SHSHYA
Studies and Perspectives on Law and Justice
Vol. 1
No. 1
January 2025
pp. 8-17

The Relevance of the Palembang Kingdom's Laws to Indonesian Legislation: A Case Study on Theft

Ayunda Zahroh Harahap[a,1], Ahmad Mafaid[b,2*]

[a] Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Jl. Prof. Dr. Andi Hakim Nst, Pidoli Lombang, Mandailing Natal 22977, Indonesia
[b] Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Jl. Prof. Dr. Andi Hakim Nst, Pidoli Lombang, Mandailing Natal 22977, Indonesia
[1] ayundazahroh817@gmail.com; [2] ahmadmafaid@stain-madina.ac.id*
* Corresponding Author

ARTICLE INFORMATION

Article History
Accepted : October 02, 2024
Revised : December 03, 2024
Accepted : January 02, 2025

Keywords
Palembang Kingdom
theft sanction
Palembang Laws
legislation

ABSTRACT

Islam Nusantara established its first political institution in the 13th century. However, some regions did not have the same political system. In total, there were 113 Islamic kingdoms that ruled over the Nusantara region: 32 in Sumatra, 28 in Sulawesi, 24 in Kalimantan, 10 in Java, 8 in East and West Nusa Tenggara, 7 in Maluku, and 4 in Papua. The majority of these kingdoms can be categorized as Islamic governments, while Hinduism was only present in small and remote areas. In Sumatra, some of these Islamic communities settled and expanded their influence as early as the 14th or 15th century. On the other hand, some kingdoms (such as Mataram) still adhered to conventional systems. This study is a literature review utilizing a descriptive analysis method. The research focuses on the political and legal dynamics of Islam in the Palembang Darussalam kingdom, aiming to reveal how the legal system was implemented based on the Simbur Cahaya Law Code and national legislation concerning theft cases, the existence of customary law, and its relevance to Indonesia's legal framework.

1. Introduction

Islam and politics are an inseparable fusion, closely intertwined with one another. Western policy experts acknowledge this integration. V. Fitzgerald stated:

> Although in recent decades, some Muslim groups claiming to be modernists have attempted to separate these aspects, the general idea in Islamic thought is that both aspects are in harmony, go hand in hand, and are not disconnected from one another (Rais, 2001).

When considering law and its relationship with society, the term legal pluralism has become increasingly recognized and utilized in recent times. Since this term can describe the diversity of customary laws and traditions, it serves as a crucial element in future lawmaking. The formation of laws in the form of legislation serves as a guideline for social life. Although achieving legal certainty cannot be fully resolved from a social perspective but only from a normative one (Rato, 2010), the law must still be upheld.

Laws are created and enforced absolutely because their legal rules are clear and logical. Clarity and logic prevent contradictions. Laws are clear because they do not allow multiple interpretations or uncertainty regarding established regulations, and they are logical because they do not contradict norms or contain vague provisions. Thus, the absolute nature of laws does not lead to conflict. Legal certainty will ultimately give rise to legal principles that are upheld by every individual in accordance with legislative principles (Prayogo, 2016).

Indonesia, as a country based on the rule of law, upholds legal principles as stipulated in Article I (3) of the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945). The country also adheres to three legal systems: civil law, customary law, and Islamic law. Interestingly, these three systems coexist and evolve within both society and the state. Civil law, which originates from written laws established during the Dutch colonial era, remains influential and continues to be in effect today, despite the

colonizers having long departed. The *Wetboek van Strafrecht* (WvS) is still regarded as the primary reference for criminal offenses (criminal law) under the Indonesian Penal Code (KUHP) Law No. 1 of 1947. Similarly, the *Burgerlijk Wetboek* (BW) serves as the Civil Code, while the *Wetboek van Koophandel* (WvK) functions as the Commercial Code. Additionally, procedural laws such as the *Herzien Inlandsch Reglement* (HIR), *Rechtsreglement voor de Buitengewesten* (RBg), and *Reglement op de Burgerlijke Rechtsvordering* (RR) remain valid and intact without any modifications to this day (Aditya & Yulistyaputri, 2019).

