# Transformation Of The Principle Of Material Legality In Corruption Offenses: A Critical Review Of The Living Law Article In The National Criminal Code

**Slamet Haryadi**[1]
[1]Fakultas Hukum, Universitas Muhammadiyah Kotabumi
slamet.haryadi@umko.ac.id

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***Abstract***

*This study examines the transformation of the principle of material legality in the context of corruption-related criminal acts following the enactment of the National Criminal Code (KUHP) through Law Number 1 of 2023. Article 2, paragraph (1), of the National Criminal Code, which recognizes living Law as a source of criminal Law, creates a fundamental normative tension with the principle of formal legality, which has been the main pillar in enforcing criminal Law against corruption. This study uses a normative legal research method, a statutory approach, a philosophical approach, and a theoretical approach. The results of the study indicate that integrating living Law into the national criminal law system creates a dualistic paradigm that could lead to legal uncertainty in the handling of corruption cases. Although the recognition of living Law is intended to accommodate the values of substantive justice of indigenous peoples, its application in the realm of corruption crimes must be strictly limited so as not to conflict with the principles of lex scripta, lex certa, and lex stricta. The synthesis offered is a normative-teleological limitation on the application of living Law, prioritizing legal certainty without sacrificing substantive justice.*

## I. Introduction

The development of Indonesian national criminal Law has entered a historic new phase with the enactment of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), which will come into effect on January 2, 2026. This codification of national criminal Law is the fruit of academic and legislative struggles that have taken more than half a century, since Indonesian legal experts in the 1960s first formulated the idea of criminal law reform. [1]Amidst this historic achievement, several provisions in the National Criminal Code have sparked serious scientific debate, especially regarding the article that recognizes the application of living Law (living law) in society as a source of criminal Law. Article 2 paragraph (1) of the National Criminal Code emphasizes that the criminal law provisions in this Law apply to anyone who commits a crime in the territory of the Unitary State of the Republic of Indonesia, with the note that living Law in society can continue to be applied as long as it is in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia,

[1] Faisal and Faidatul Hikmah. "The Meaning of the Principle of Legality in National Criminal Law Thought and Legal Philosophy." (2025). 1-12

human rights, and general legal principles recognized by civilized society. This article, when combined with Article 2, paragraph (2), of the National Criminal Code, provides the constitutional basis for the recognition of living Law in the Indonesian criminal law system.[2]

The most fundamental normative tension arises when the living law clause is confronted with the principle of legality, which traditionally requires that no act can be punished except by the force of criminal provisions in legislation that existed before the act was committed ( nullum crimen, nulla poena sine lege praevia scripta et stricta ). From a modern criminal law perspective, the principle of legality comprises four main dimensions: lex scripta (the Law must be written), lex certa (the Law must be clear and certain), lex stricta (the Law must be interpreted strictly), and lex praevia (the Law must be non-retroactive). The recognition of living Law as a source of criminal Law, at the theoretical level, has the potential to erode these four dimensions. [3]This issue gains particular urgency when linked to the crime of corruption, which is categorized by various international legal instruments and national legal policies as an extraordinary crime. Eradicating corruption requires legal instruments that are precise, measurable, and highly certain, because any normative ambiguity can be exploited as a defense loophole that weakens law enforcement efforts. Therefore, a critical study of the relationship between the principle of material legality, living Law, and the crime of corruption in the National Criminal Code is very important and urgent, and should be carried out systematically and scientifically.[4]

The view that the recognition of living Law in the National Criminal Code is a progressive breakthrough that reflects the principle of material legality, a concept that prioritizes substantive justice over the formality of written norms. In this view, criminal Law is not solely derived from the text of the Law in black and white, but also from the values that are alive, developing, and internalized by the legal community of society. This breakthrough, according to its supporters, finds its legitimacy in the rich and diverse traditions of Indonesian customary Law, as well as in the development of responsive legal thought that emphasizes the contextual relevance of Law to societal needs. In the context of corruption crimes, this thesis argues that anti-corruption values across various Indonesian customary communities predate the regulation of corruption by positive legal instruments. Local wisdom that condemns the abuse of power, the embezzlement of communal harvests, or the acceptance of bribes in return for improper gifts is a concrete manifestation of living Law with anti-corruption content. Thus, the integration of living Law into the criminal legal system is seen as an effort to revive authentic community wisdom that could strengthen rather than weaken efforts to eradicate corruption.[5]

