placed in the legal order, should it be formalized in the law.

II. Literature Review

2.1. Legality Principle Controversy

The principle of legality is the principle that determines that there is no prohibited act and is threatened with a criminal if it is not determined in advance in the legislation. In Latin, it is known as the Nullum Delictum Nulla poena sine lege private lege poenali principle (no offense, no crime without prior regulation). The same thing is also regulated in Law Number 35 of 1999 concerning the Principal Powers of the Judiciary. Article 6 (1) states that "no one can be brought before a court other than what is determined for him by law. ((Molijatno, 1987: 25).

As is understood, the principle of legality in the Indonesian Criminal Code is based on the basic idea/value of "legal certainty." However, in reality, this legality principle has undergone various forms of softening/smoothing or shifting/expanding and facing various challenges, including the following (Arief, 2003: 10 -11): (1) The first form of softening/refining is contained in the Criminal Code itself, namely the existence of Article 1 Paragraph (2) of the Criminal Code; (2) In the practice of jurisprudence and theoretical development, it is known that there are material laws against the law; (3) In positive law and its development in Indonesia (in the 1950 provisional constitution; Law No. .1 Drt. 1951; Law No. 14 of 1970 in conjunction with Law No. 35 of 1999; and the concept of a new Criminal Code,), the legality principle is not merely interpreted as "nullum delictum sine lege," but also as "nullum dellictum sine ius, "

Legality in an act of law is the most important because if there is no legality then the act committed is an illegal act. Based on this, of course the registration of mortgage rights carried out required the existence of legality. Legality must be in the form of laws and regulations issued by authorized institutions (Chen, 2015). With the existence of legality, it will provide legal certainty and protection for the consequences of acts committed in registering mortgage rights. Legality in the case of mortgage rights is regulated by Law Number 4 of 1996 concerning Mortgage Rights and Land Related Items. (Sriono et al, 2021)

Regarding "the declaration of guilt without imposing a penalty"); (7) The very fast and difficult to anticipate development/change of "cyber-crime" is a big enough challenge for the application of the "lex certa" principle. Because the virtual world (cyber-space) is not the real world/reality/real/definite. The principle of "legality" is an essential characteristic, both proposed by the "rule of law," the concept, as well as by the previous "rechstaat" notion, or by the concept of "socialist legality." such as the prohibition of retroactive or retrospective application of criminal law, prohibition of analogies, the application of the principle of "nullum delictum" in criminal law, all of which are a reflection of the principle of "legality." (Adji, 2004: 8-9).

2.2. The Dynamics of the Existence of Customary Law Orders in Indonesia

The rules and values that guide people's lives are diverse. Legal norms are important norms in addition to religious norms, decency, and decency. There are various legal norms in society, which include written law and unwritten law. Every society in the world has a legal system in its territory. No nation does not have a national legal system. The national law of the nation is a reflection of the culture of the nation concerned. Because the law is the nation's mind and grows from the nation's legal awareness, the law will appear from a reflection of the nation's culture (Anto Sumarman, 2003: 1)

Customary law is a law that grows from public awareness, which reflects the taste and culture of the nation. In the development and development of the law, statements often arise as to whether in its formation it will use materials of customary law, which is its law or even

use law from outside (foreign). (Customary law is a term given by legal scientists in the past to groups, guidelines, and facts that regulate and regulate the lives of the Indonesian people. The scientists at that time saw that the Indonesian people, who lived in remote areas, lived in order, and they lived in an orderly manner by following the rules they had made themselves. (M. Koesnoe, 1979: 100)

That is closely related to each other to achieve goals. Each element must be seen about the other elements and to the whole. Sudikno Mertokusumo (1999:101) likens the Indonesian legal system to a mosaic picture, which is an image that is cut into small pieces and then connected again so that the original image appears intact again. Each part does not stand alone apart from the others but is intertwined with other parts. Each part has no meaning outside of unity.

