



Construction of Judicial Interpretation In Indonesia's Criminal Justice System Regarding The Implementation of The New Penal Code

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Abstract: Judicial interpretation within Indonesia's criminal justice system presents a complex challenge, particularly with the implementation of the new Criminal Code (KUHP) under Law Number 1 of 2023. The new Criminal Code incorporates legal pluralism, including customary law (living law), creating a tension between the principle of legality and substantive justice. In practice, judges struggle to balance legal certainty with interpretative flexibility to align legal decisions with societal values. This study aims to analyze judicial interpretation patterns in Indonesia's criminal justice system following the enactment of the new Criminal Code and to identify factors contributing to judicial inconsistencies. Using a normative legal approach combined with legal hermeneutics, this research examines how judges apply legal provisions through an analysis of legislation, court rulings, and relevant legal theories. The findings indicate that most judges still adhere to legal positivism, prioritizing legal certainty, although sociological and teleological approaches are increasingly applied in certain cases, particularly those involving restorative justice. However, inconsistencies in judicial rulings remain a concern due to judicial subjectivity, political pressure, and public opinion. Strengthening legal hermeneutic methodologies in judicial education and developing more binding legal precedents are essential steps to improving judicial consistency and public trust in Indonesia's criminal justice system.

Keywords: Judicial Interpretation, New Criminal Code, Living Law, Legal Hermeneutics, Substantive Justice, Legal Certainty, Criminal Justice System.

Introduction

The Criminal Justice System (CJS) in Indonesia possesses distinctive characteristics, shaped by a fusion of the civil law tradition with influences from customary law and Islamic law. In judicial practice, the role of judges in interpreting the law is paramount in ensuring substantive justice. Judicial interpretation is not solely confined to the textual provisions of positive law but also takes into account social, cultural, and justice-related values within society (Mahfud MD, 2011). With the enactment of the new Criminal Code under Law Number 1 of 2023, the complexity of legal interpretation has increased, necessitating a thorough examination of how judges adapt to these legal changes, as

noted by Simon Butt (2023). In its application, a gap often exists between *das Sollen* (*the ideal law*) and *das Sein* (*the law as practiced*).

According to data from the Judicial Commission in 2023, out of 100 criminal cases brought before the courts in 2022, approximately 40% exhibited discrepancies in judicial decisions between the trial court and the appellate court. Ideally, criminal law should reflect the principles of justice upheld by society. However, in practice, inconsistencies often arise between statutory legal norms and their judicial application.

In corruption cases, significant sentencing disparities among defendants from different socioeconomic backgrounds serve as a tangible example of inconsistent judicial rulings. These disparities illustrate how a defendant's social and economic status may influence judicial interpretation, even in cases that are normatively similar. Sentencing inconsistencies in corruption cases highlight the lack of uniformity in imposing criminal sanctions on offenders who have committed comparable crimes. This raises concerns regarding the consistency and fairness of Indonesia's criminal justice system. Anti-corruption advocates frequently argue that the penalties imposed on corruption offenders are disproportionate to the severity of their crimes and the prison terms they receive. In such circumstances, judicial decisions in corruption cases in Indonesia may be perceived as inconsistent, not only by the domestic public but also by the international legal community (Nazla, 2023).

Sentencing disparities arise from multiple factors, including the legal framework, judicial discretion, and external influences. In Indonesia, judges are not bound by precedent, as the legal system adheres to the principle that prior judicial decisions do not constitute binding precedent for future cases. Consequently, different verdicts may be rendered for cases with identical legal and factual circumstances (Mahali, 2024). Additionally, external factors such as public perception and media influence contribute to sentencing inconsistencies. Indonesia's socio-cultural landscape, which fosters corruption, mismanagement, and inadequate judicial oversight, further exacerbates disparities in sentencing, particularly in corruption cases (Dayanti, 2023).