A comparative perspective also supports this thesis. Countries adhering to the common law legal tradition have long recognized the doctrine of judge-made Law, in which judges can create new norms through analogical reasoning and principles of equity. In Africa, the concept of ubuntu, which prioritizes communal harmony, has been integrated into formal legal systems as a source of normative interpretation. Even in stricter civil law traditions, judges are granted significant interpretive discretion in applying general norms to specific cases. Thus, the recognition of living Law in the National Criminal Code is not an anomaly but rather a

[2]Simanjuntak, Enrico. (2022). 'Living Law in the Construction of the National Criminal Code: Between Legal Pluralism and Certainty of Criminal Law. Journal of Law and Development, 52(4), 897–921.
[3]Fuady, Munir. (2019). 'The Principle of Legality in Indonesian Criminal Law: A Comparative Review.' Jurnal Hukum Ius Quia Iustum , 26(1), 1–26.
[4]Susanto, IS (2018). 'Corruption as an Extraordinary Crime and the Challenges of Law Enforcement in Indonesia.' Legal Issues, 47(1), 1–14.
[5]Prasetyo, Teguh. (2021). 'Reconstruction of the Principle of Legality in the Draft Indonesian Criminal Code.' Journal of Legal Reform, 8(2), 133–152.

continuation of the development of global legal thought, which increasingly accommodates the plurality of legal sources.

The recognition of living Law in the criminal legal system, particularly in the realm of corruption offenses, poses a serious threat to legal certainty and the principle of formal legality, the foundations of the rule of Law. This antithesis rests on the argument that the uniqueness of criminal Law as the state instrument most invasive of individual freedom demands the highest standards of clarity and normative precision compared to any other branch of Law. This argument can be broken down into several dimensions. First, from the perspective of legal certainty (rechtszekerheid), the application of living Law in criminal Law creates fundamental uncertainty about what is prohibited and what is not. Unlike written norms with identifiable formulations, living Law is uncodified, spread across various communities, and may vary in content and interpretation from one region to another. This uncertainty, in itself, contradicts the demands of lex certa, which requires a clear and specific formulation of offenses. Second, from the perspective of equality before the Law, the differential application of living Law across communities can give rise to structural discrimination. Someone committing a similar act in region A may be punished under the local community's living law, while in region B, the same act is not considered a crime. In the context of cross-border corruption involving state officials serving across regions, this inconsistency is highly counterproductive.[6]

Third, from the dimension of human rights protection, the International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia through Law Number 12 of 2005, explicitly stipulates in Article 15 that a person may not be punished for an act that did not constitute a criminal offense at the time the act was committed under national Law or international Law. This international standard requires the accessibility and foreseeability of criminal norms, which uncodified living law cannot provide. The synthesis of the dialectic between thesis and antithesis above leads to a more integrated normative proposition: living law can be recognized in the national criminal law system, but its applicability must be normatively-teleologically limited, especially in the realm of corruption crimes. This normative-teleological limitation comprises two complementary dimensions: the normative dimension, related to the formal limits of the applicability of living Law, and the teleological dimension, related to the purpose of recognizing living Law itself. In the normative dimension, living Law in the context of criminal Law must meet the cumulative requirements: (1) it has been codified or at least can be identified through formal legal instruments such as regional regulations; (2) it does not conflict with international human rights instruments that bind Indonesia; (3) it is not more severe than the sanctions stipulated in written Law; and (4) it only applies as a means of expanding legal protection, not as a basis for harsher punishment. In the teleological dimension, the recognition of living law must be consistently directed towards protecting victims and communities, not merely towards expanding the scope of punishment.[7]