Article 362 of the Penal Code (KUHP) states the following regarding theft:

> Whoever unlawfully takes another person's property, in whole or in part, shall be subject to the crime of theft, punishable by imprisonment for a maximum of five years or a fine not exceeding nine hundred rupiahs.

However, this article appears to contradict Article 28(40) of the 1945 Constitution, which asserts that "Every person has the right to private property, and no one may arbitrarily seize that property."

Given these legal inconsistencies, this study aims to analyze the provisions of the Special Criminal Law (UUSC), particularly Section V concerning customary law punishments for theft cases. Considering the increasing number of theft cases causing unrest across all societal levels—and in some instances even leading to loss of life—it is necessary to reassess and align pre-independence laws with contemporary contexts to ensure justice and national integrity. Among the legal frameworks that require reconsideration is the Islamic Kingdom of Palembang Darussalam's legal code.

2. Literature Review

Reviewed from the existing literature, discussions about the Islamic Kingdom of Palembang or related research on this topic can be found in several books and journal articles. However, it is difficult to find references published within the last five years. In book form, there is a work written by Endrayadi (2016) titled *Kesultanan Palembang Darussalam: Sejarah dan Warisan Budayanya* (The Sultanate of Palembang Darussalam: Its History and Cultural Heritage). Meanwhile, in journal articles, some relevant studies include: the contents of *Undang-Undang Simbur Cahaya* (Simbur Cahaya Law) and the dynamics of Islamic legal integration in Palembang (Adil, 2014), the existence of customary criminal law (Mulyadi, 2013), the traditional interpretation of *Simboer Tjahaja* in gender relations (Kasuma & Santoso, 2009), Islamic family law in *Undang-Undang Simboer Tjahaya* (Nurasiah, 2016), and the customary legal system in resolving criminal cases (Syarifuddin, 2019).

The studies mentioned above primarily discuss history, Islamic legal reform, gender relations, and the resolution of customary criminal cases. However, the author has not yet found any specific discussion regarding theft cases within Simbur Cahaya Law. Therefore, this research aims to examine the resolution of theft-related criminal cases in Undang-Undang Simbur Cahaya and its relevance to contemporary legislation.

3. Method

This research employs a normative-perspective method. In general, legal research follows several approaches as outlined by Marzuki (2005), namely the statutory (statute) approach, conceptual approach, case law (case) approach, comparative approach, and historical approach. This study is developed using three approaches: the statutory, comparative, and historical approaches.

The statutory (legal) approach is examined through all legislative regulations relevant to the subject of study, specifically the legal provisions from the Simbur Cahaya Law and the criminal law system of the Indonesian Penal Code (KUHP). The comparative approach is analyzed by comparing the Simbur Cahaya Law and the Penal Code in terms of their application. Meanwhile, the historical approach refers to the history of law and the legal system in Indonesia.

The primary sources in this research consist of data obtained from two legal texts, Simbur Cahaya Law and the KUHP. Secondary data is gathered from various relevant sources, such as scientific writings in books, journals, and other literature, processed through a library research method by aligning the data with the research topic. Finally, the last stage of data analysis employs a qualitative analysis technique, which includes data reduction, presentation, and conclusion drawing.

4. Discussion

Palembang earned the name *Net Indian Veneti* (the Venice of the Dutch Indies). Meanwhile, the title *Darussalam* is interpreted as *de stad des vredes*, meaning 'a place of peace,' as it embodies strong Islamic values, making its society appear religious and establishing this as a local wisdom (Amri & Maharani, 2018).