2.3. Legality Principle Controversy

The principle of legality is the principle that determines that there is no prohibited act and is threatened with a criminal if it is not determined in advance in the legislation. In Latin it is known as the Nullum Delictum Nulla poena sine lege priviae lege poenali principle (no offense, no crime without prior regulation). The same thing is also regulated in Law Number 35 of 1999 concerning the Principal Powers of the Judiciary, as Article 6 (1) states that "no one can be brought before a court other than what is determined for him by law. ((Molijatno, 1987: 25).

As is understood, the principle of legality in the Indonesian Criminal Code is based on the basic idea/value of “legal certainty”. However, in reality, this legality principle has undergone various forms of softening/smoothing or shifting/expanding and facing various challenges, including the following (Arief, 2003: 10 -11): (1) The first form of softening/refining is contained in the Criminal Code itself, namely the existence of Article 1 Paragraph (2) of the Criminal Code; (2) In practice of jurisprudence and theoretical development, it is known that there are material laws against the law; (3) In positive law and its development in Indonesia (in the 1950 provisional constitution; Law No. .1 Drt. 1951; Law No. 14 of 1970 in conjunction with Law No. 35 of 1999; and the concept of a new Criminal Code,), the legality principle is not merely interpreted as "nullum delictum sine lege", but also as "nullum dellictum sine ius ", regarding "the declaration of guilt without imposing a penalty"); (7) The very fast and difficult to anticipate development/change of "cyber-crime" is a big enough challenge for the application of the "lex certa" principle. , because the virtual world (cyber-space) is not the real world/reality/real/definite. The principle of "legality" is an essential characteristic, both proposed by the "rule of law", the concept, as well as by the previous "rechstaat" notion, or by the concept of "socialist legality". such as the prohibition of retroactive or retrospective application of criminal law, prohibition of analogies, the application of the principle of "nullum delictum" in criminal law all of which are a reflection of the principle of "legality". (Adji, 2004: 8-9).

2.4. The Dynamics of the Existence of Customary Law Orders in Indonesia

The rules and values that guide people's lives are diverse. Legal norms are important norms in addition to religious norms, decency and decency. There are various legal norms in society, which include written law and unwritten law. Every society in the world has a legal system in its territory. There is no nation that does not have its national legal system. The national law of the nation is a reflection of the culture of the nation concerned. Because the law is the nation's mind and grows from the nation's legal awareness, the law will appear from a reflection of the nation's culture (Anto Sumarman, 2003: 1)

Customary law is a law that grows from public awareness, which is a reflection of the taste and culture of the nation. In the development and development in the field of law, statements often arise as to whether in its formation it will use materials of customary law, which is its own law, or even use law from outside (foreign). (Customary law is a term given by legal scientists in the past to groups, guidelines and facts that regulate and regulate the lives of the Indonesian people. The scientists at that time saw that the Indonesian people, who lived in remote areas, lived in order and they lived in an orderly manner by following the rules they had made themselves. (M. Koesnoe, 1979: 100).

Indonesian law is a system. This means that Indonesian law is not just a collection or summation of regulations, each of which stands independently, but the meaning of the existence of a legal regulation is due to its systematic relationship with other legal regulations. It should be understood that as a system, Indonesian law is an order, constitutes a unified whole consisting of parts or elements that are closely related to each other to achieve goals. Each element must be seen in relation to the other elements and to the whole. Sudikno Mertokusumo (1999:101) likens the Indonesian legal system to a mosaic picture, which is an image that is cut into small pieces and then connected again so that the original image appears intact again. Each part does not stand alone apart from the others, but is intertwined with other parts. Each part has no meaning outside of unity.

III. Research Methods

To facilitate the work of this research, we need a research method, data collection techniques, and appropriate approach methods. In this case, the descriptive-analytical research method is used with a normative juridical approach. The data and information to be collected both in terms of assessment and in terms of management are carried out interdisciplinary and multidisciplinary as well as cross-sectoral. Secondary data in the form of primary, secondary, and tertiary legal materials and the information is then analyzed in-depth qualitative juridical to obtain an overview of customary law. The data collection technique used is a literature study.