More specifically, in the context of corruption offenses, this synthesis proposes that living Law be used in a limited capacity as a source of value interpretation, rather than as a standalone basis for criminalization. This means that judges can refer to living law values to strengthen and deepen their understanding of the elements of culpability ( mens rea ) or the social harm element of a corruption offense that are already regulated in written Law, but cannot use living law as the sole basis for imposing penalties for acts not defined in Law. This

[6] Fathurokhman, Ferry. "Breaking Through the Rigidity of Formal Legality in Criminal Law." Progressive Law Journal 4.1 (2008): 22-35.
[7] Nissa, Khaoeirun, Rini Fathonah, and Maya Shafira. "Reconstruction of Justice in Criminal Law: A Philosophical Review of Legal Politics in the New Criminal Code and Its Impact on the Criminal System." Al-Zayn: Journal of Social Sciences & Law 3.4 (2025): 5085-5092.

approach aligns with the doctrine of teleological-sociological interpretation that has developed in the Indonesian Supreme Court's jurisprudence.[8]

## 2. Research Method

This research is a normative legal research *that* examines the principles, norms, and legal doctrines related to the principle of material legality, *living Law*, and the crime of corruption in the National Criminal Code. The sources of legal materials consist of primary legal materials in the form of Law Number 1 of 2023 concerning the National Criminal Code, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the ICCPR, and relevant jurisprudence of the Supreme Court and the Constitutional Court. Secondary legal materials include criminal law doctrine, academic literature, and prior research. [9]This research uses three approaches. First, the statute approach examines the hierarchy and consistency of norms between the National Criminal Code and laws and regulations related to the eradication of corruption. Second, the philosophical approach *that* examines the axiological and epistemological basis of the principle of material legality from the perspective of legal philosophy and justice theory. Third, a theoretical approach *that* analyzes the tension between formal legality theory and responsive legal theory as an analytical framework for understanding the normative implications of recognizing *living Law* in criminal Law in the context of corruption.[10]

## 3. Results and Discussion

### 1. Anatomy of the Principle of Legality in the National Criminal Code: Between Formal and Material Legality

The principle of legality is the heart of modern civilized criminal Law. Historically, this principle was first systematically formulated by Anselm von Feuerbach in the early 19th century through the adage nullum crimen, nulla poena sine lege praevia, as a reaction to the arbitrary practice of absolute monarchical power in sentencing. Since then, the principle of legality has developed into one of the fundamental guarantees of citizen protection from arbitrary state power in the field of criminal Law. The National Criminal Code adopts the principle of legality in a more complex formulation than the colonial legacy Criminal Code. Article 1, paragraph (1), of the National Criminal Code maintains the classic principle of formal legality: no one can be sentenced for a crime or subjected to an act except by virtue of criminal provisions in laws that existed before the crime was committed. However, simultaneously, Article 2, paragraph (1), of the National Criminal Code opens the way for the application of living Law as a source of criminal Law recognized by the state, creating a dualism that, in criminal law doctrine, is referred to as the coexistence of the principles of formal and material legality.

The principle of material legality, as adopted in the National Criminal Code, does not require written norms as an absolute condition for punishment, but rather requires that actions be deemed, according to the community's sense of justice, reprehensible and deserving of punishment. This concept is rooted in the tradition of Indonesian customary Law, which recognized actions that violate the sense of justice (onrechtmatigheid in materielen zin) long before written Law regulated them. From this perspective, criminal law norms are not merely artificial creations of the state, but rather the crystallization of social norms that have long lived

[8] Rosmini, Sitti. "The Urgency of Reformulating the Criminal Code (Kuhp) in the Context of Pancasila Values." LEGALITAS: Scientific Journal of Legal Studies 10.1 (2025): 25-32.
[9] Ali, Zainuddin. Legal research methods. Sinar Grafika, 2021. 1-6
[10] Rahayu, Derita Prapti. "Legal Research Methods." Yogyakarta: Thafa Media (2020): 1-25.

in society's collective consciousness. However, the anatomy of the principle of material legality in the National Criminal Code cannot be understood in isolation. The explanation of Article 2, paragraph (1), of the National Criminal Code explicitly states that the application of living Law must take into account the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by civilized society. These cumulative requirements demonstrate that the legislators did not intend to grant unlimited discretion in applying living Law, but rather desired a strict normative filter. The question then is whether this normative filter is sufficient to prevent the disintegration of the principle of legal certainty, particularly in the handling of corruption cases.[11]