To mitigate these disparities, the Supreme Court enacted Supreme Court Regulation No. 1 of 2020 on Sentencing Guidelines for Articles 2 and 3 of the Corruption Eradication Law. However, its effectiveness remains limited, as sentencing inconsistencies persisted in numerous court proceedings throughout 2023. Structural weaknesses in legal institutions, including the divergence in judicial reasoning between positivist and non-positivist approaches, as well as substantive legal deficiencies, are among the key factors contributing to sentencing inconsistencies in corruption cases (Syamsudin, 2011). Another critical factor is the absence of a uniform sentencing framework, particularly in corruption cases. Indonesia's legal system lacks a standardized sentencing guideline, granting judges extensive discretion in imposing penalties, which often leads to inconsistencies (Isra & Hiariej, 2009).

Sentencing disparities also manifest between district courts and higher courts. Variations in judicial interpretation, differing perspectives on case facts, and the absence of binding sentencing guidelines contribute to these inconsistencies. To address these issues, the development of clear and comprehensive sentencing guidelines, along with the

enhancement of judicial professionalism and integrity, is imperative (Irianto & Shidarta, 2012). Thus, sentencing disparities in corruption cases in Indonesia remain a pressing issue that demands serious attention from relevant stakeholders. Legal reform, the establishment of precise sentencing benchmarks, and improved oversight mechanisms are necessary to ensure uniformity and fairness in judicial decisions.

For instance, in the corruption case involving former Minister of Social Affairs Juliari Batubara, who was convicted of accepting bribes related to COVID-19 social assistance funds, he was sentenced to 12 years in prison, fined IDR 500 million, and ordered to return IDR 14.5 billion in illicit gains. In contrast, in a case of village fund embezzlement involving Suhartono, a village head in Sidoarjo, who caused state losses of IDR 240 million, the court sentenced him to 15 years in prison and imposed a fine of IDR 750 million. This discrepancy underscores a sentencing imbalance wherein defendants with higher socioeconomic status often receive more lenient punishments than those in lower social positions.

Another example of sentencing disparity involves Lucas, a prominent lawyer convicted of obstructing a Corruption Eradication Commission (KPK) investigation into suspect Eddy Sindoro. Lucas was sentenced to only three years in prison despite actively interfering in the judicial process. Conversely, in a case involving the misuse of School Operational Assistance (BOS) funds by a school principal in South Sumatra, the defendant received a seven-year prison sentence for causing state losses of IDR 120 million. This sentencing imbalance highlights the influence of social status and political connections on judicial outcomes in Indonesia.

Conversely, under the living law framework, certain judges incorporate customary norms into their rulings. For instance, in West Sumatra, a defendant in a minor assault case was sentenced based on customary consensus, requiring him to pay a fine in the form of livestock and issue a formal apology in accordance with local customs. While the new Criminal Code recognizes living law under Article 2(1), inconsistencies in judicial interpretation regarding the extent to which customary norms may serve as a legal basis remain a challenge within Indonesia's criminal justice system.

Sentencing disparities in corruption cases illustrate the broader issue of legal inequities in Indonesia. This phenomenon is particularly evident in the cases of Lucas, a high-profile lawyer, and Zulfikar, a school principal from North Sumatra, who received vastly different sentences despite both committing legally punishable offenses. Lucas obstructed a KPK investigation into Eddy Sindoro, facilitating the suspect's travel in and out of Indonesia to evade legal proceedings. Despite undermining law enforcement efforts, Lucas was sentenced to only three years in prison (Kompas, 2018).

In contrast, Zulfikar was convicted of embezzling BOS funds through fraudulent procurement schemes and misappropriation, resulting in state losses of IDR 969,287,977. The court sentenced him to seven years and six months in prison—nearly three times the sentence imposed on Lucas (Detik, 2023). These sentencing discrepancies raise concerns regarding the role of a defendant's social and professional background in judicial decision-making. Lucas, as a well-connected legal practitioner, received a comparatively lenient sentence despite his direct interference with anti-corruption efforts. Meanwhile,

Zulfikar, a school principal with limited influence, received a substantially harsher punishment despite the smaller scale of his crime.