IV. Result and Discussion

In addition to being able to classify customary law based on diversity as contained in legal environments (rechtskring), it can also be viewed from another perspective, namely from the field of study, namely customary law regarding the structure of citizens (state system law), customary law regarding the relationship between citizens (civil law), and customary law on offences (criminal law). Based on this and to examine the customary law that is still relevant, used as a source for the formation of national law, the researcher first establishes the guidelines.

4.1. The Urgency of Customary Law as the Foundation of National Law Development Policy

In customary law, sanctions (in customary law are often referred to as punishments) are not very urgent because, in customary law, punishment is an effort to restore the balance that has been disturbed because of violations committed by someone in the community. And if the correction of the law that has been violated has been restored to its original balance, it means that there are no more problems. Law officers do not always give corrective actions against law violators because the correction can also be done alone, for example, escaping girls in the Dayak tribe. This act violates the sanctity of the community concerned and violates the

honour of the family. So to restore the legal balance, two kinds of efforts are needed, namely the payment of a fine to the family and the submission of a sacrificial animal to the head of the alliance to be used as a traditional meal so that the community becomes clean and holy again. (Ratna Winahyu Lestari Dewi 2005: 87)

The values that live in a society (behaviour) may first be a habit that later emerges as a feeling in a society that adheres to that habit into something appropriate. Something that should later become a custom. It is the proper element that makes it a custom, not an element of habit or custom. These rules of behaviour become customary rules. From the rules of behaviour, some become customary, some become law. What distinguishes between adat and law is the presence or absence of certain bodies which the state is given the task of determining, implementing, creating and maintaining the code of conduct.

It in a certain way. These bodies include legislators, judges and others whose decisions have binding legal force. This is the difference between custom and law. If the law is not written, it is called customary law, but it is called written law whose form is regulated in statutory regulations if it is written.

In a society that is changing for the better, these values are also changing. These values cannot be separated from the attitudes and traits possessed by society members. Without a change in attitude and character in the required direction, all development in a physical sense will have very little meaning.

In applying customary law as positive law, it is necessary to present two concepts of law that are very sharp in contrasting the position of customary law in the legal system, namely the concept of legalism (including the flow of positivism) the school of history. The flow of legalism requires that law-making can be done by law, while the flow of history opposes equating law with the law because the law cannot be made but must grow from public legal awareness.

The school of history pioneered by Von Savigny had a significant influence in shaping the flow of legal development in Indonesia, which at first was also divided into those that wanted codification and unification and those that wanted the preservation of uncodified and ununified customary law. The school of history requires that customary law, which reflects the original cultural values of Indonesia, be maintained to prevent westernization in law. On the other hand, maintaining customary law also has negative implications, namely the isolation of the Indonesian nation in the development of modern law, resulting in underdevelopment and causing problems, especially in competing with other nations..

According to Muchtar Kusumaatmadja, this school of history is very influential in Indonesia, both in education and government. This influence continues through leading customary law experts to the current generation of legal scholars. The thoughts and attitudes of this school towards law have played an essential role in maintaining customary law as a reflection of the values of indigenous people's lives.

On the other hand, the legal literature also notes that law in a broad sense can be grouped into two parts, namely written law and unwritten law. Customary law belongs to the second group. However, the problem is that there is not a single article in the body of the 1945 Constitution.

Opportunities for the Application of Law that Lives in Society in the Concept of Criminal Law in Indonesia in the Era of Globalization It is known that efforts to reform Indonesia's criminal law have been started since the 1960s. It was then realized that the current Criminal Code is a legacy of the Dutch colonial era. The enthusiasm to replace the Criminal Code with a criminal law that is more in line with Indonesian values is so passionate. As revealed in the 1980 National Criminal Law Symposium report held in Semarang that:

The problem of criminalizing and decriminalizing an act must be by the criminal politics adopted by the Indonesian people, namely the extent to which the act is contrary to the fundamental values that apply in society and is considered appropriate or inappropriate by the community to be punished in the context of providing community welfare.