## 2. Living Law in the National Criminal Code: Normative Construction and Legal Implications

The concept of living Law in the National Criminal Code has a long intellectual history in Indonesian legal thought. Doctrinally, living Law is a translation of Eugen Ehrlich's concept of Law that truly lives and develops in society as the antithesis of state law, which is often uprooted from its social roots. In the Indonesian context, living Law predominantly refers to customary Law, the original legal system of the Indonesian nation, which various court decisions and national legal instruments have recognized. The Constitutional Court, in various decisions, including Constitutional Court Decision Number 35/PUU-X/2012 concerning Customary Forests and Constitutional Court Decision Number 31/PUU-V/2007 concerning Customary Crimes, has recognized customary Law as a legitimate and constitutional legal system. This recognition by the Constitutional Court provides a constitutional basis for the enactment of living Law in the national legal system. However, it is important to note that this recognition generally relates to the domain of civil Law and non-criminal public Law, not to the criminalization of acts through customary Law.

The legal implications of recognizing living Law in the National Criminal Code can be identified in at least three aspects. First, the jurisdictional aspect: the application of living law has the potential to create a pluralism of criminal jurisdictions based on customary territories, which could conflict with the principle of the unity of national criminal Law. Second, the evidentiary aspect: identifying and proving living law norms in criminal trials requires a separate methodology that lacks clear guidelines in criminal procedure law. Third, the proportionality of sanctions: living Law often contains sanctions that are restorative rather than punitive, so its integration with the National Criminal Code's sanction system requires careful harmonization. In relation to corruption crimes, the implications of living Law become increasingly complex because corruption is essentially a crime of office involving state officials and formal power relations that transcend the boundaries of customary communities. The normative question that arises is: can the living Law of a particular customary community be constructed as a source of criminalization for the actions of public officials who, in the context of written Law, do not fulfill the elements of a corruption crime? The answer to this question determines whether living law can function to expand or limit the scope of criminal Law on corruption.

## 3. Normative Conflict between the Living Law Article and the Corruption Eradication Law

[11]Wignjosoebroto, Soetandyo. (2014). 'Indonesian Customary Law in Its Historical Development.' Journal of Law and Development, 44(4), 461–490.

The most concrete normative tension between the living law provisions in the National Criminal Code and the legal regime for eradicating corruption can be analyzed through several potential points of conflict. Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (the Corruption Law), as the lex specialis in the field of corruption, contains a very technical and detailed formulation of crimes, including elements such as abuse of authority, state financial losses, the provision of gratuities, and attempted or criminal conspiracy. The first conflict relates to the principle of lex specialis derogat legi generali. If the living Law recognized in the National Criminal Code is viewed as lex generalis, then the provisions of the Corruption Law as the applicable lex specialis should be prioritized. However, the problem is more complex because the National Criminal Code is not merely a general law; it is a parent codification that occupies a more central position in the hierarchy of criminal law norms. The relationship between the National Criminal Code and the Corruption Law, following the enactment of the National Criminal Code, needs to be reconstructed within a more systematic framework.[12]

The second conflict relates to the standard of proof. In criminal Law, mens rea elements such as "intentionally" and "unlawfully" must be proven concretely based on norms that the defendant can identify ex ante. If living Law is used as the basis for proving the "unlawful" element in corruption crimes, the question arises: how can the defendant prove that they knew or should have known the living law norm prohibiting their actions at the time they were committed? This ambiguity has the potential to create uncertainty in law enforcement practices. The third conflict relates to the material unlawfulness of acts that have long been recognized in the jurisprudence of the Indonesian Supreme Court, particularly through Supreme Court Decision No. 275K/Pid/1983, which introduced the concept of acts that do not meet the definition of a crime but are still punishable because they conflict with society's sense of justice. This concept of material unlawfulness is actually proto- living law in Indonesian jurisprudence, and its presence in the National Criminal Code through the living law article represents a codification of long-standing jurisprudential developments. However, the Constitutional Court, through MK Decision Number 003/PUU-IV/2006, has limited the use of unlawful material under the Corruption Eradication Law, a relevant constitutional precedent for measuring the limits of the living Law's applicability to corruption crimes.