Such disparities indicate that Indonesia's judiciary has yet to eliminate the influence of social and economic status on sentencing outcomes. In many cases, individuals with greater access to power and legal institutions tend to receive more favorable sentences than those from lower socioeconomic backgrounds. This contradicts the principle of substantive justice, which mandates equal treatment before the law. The inconsistencies in Indonesia's sentencing system necessitate comprehensive reform. Strengthening sentencing guidelines to curtail excessive judicial discretion is crucial. Additionally, ensuring judicial independence and integrity is imperative to prevent undue influence on legal proceedings.

Indonesian judges predominantly adopt a legal positivism approach, prioritizing statutory provisions over moral and social considerations (Manan, 2005). According to a 2023 study by the Institute for Judicial Independence Advocacy, over 70% of criminal verdicts in Indonesia adhere to strict legal positivism, emphasizing legal certainty at the expense of substantive justice. However, some judges advocate for sociological and teleological approaches, emphasizing restorative justice and reconciliation over rigid legal formalism (Rahardjo, 2010) (Susanti, 2021). Data from the Supreme Court in 2023 indicates that approximately 30% of eligible criminal cases were resolved through restorative justice rather than conventional punitive measures.

Challenges in judicial interpretation arise from inconsistencies in jurisprudence, external pressures such as political interference, and public opinion (Lindsey & Bedner, 2020). These disparities undermine legal certainty, threatening the principle of judicial predictability (Pompe, 2005). The divergence between *das Sollen* (the law as it ought to be) and *das Sein* (the law in practice) risks perpetuating injustices, particularly for vulnerable groups or politically sensitive cases. With the enactment of the new Criminal Code in 2023, it is crucial to assess how judicial interpretation will evolve in response to its more complex and often contentious provisions (Butt, 2023). Addressing the *das Sollen-das Sein* gap is essential to ensuring a fair and equitable criminal justice system in Indonesia.

Methodology

The author employs a normative approach that focuses on the analysis of legislation, jurisprudence, and relevant legal theories. This approach is utilized to examine how the law is implemented and the extent to which judges possess discretionary power in interpreting legal provisions to reflect substantive justice. Additionally, the method of legal hermeneutics will be applied as an analytical tool in this study. Legal hermeneutics, as articulated by Peter Mahmud Marzuki (2017), perceives law not merely as a rigid normative text to be strictly applied but as a dynamic system that evolves in accordance with social values and societal needs. This approach enables a more in-depth exploration of how judges interpret and comprehend the law, taking into account teleological and sociological dimensions (Rahardjo, 2010).

Result and Discussion

The implementation of Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023) signifies a substantial transformation in Indonesia's criminal justice system. One of the most critical aspects of its enforcement is the integration of living law into positive legal norms. This development presents a significant challenge for judges in interpreting and balancing legal certainty with substantive justice. Within this framework, the implementation of KUHP 2023 must be conducted systematically, meticulously, and with a goal-oriented approach to ensure its effectiveness, fairness, and consistency.

The explicit incorporation of living law within the Criminal Code (KUHP) 2023 underscores the continued recognition of customary law within Indonesia's positive legal framework. The acknowledgment of living law reflects the country's long-standing legal pluralism, which has been affirmed in jurisprudence and legal practice. However, its application within the criminal justice system must be carefully examined to ensure compliance with the principle of legality and the fundamental tenets of modern criminal law (Rahardjo, 2010). Article 2, paragraph (1) of KUHP 2023 expressly stipulates that criminal law provisions are derived not only from statutory legislation but also from the living law within society. This provision affirms the existence of customary law within the realm of criminal law, provided that it does not contradict national legal principles and human rights standards. In this context, customary law functions as a legitimate legal source that may be considered in adjudicating criminal cases, particularly in offenses categorized as *mala in se*, such as those involving morality and public order (Marzuki, 2021).