In the 1963 National Law Seminar I, Long before the symposium, the desire to enforce laws that live in society had already emerged. In Resolution point (iv), it is stated that: What is considered evil acts are acts whose elements are formulated in this Criminal Code and other legislation. This does not close the door for the prohibition of actions according to living customary law and does not hinder the formation of the aspired society, with customary sanctions that can still be by the nation's dignity.

While in Resolution point (vii), it is stated that religious law and customary law elements are woven into the Criminal Code. Likewise, in the National Law Seminar IV in 1979, the report on the National Legal System stated, among other things, that: (i) the national legal system must be by the legal needs and awareness of the Indonesian people; (ii) national laws shall, as far as possible, be in written form. In addition, unwritten law remains part of national law. (Barda Nawawi Arief 2002: 31)

Thus, it can be understood that the emergence of the regulation of the principle of legality in the RKUHP, which is excluded by enacting "laws that live in society," is motivated by the spirit of Indonesian criminal law. At that time, the spirit was so passionate, but more substantial efforts by Indonesian jurists did not follow it. The regulation of the principle of legality and customary sanctions in the current RKUHP are remnants of that spirit.

Furthermore, in the current context of Indonesia, is that spirit still relevant? In the sense of whether criminal politics can still be used for Indonesia now and in the future. Currently, it is realized that Indonesia is in the transition towards democracy. Therefore, the RKUHP should be contextualized at present, so that prohibited and non-prohibited actions must be by this context. The regulation of the principle of legality that is excluded, or precisely deviated from the RKUHP, can also cause problems in criminal law enforcement. (H Abdurrahman 2005: 72)

Living Law in Society Becomes Formal Law. The explanation of Article 1 paragraph (3) of the RKUHP states that the provisions in this paragraph are an exception to the principle of Legality. The recognition of these customary crimes is to fulfill better the sense of justice that lives in specific communities. So, it can be seen that one of the goals is to fulfill a sense of justice. The inclusion of living law in society (unwritten law) is nothing but pulling this unwritten law into formal law. This can be seen in the explanation of Article 1 paragraph (3) of the RKUHP, which states:

In certain areas in Indonesia, there are still unwritten legal provisions that live in the community and apply as law in that area. This is also found in the field of criminal law, namely what is usually called customary crime. This matter is strictly regulated in this Criminal Code to provide a solid legal basis regarding the application of customary criminal law.

The explanation above can be interpreted that the state will carry out law enforcement that lives in society through its instruments. If a violation occurs, the court will enforce it; the perpetrator will be processed through a formal process, be it arrest, investigation, or sentencing.

The question is whether making the law that lives in society into formal law (criminal law) can guarantee the fulfillment of a sense of community justice? Before answering this question, it is necessary to realize that criminal law is very different from the law that lives in society, especially customary law. In customary law, there is no legal division in the form of

criminal law but customary violations. Moreover, even without being drawn into formal law, such as the Criminal Code, the laws that live in this society still exist. The sense of justice for the community can be fulfilled by allowing the community to enforce its own laws without court intervention.

Another reason the drafting team included the law that lives in a society in Article 1 paragraph (3) of the RKUHP is the assumption that many other acts are considered by the community as evil acts but have not been accommodated in the Criminal Code. This kind of thinking can be equated with the assumption that there are criminal extra ordinaria in the concept of the Ancient Roman era. In other words, there are still many crimina stellionatus (evil/evil acts) that are not covered by the Criminal Code. In fact, in the RKUHP many new types of crimes have emerged, the criminalization process of which is based on court practice and community dynamics. Then the question is, what evil deeds are still left? anyway, Criminal politics that includes laws that live in society as the basis for determining people to commit crimes will be vulnerable to a crisis of excess criminalization. Thus there will be an abundance of crimes and criminalized acts.