Comparative studies provide valuable perspectives on how other legal systems manage the tension between recognizing unwritten norms and the principle of formal legality in criminal Law. In the Netherlands, the country of origin of the Indonesian Criminal Code, courts have long recognized the right of judges to interpret criminal norms in an evolutionary manner (evolutieve interpretatie) while remaining within the constraints of not creating analogies detrimental to the accused (verbod van analogie). The Dutch legal tradition demonstrates that flexibility in interpreting norms can be accommodated without fundamentally compromising the principle of legality. In South Africa, following the democratic transition, the Constitutional Court has recognized ubuntu as a value that can influence the interpretation of legal norms, including in the field of criminal Law. However, this recognition of ubuntu is interpretive—ubuntu influences how norms are applied, rather than creating new criminalizing norms. This approach provides a relevant model for Indonesia in operationalizing living law: as a source of value interpretation, not as a source of independent criminalization.[13]

[12] Putranto, Afandono Cahyo, and Irwan Triadi. "The Concept of Customary Criminal Law After the Enactment of Law Number 1 of 2023 concerning the Criminal Code from a Living Law Perspective." Al-Zayn: Journal of Social Sciences & Law 3.5 (2025): 7317-7338.
[13] Sianipar, Sofian Herianto. "Solution-based or Contradictory: Regulation and Implementation of Living Law in Law Number 1 of 2023 concerning the Indonesian Criminal Code." Bhayangkara Law Review 2.2 (2025): 206-218.

In Southeast Asian countries, Malaysia recognizes the role of custom in legal interpretation. In contrast, Papua New Guinea explicitly recognizes customary Law as a legal source equal to statute law in its constitution. The experience of Papua New Guinea, which most closely resembles the Indonesian National Criminal Code model, demonstrates that without a clear harmonization mechanism, the dualism between customary law and statute law in the criminal law field can create jurisdictional fragmentation that weakens the cohesion of the national legal system. Lessons from Papua New Guinea's experience are highly relevant for Indonesia, which is currently designing the normative architecture of living Law in its National Criminal Code. The United Nations Convention Against Corruption (UNCAC), ratified by Indonesia through Law Number 7 of 2006, establishes minimum standards for the criminalization of corruption crimes that reflect global normative convergence. The UNCAC standards presuppose a high degree of legal certainty in the formulation of corruption offenses, as legal certainty is a prerequisite for effective prosecution and successful mutual legal assistance in cross-border corruption cases. Thus, the recognition of living Law in the National Criminal Code must be operationalized in a manner that does not undermine Indonesia's fulfillment of its obligations under the UNCAC.

## 4. Theoretical Reconstruction: Towards a Balanced Integration Model

Based on the above analysis, a theoretical reconstruction is needed that offers a balanced and operational model of integration between living Law and the principles of formal legality. This reconstruction is built on three theoretical foundations: Nonet and Selznick's responsive legal theory, Satjipto Rahardjo's legal integration theory, and Lon Fuller's procedural legality theory. From responsive legal theory, the proposition can be drawn that good Law can respond to the real needs of society without losing its normative integrity. [14]In the context of living law and corruption crimes, this proposition implies that the recognition of living law can be theoretically justified only if it truly responds to society's need for substantive justice in addressing corruption, rather than, conversely, creating room for corrupt practices hidden behind the cloak of local wisdom. In some indigenous communities, the practice of giving gifts to traditional leaders (seserahan) can overlap with the practice of gratification, and clear, predictable norms must define the boundary between the two.[15]

Satjipto Rahardjo's theory of legal integration draws on the idea of Law as a social institution that continually evolves alongside society. From this perspective, the tension between living law and written Law is not a conflict to be resolved by eliminating one party, but rather a creative dynamic that produces a richer normative synthesis. The task of judges and law enforcers is to mediate between these two normative streams while maintaining accountable standards of certainty and consistency. Lon Fuller's theory of procedural legality, which outlines eight principles of the inner morality of Law, including the requirements that Law must be publicly accessible, non-retroactive, sufficiently clear, non-contradictory, non-demanding, stable, and applied as formulated, provides an evaluative standard for assessing the suitability of living Law as a source of criminal Law. A living law norm that fails to meet these standards, for example, because it is too vague, inaccessible to the public, or inconsistently applied, should not be accepted as a basis for criminal punishment in a state governed by the rule of Law.