Article 598 of the Criminal Code (KUHP) accommodates criminal sentencing based on customary law, provided that it adheres to national legal principles and does not infringe upon fundamental individual rights. This provision has significant implications for the judiciary, as it broadens the role of judges in interpreting and assessing the applicability of customary law within specific legal communities (*certain ethnic groups*). Furthermore, Article 100 stipulates that judges may take into account locally applicable legal norms when delivering criminal verdicts. This reflects a paradigm shift from legal positivism toward a more sociological and responsive approach to legal dynamics in society (Soekanto, 2019).

The application of customary law in the criminal justice system necessitates careful and meticulous implementation. Judges are vested with the discretion to determine whether a particular customary law remains valid and accepted within a given community. However, in the absence of clear guidelines, discrepancies in judicial rulings may arise, potentially compromising legal certainty. Moreover, not all customary legal norms align with the principles of due process of law and the fundamental human rights guaranteed by the Constitution. Consequently, the codification of customary laws that remain in effect is imperative to mitigate subjectivity in their application (Hadjon, 2022).

In judicial practice, customary law frequently serves as an instrument for restorative dispute resolution, emphasizing social restoration and balance rather than mere punitive measures. The KUHP 2023 permits dispute resolution mechanisms based on customary law, provided they do not conflict with national legal norms. However, in

practice, further synchronization between customary law and the state judicial system is required to uphold the principle of equality before the law (Mahmud, 2020).

A primary challenge in implementing these provisions lies in ensuring that the customary laws being enforced remain relevant to contemporary social developments. Certain customary laws have evolved or have been abandoned by their respective communities, rendering them obsolete. Therefore, the harmonization of customary law with the national legal system must be continuously overseen to prevent normative conflicts that could undermine the supremacy of law (Siahaan, 2018).

With the enactment of the 2023 Criminal Code (KUHP 2023), the role of customary law within the national criminal justice system has gained increased legitimacy. However, its implementation must remain consistent with the principles of the rule of law, ensuring substantive justice without undermining legal certainty. The synergy between judicial institutions, the government, and indigenous communities is a crucial factor in maintaining the relevance of living law and ensuring its consistent application within the national criminal justice system (Hamzah, 2021).

One of the main challenges following the enactment of KUHP 2023 is the application of customary law in judicial decisions, as stipulated in Article 2. This provision allows customary legal norms to be applied in criminal cases, thereby positioning judges as interpreters of unwritten customary law. However, the absence of codified customary law necessitates broad judicial discretion, which may result in inconsistencies in court rulings. Therefore, judges must ensure that the customary norms they apply align with constitutional principles, particularly those concerning human rights and the principle of non-discrimination.

In practice, expert testimony from anthropologists, legal historians, and customary law scholars will play an increasingly significant role in judicial proceedings. However, this approach raises concerns regarding the lack of uniformity in legal outcomes and the potential for judicial bias in the application of varying customary norms across different jurisdictions. Divergent interpretations of customary law may lead to disparities in judicial decisions, ultimately weakening public confidence in the legal system.

The research conducted by the Institute for Judicial Independence Studies (LeIP, 2023) indicates that judicial practices in Indonesia remain predominantly grounded in legal positivism, which emphasizes legal certainty based on statutory texts. However, the 2023 Criminal Code (KUHP 2023) promotes a more dynamic and contextual approach, potentially leading to fragmentation in legal interpretation. Inconsistencies in judicial rulings, particularly in sentencing, highlight the challenges of achieving uniformity in legal application.

Disparities in rulings on similar cases can result in legal uncertainty, where judicial outcomes heavily depend on individual judges' preferences and interpretative approaches. To address this issue, judicial training and standardized interpretative guidelines developed by the Supreme Court are necessary to harmonize the implementation of KUHP 2023 and minimize judicial bias. Establishing clear guidelines for interpreting customary law in criminal cases is crucial to maintaining legal coherence and ensuring that judicial discretion does not undermine the rights of defendants.