There is no clear boundary regarding the living law in society. Article 1 paragraph

(3) This does not provide a very clear understanding of what is meant by living law in society. This ambiguity will result in the arbitrary use of living law in society. So it is feared that symptoms of customary law thuggery will appear as stated by Prof. Tambun Anyang which occurred in West Kalimantan.

An opportunity for the Application of Law that Lives in Society in the Concept of Criminal Law in Indonesia in the Era of Globalization It is known that efforts to reform Indonesia's criminal law have been started since the 1960s. It was then realized that the current Criminal Code is a legacy of the Dutch colonial era. The enthusiasm to replace the Criminal Code with a criminal law that is more in line with Indonesian values is so passionate. As revealed in the 1980 National Criminal Law Symposium report held in Semarang that:

- The problem of criminalizing and decriminalizing an act must be in accordance with the criminal politics adopted by the Indonesian people, namely the extent to which the act is contrary to the fundamental values that apply in society and is considered appropriate or inappropriate by the community to be punished in the context of providing community welfare.
- Long before the symposium, in the 1963 National Law Seminar I, the desire to enforce laws that live in society had already emerged. In Resolution point (iv) it is stated that: What are considered as evil acts are acts whose elements are formulated in this Criminal Code as well as in other legislation. This does not close the door for the prohibition of actions according to living customary law and does not hinder the formation of the aspired society, with customary sanctions that can still be in accordance with the dignity of the nation.
- While in Resolution point (vii) it is stated that elements of religious law and customary law are woven into the Criminal Code. Likewise, in the National Law Seminar IV in 1979, the report on the National Legal System stated among other things that: (i) the national legal system must be in accordance with the legal needs and awareness of the Indonesian people; (ii) … national laws shall, as far as possible, be in written form. In addition, unwritten law remains part of national law. (Barda Nawawi Arief 2002: 31)

Thus, it can be understood that the emergence of the regulation of the principle of legality in the RKUHP which is excluded by enacting "laws that live in society" is motivated by the spirit of Indonesian criminal law. At that time the spirit was so passionate, but it was not followed by more concrete efforts by Indonesian jurists. The regulation of the principle of

legality and the application of customary sanctions in the current RKUHP are remnants of that spirit.

Furthermore, in the current context of Indonesia, is that spirit still relevant? In the sense of whether the criminal politics can still be used for Indonesia now and in the future. Currently, it is realized that Indonesia is in transition towards democracy. Therefore, the RKUHP should be contextualized at the present time, so that prohibited and non-prohibited actions must be in accordance with this context. The regulation of the principle of legality that is excluded, or precisely deviated from the RKUHP, can also cause problems in the enforcement of criminal law. (H Abdurrahman 2005: 72).

Living Law in Society Becomes Formal Law. The explanation of Article 1 paragraph (3) of the RKUHP states that the provisions in this paragraph are an exception to the principle of legality. The recognition of these customary crimes is to better fulfill the sense of justice that lives in certain communities. So, it can be seen that one of the goals is to fulfill a sense of justice. The inclusion of living law in society (unwritten law) is nothing but pulling this unwritten law into formal law. This can be seen in the explanation of Article 1 paragraph (3) of the RKUHP which states:

The question is whether by making the law that lives in society into formal law (criminal law) can guarantee the fulfillment of a sense of community justice? Before answering this question, it is necessary to realize that criminal law is very different from the law that lives in society, especially customary law. In customary law, there is no legal division in the form of criminal law, but customary violations. Moreover, even without having to be drawn into formal law, such as the Criminal Code, the laws that live in this society still exist. The sense of justice for the community can be fulfilled by allowing the community to enforce their own laws without court intervention.

Another reason the drafting team included the law that lives in society in Article 1 paragraph (3) of the RKUHP, among them is the assumption that there are many other acts that are considered by the community as evil acts but have not been accommodated in the Criminal Code. This kind of thinking can be equated with the assumption that there are criminal extra ordinaria in the concept of the Ancient Roman era. In other words, there are still many crimina stellionatus (evil/evil acts) that are not covered by the Criminal Code. In fact, in the RKUHP many new types of crimes have emerged, the criminalization process of which is based on court practice and community dynamics. Then the question is, what evil deeds are still left? anyway, Criminal politics that includes laws that live in society as the basis for determining people to commit crimes will be vulnerable to a crisis of excess criminalization. Thus there will be an abundance of crimes and criminalized acts.