[14] Sukmana, Teja, Zahrah Salsabillah Ashari, and Yadi Darmawan. "Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo." Peradaban Journal of Law and Society 2.1 (2023): 92-105.
[15]Arief, Barda Nawawi. (2008). Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code. Jakarta: Kencana Prenada Media Group. 1-6

Based on the analysis conducted, several normative solutions can be offered to responsibly operationalize living law within the realm of corruption criminal law. These solutions aim to strike the right balance between recognizing legal pluralism and protecting legal certainty, a constitutional right of every citizen. First, it is necessary to establish a selective codification mechanism for living Law relevant to corruption offenses through regional regulations (perda) or other formal legal instruments with generally binding force. With such codification, living law norms acquire a form that can be identified, accessed, and tested for validity by the public and law enforcement officials. This approach combines the substantive flexibility of living Law with the formal certainty of written Law, a compromise that is both theoretically coherent and practically operational. Second, it is necessary to formulate jurisprudence that consistently limits living law to its hermeneutical (interpretive) function, rather than its criminalization function, in corruption cases. Judges can use living law to enrich their understanding of the social context of an act, clarify the boundaries between criminal acts and acts that are customary, or strengthen considerations regarding the level of moral culpability of the accused, but cannot use living law as the sole basis for declaring that an act constitutes a criminal act of corruption.

Third, it is necessary to strengthen law enforcement officials' institutional capacity to accurately and responsibly understand and identify living law norms. Public prosecutors and judges handling corruption cases need adequate legal-anthropological competence to avoid being trapped by misidentification of customary norms or by the manipulation of living law claims by interested parties. Legal education that integrates a legal anthropology perspective into the criminal law curriculum is a long-term investment that cannot be ignored. Fourth, there needs to be a structured judicial harmonization mechanism among the Supreme Court, the Constitutional Court, and stakeholder institutions to develop living law norms in the criminal law field. This judicial forum can produce guidelines that provide more concrete direction to courts throughout Indonesia on how to apply living law articles in concrete cases, including corruption cases, without compromising the standards of legal certainty and the principle of formal legality, which are constitutional guarantees for every citizen.

The transformation of the principle of material legality through the recognition of living Law in the National Criminal Code has multidimensional implications for the national corruption eradication system. These implications need to be anticipated and proactively managed by all stakeholders in the Indonesian criminal justice system so that the transition process towards the enactment of the National Criminal Code in 2026 does not create new vulnerabilities in corruption eradication efforts. From the perspective of the Corruption Eradication Commission (KPK), as a specialized anti-corruption law enforcement agency, the recognition of living Law has the potential to create new challenges in preparing indictments and providing evidence. KPK public prosecutors must prepare to face living-law-based defense arguments, in which defendants argue that their actions are in accordance with local customary norms. Strengthening prosecutorial capacity, including an understanding of customary Law and living Law, is an urgent need for the KPK.

From a corruption-prevention perspective, recognizing living law can be a positive tool when properly directed. The values of integrity, transparency, and accountability embedded in various Indonesian cultural traditions are indeed invaluable social capital in corruption prevention efforts. Anti-corruption education programs that integrate anti-corruption living law values, such as local wisdom on honesty in traditional leadership, the prohibition on embezzlement of communal goods, and social sanctions against corrupt leaders, have the potential to resonate more strongly with public consciousness than a purely legalistic

approach. From the perspective of international cooperation in eradicating corruption, Indonesia needs to ensure that the recognition of living Law in the National Criminal Code does not create negative perceptions among international partners about Indonesia's commitment to clear and predictable criminal law standards. Proactive and constructive communication with international bodies such as the UNODC, the OECD, and the FATF regarding the normative design of living Law in the National Criminal Code and the accompanying guarantees of legal certainty is an integral part of managing the diplomatic impact of this ongoing criminal law reform.