This situation reflects the texts of Simbur Cahaya Law and *Tuhfah al-Raghibin*. The laws in Simbur Cahaya Law represent a combination of local wisdom (customary practices) and Sharia (Islamic guidance). This legal text was written by a queen named Sinuhun, the wife of Prince Sido Ing Kenayan, who ruled Palembang around 1630–1642 AD. Furthermore, it is believed to be the first book of Islamic law implemented in the Nusantara (Indonesian archipelago).

Palembang earned the nickname *Net Indian Veneti* (the Venice of the Dutch East Indies). Meanwhile, the term *Darussalam* is translated as *de stad des vredes*, meaning 'a place of peace,' as it embodies strong Islamic values. This religious character became a defining aspect of local wisdom and shaped the way of life of its people (Amri & Maharani, 2018).

This characteristic is reflected in the texts of Simbur Cahaya Law and *Tuhfah al-Raghibin*. The laws in *Simbur Cahaya Law* represent a fusion of local wisdom (customary practices) and Sharia (Islamic teachings). This legal code was written by a queen named Sinuhun, the wife of Prince Sido Ing Kenayan, who ruled Palembang around 1630–1642 CE. Additionally, Simbur Cahaya Law is believed to be the first Islamic legal text implemented in the Nusantara (Indonesian archipelago). Meanwhile, *Tuhfah al-Raghibin*, written by Islamic scholars, served as a guide for correcting deviant customary practices. The rulers of Palembang consistently upheld this text to preserve its purity in accordance with Islamic teachings. With the guidance of enlightening scholars and the impartial stance of rulers and leaders in governance, Palembang transformed into a rapidly developing multicultural city and the capital of a maritime kingdom in the Nusantara (Adil, 2014).

The term *Simbur Cahaya* can be interpreted as a reflection of the cosmological thinking of the Palembang people, who at that time were deeply influenced by the spirit of Islam, which was still evolving. The word *Simbur* can be understood as a spark of thought, *Cahaya* (light) symbolizes a mystical power or a divine entity, and Simbur Cahaya represents Palembang's intellectual perspective on cosmology—an idea rooted in Islamic teachings that regulate relationships between humans, the environment, nature, and ultimately, between humans and Allah (God) (Adil & Hadi, 2018).

The Simbur Cahaya Law Book consists of five sections containing regulations on community life. These sections are as follows:

1) First Section – Regulations on Marriage for Young Men and Women, comprising 32 Articles.
2) Second Section – Regulations on Marga (territorial communities), consisting of 29 Articles.
3) Third Section – Regulations on Villages and Farming, covering 34 Articles.
4) Fourth Section – Regulations on Social Groups, with a total of 19 Articles.
5) Fifth Section – Regulations on Customary Punishments, divided into 58 Articles.

The contents of the Simbur Cahaya Law and national legislation (as stipulated in the Criminal Code) regarding theft will be explained in the following discussion.

4.1 Theft in Islam

All religions undoubtedly share the same view on disgraceful acts; there is no religion that permits theft. Even within the legal system of our country, Indonesia, such an act is considered a criminal offense. Therefore, Islam strongly condemns this act and imposes severe punishment on the perpetrator, including amputation of the hand in this world and the threat of Hell in the Hereafter.

A person with a sound mind will agree that stealing is a deceitful and despicable act. In this regard, Islam prohibits a person from taking something that does not belong to them. Such an act is regarded as a major sin and an act of injustice. From a religious perspective, the rulings on theft in Islam are derived from two primary sources: the words of Allah and the sayings of the Prophet Muhammad. Allah's decree regarding this matter is found in Surah Al-Ma'idah 38:

وَٱلسَّارِقُ وَٱلسَّارِقَةُ فَٱقْطَعُوٓاْ أَيْدِيَهُمَا جَزَآءًۢ بِمَا كَسَبَا نَكَٰلًا مِّنَ ٱللَّهِ وَٱللَّهُ عَزِيزٌ حَكِيمٌ

It means that every individual who commits theft, whether a man or a woman, will be subjected to hand amputation as a consequence of their action. Additionally, this act will also be punished in the afterlife with torment in hell.