The law that lives in society is not written and does not have a clear formulation of the prohibited act. After all, a violation of the law that lives in society is not absolutely defined in advance of the action. The law that lives in society is very different from the concept of the principle of legality which requires closed rules. While the law that lives in society has an open nature so that evil acts are meant to be any act that can cause the balance of society to be disturbed. (Artidjo Alkostar,, http://www.kompas.com) In the explanation of Article 1 paragraph (2) of the RKUHP, it is stated that the prohibition of using analogy interpretation in determining the existence of a criminal act is a consequence of the use of the principle of legality. Analytical interpretation means that an act which at the time it was committed did not constitute a criminal act, but the criminal provisions applicable to other criminal acts which have the same nature or form are applied, because the two acts are seen as analogous to one another. (Ahmad Ubbe 2000: 123).

V. Conclusion

In the formation of national law, legal theory and philosophy become a necessity that becomes the main concern in efforts to establish national law, because law as a social rule cannot be separated from the values that apply in a society, it can even be said that law is a reflection of living values. In society, good law is a law that is by the living law in society; of course, it reflects the values that live in society.

The current reality is that the practice of implementing the mechanism for resolving criminal cases through customary law mechanisms (in positive Indonesian criminal law) has been widely applied in various disputes that occur in society, especially against crimes that are light and not difficult to prove. Likewise, in customary law, where the community prioritizes deliberation in resolving conflicts that occur while still prioritizing the interests of both parties to the dispute, support for small claim courts to become part of the national legal system is getting stronger.

References

Ahmad Ubbe. (2000). "Bugis-Makassar Customary Offenses and Judicial Decisions Across History", in Masinambow EKM, Law and Cultural Diversity, Indonesian Obor Foundation.

Ali, Ahmad. (2002). Legal downturn in Indonesia (cause and solution), Ghalia Indonesia. Jakarta

Anto Sumarman. (2003). Present and Future Perspective Customary Law, Yogyakarta: Adi Cita Karya Nusa.

Artidjo Alkostar, Sues the Legal Ideology of the Criminal Code Bill, http://www.kompas.com

Barda Nawawi Arief. (2002). Anthology of Criminal Law Policy, PT Citra Aditya Bakti.

H Abdurrahman. (2005).Some Notes on Legality Principles, Paper presented at a Focus Group Discussion on Regulation of Legality Principles in the RKUHP held by ELSAM at Ibis Tamarim Hotel, August 22.

Hamza, Andi. (1994). Principles of Criminal Law. Rineka Cipta. Jakarta

M. Koesnoe. (1979) Notes on Customary Law Today, Surabaya: Airlangga University Press.

Moeljatno. (1993). Principles of Criminal Law. Rineka Cipta. Jakarta.

Moh. Mahfud MD. (2006). Building Legal Politics, Enforcing the Constitution, LP3ES

Nawawi Arief, Barda. (2002). Legality Principles. National Upgrading Papers ASPEHUPIKI. Bandung.

Legal Pulpit Journal Vol. 24, No. February 1 2012, pp 1-186 Prodjodikoro, Wirjono. 1989. Principles of Criminal Law. ERESCO. Bandung

Ratna Winahyu Lestari Dewi, "The Role of Customary Law in the Development and Development of the Criminal Code

Reimon Supusesa. (2005). "The Existence of Customary Offense Laws in the Perspective of Criminal Law Reform in Maluku Perspective Journal Vol. X No. 3 July Edition, Year.

Sriono, et al. (2021). Legality of Execution of Collateral Based on Electronic Mortgage Certificate in Bank Credit Agreement. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 15-27