## Conclusion

A critical review of the transformation of the principle of material legality in corruption crimes through the living law article in the National Criminal Code yields several significant conclusions. First, the recognition of living Law in the National Criminal Code represents a legislative breakthrough that is normatively ambitious but operationally challenging, as it synthesizes two legal traditions that have previously operated in parallel—written positive Law and unwritten customary Law—into a single, integrated criminal law system. Second, in the realm of corruption crimes that require a high standard of legal certainty, the application of living Law must be normatively and teleologically limited. Living Law can serve as a source of interpretation of values and social contexts in corruption cases. Still, it cannot function as a standalone source of criminalization without the support of written norms. This limitation does not constitute a rejection of Indonesia's rich customary legal tradition, but rather an application of the minimum standards of the rule of Law required by the constitution and international human rights instruments. Third, resolving the tension between the principles of formal and material legality in the context of the National Criminal Code requires a multidimensional approach: selective codification of relevant living law norms, development of consistent and principled jurisprudence, strengthening the institutional capacity of law enforcement officials, and structured judicial harmonization. Without these comprehensive efforts, the recognition of living Law risks becoming a counterproductive legal loophole for eradicating corruption rather than an instrument for strengthening substantive justice as envisioned by the drafters of the National Criminal Code.

## References

Ali, Z. (2021). *Legal research methods*. Sinar Grafika.

Arief, BN (2008). *Anthology of criminal law policies: Developments in the drafting of the new Criminal Code*. Kencana Prenada Media Group.

Faisal, & Hikmah, F. (2025). The meaning of the principle of legality in national criminal Law, thought, and legal philosophy. *[Journal Name Not Detected]*, 1–12.

Fathurokhman, F. (2008). Breaking through the rigidity of formal legality in criminal Law. *Progressive Law Journal*, *4* (1), 22–35.

Fuady, M. (2019). The principle of legality in Indonesian criminal Law: A comparative review. *Jurnal Hukum Ius Quia Iustum* , *26* (1), 1–26.

Nissa, K., Fathonah, R., & Shafira, M. (2025). Reconstruction of justice in criminal Law: a philosophical review of legal politics in the new Criminal Code and its impact on the criminal justice system. *Al-Zayn: Journal of Social Sciences & Law*, *3* (4), 5085–5092.

Prasetyo, T. (2021). Reconstruction of the principle of legality in the draft Indonesian Criminal Code. *Journal of Legal Reform*, *8* (2), 133–152.

Putranto, AC, & Triadi, I. (2025). The concept of customary criminal Law after the enactment of Law Number 1 of 2023 concerning the Criminal Code from a living law perspective. *Al-Zayn: Journal of Social Sciences & Law*, *3* (5), 7317–7338.

Rahayu, DP (2020). *Legal research methods*. Thafa Media.

Rosmini, S. (2025). The urgency of reformulating the Criminal Code (KUHP) in line with Pancasila values. *LEGALITAS: Scientific Journal of Legal Science*, *10* (1), 25–32.

Sianipar, SH (2025). Solution or Contradictory: Regulation and Implementation of Living Law in Law Number 1 of 2023 concerning the Indonesian Criminal Code. *Bhayangkara Law Review*, *2* (2), 206–218.

Simanjuntak, E. (2022). Living Law in the construction of the national Criminal Code: Between legal pluralism and certainty of criminal Law. *Journal of Law and Development*, *52* (4), 897–921.

Sukmana, T., Ashari, ZS, & Darmawan, Y. (2023). Responsive Law and progressive Law: Examining the legal ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo. *Civilization Journal of Law and Society*, *2* (1), 92–105.

Susanto, IS (2018). Corruption as an extraordinary crime and the challenges of law enforcement in Indonesia. *Legal Issues*, *47* (1), 1–14.

Wignjosoebroto, S. (2014). Indonesian customary Law in its historical development. *Journal of Law and Development*, *44* (4), 461–490.