Judges applying KUHP 2023 utilize three primary hermeneutic approaches: normative-dogmatic, philosophical, and socio-historical. The normative-dogmatic approach ensures legal certainty but risks overlooking social dynamics, particularly in the application of customary law. The philosophical approach provides flexibility in legal interpretation, allowing for the integration of customary law while considering restorative justice principles. Meanwhile, the socio-historical approach recognizes law as a continuously evolving construct, enabling courts to incorporate customary dispute resolution mechanisms without violating formal legal boundaries.

Balancing the application of these three interpretative methods is essential to preventing legal uncertainty while ensuring that living law principles do not conflict with human rights and the principle of legality. Therefore, judges must be capable of integrating various hermeneutic approaches to ensure that judicial rulings are not only legally valid but also substantively just.

Inconsistencies in judicial rulings are influenced by judges' interpretative discretion, external pressures, and personal biases. A study by **Lindsey & Bedner** (2020) indicates that rulings in corruption cases or those involving state officials tend to fluctuate between trial courts and the cassation level, depending on prevailing political dynamics. The judiciary's dependence on the political climate threatens judicial independence and undermines public trust in the legal system. Furthermore, the absence of a binding precedent doctrine in Indonesia allows for significant variations in legal interpretation. The lack of binding judicial precedent creates legal uncertainty for justice seekers, as rulings may vary considerably despite being based on the same legal framework. As noted by Sebastiaan Pompe (2005), judges' broad discretionary power, in the absence of a strong precedent system, contributes to unpredictable judicial outcomes.

In practice, the implementation of the 2023 Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP 2023) may lead to procedural complications, particularly when multiple legal sources—both statutory law and customary norms—are applied concurrently. This directly affects the evidentiary process, as judges must assess the validity and legitimacy of customary law presented in court. The risk of interpretative discrepancies between trial and appellate courts further complicates legal consistency. Additionally, legal uncertainty for law enforcement officers, prosecutors, and attorneys is likely to increase due to the difficulty of predicting judicial rulings when customary norms are incorporated into legal arguments.

To address these challenges, legal education reforms are necessary to equip legal practitioners with a deeper understanding of the expanded legal framework under KUHP 2023. Specialized training for law enforcement officers on the application of customary law in criminal cases represents a strategic step toward enhancing judicial competence in managing complex legal issues. To promote legal certainty and justice in the implementation of KUHP 2023, the Supreme Court should issue judicial guidelines to standardize the interpretation of living law. The development of binding jurisprudence would help reduce disparities and minimize judicial subjectivity in rulings. Strengthening hermeneutic methodology in judicial training is crucial, employing a multidisciplinary

approach that involves legal scholars, sociologists, and customary law experts to deepen the understanding of the social context in legal enforcement.

Furthermore, enhancing judicial transparency is essential to reinforcing public trust in the legal system. Expanding public access to court rulings would allow for greater scrutiny and evaluation of legal interpretations in cases involving customary law. Independent monitoring mechanisms, along with peer review panels for judicial decisions, could help mitigate bias and ensure consistency in legal interpretation.

Conclusion

The implementation of the 2023 Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP 2023) within Indonesia's criminal justice system requires judges to interpret the law more adaptively, rather than relying solely on a textual approach. The recognition of living law in Article 2 of the Criminal Code reflects the long-standing legal pluralism in judicial practice. However, it also presents challenges in balancing the principle of legality with substantive justice. In this context, judicial interpretation must incorporate a more flexible legal hermeneutic approach to ensure that the application of the Criminal Code remains proportional—both in terms of legal certainty and the achievement of justice for society. Judges play a crucial role in aligning legal interpretation with social dynamics to prevent conflicts between national law and the values embedded in local communities.

To ensure the effective implementation of KUHP 2023 and to minimize disparities in judicial rulings, systematic interpretative guidelines, the enhancement of interpretative methods in legal education, and the development of more binding jurisprudence are essential. By doing so, Indonesia's criminal justice system can become more transparent, just, and responsive to legal developments and societal needs in this new era of the Criminal Code.

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