Meanwhile, the ruling of the Messenger of Allah (peace be upon him) is found in the narration of Imam Bukhari, Hadith number 6285, in which he curses the thief, even if they steal just a single egg or a piece of rope, with his statement:

لعن الله السارق يسرق البيضة فتقطع يده ويسرق الحبل فتقطع يده

In Islam, the punishment for theft is amputation of the hand (hudud) and is also threatened with the torment of hell.

In Indonesian legislation, the concept of amputation is not recognized, meaning it is not implemented in the prevailing legal system. However, Islamic law became stronger after the enactment and ratification of the 1945 Constitution, Article 29, where Islam was approved as a persuasive legal foundation at that time (Sunny, 1988).

After the implementation of regional autonomy, Islamic law was accepted, and regions began competing to manage their own affairs. This opportunity was utilized by local governments to develop regional regulations based on their unique characteristics. Many regions, especially their communities, desired regulations based on Islamic principles, reflecting Sharia law and aligning with the social conditions of the population. One such region is Aceh, which, after gaining autonomy, implemented laws known as *Kanun*.

4.2. Theft in Simbur Cahaya Law

The issue of theft in the Simbur Cahaya Law is found in Part V, which relates to *Adat Perhukuman* (Customary Punishments), specifically from Articles 20 to 26, with the following details:

No	Articles and Their Sanction
1	Article 20: If someone steals a chicken or a duck outside the house, in a garden, or in a village during the daytime, or steals items left outside the house such as nets, fishing gear, cloth, or similar items, they shall be fined two to four ringgits. The stolen goods must be returned or replaced, and the fine will be divided into two parts: one part returned to the owner and the other given to the *pasirah* (tribe chief) or *proatin* (village head).
2	Article 21: Whoever steals rice that is being dried, coconuts, areca nuts, or bananas from their trees shall be fined four ringgits. The stolen goods must be returned or replaced, and the fine will be divided into two parts: one part returned to the owner and the other given to the *pasirah* or *proatin.*
3	Article 22: If someone steals coconuts, chilies, areca nuts, or cuts down their trees, as well as steals buffalo or goats in the village or fields, they shall be fined six to twelve ringgits. Any lost or damaged goods must be returned or replaced. The fine will be divided into two parts: one part returned to the owner and the other given to the *pasirah* or *proatin*.
4	Article 23: If someone enters a house at night by breaking the door, they shall be fined twelve ringgits, and any stolen goods must be returned or replaced. If the house is damaged, the repair costs will be determined based on the consideration of the *pasirah* or *proatin*. The fine shall be divided between the victim and the *pasirah* or *proatin*.
5	Article 24: Whoever steals from a house at night or during the day, known as *tayap*, or if someone enters a house at night or during the day and steals by force, known as *nerungku*, they shall be fined twelve ringgits. The stolen goods must be returned or replaced. The fine will be divided into two parts: one part for the victim and the other for the pasirah or proatin.
6	Article 25: If someone steals rice inside a room, they will be fined twelve ringgits, and the stolen rice must be returned or replaced. The fine will be divided into two parts: one part will be given to the owner of the rice, and the other part will go to the *pasirah* or *proatin* (local authorities).
7	Article 26: If someone seizes and steals another person's belongings on the road and in their name, they will be fined between six to twelve ringgits, and the stolen goods must be

returned or replaced. The fine will be divided into two parts: one portion will go to the victim of the theft, and the other portion to the *pasirah* or *proatin.*

From the contents of the law, it can be understood that the lightest punishment is for theft committed during the daytime outside a house. Next is theft of items being dried, followed by theft committed in a village or field, which is equivalent to stealing rice inside a storage room or taking someone else's belongings on the road. The heaviest punishment applies to theft committed at night inside a house or theft committed during the day or night in a residence, with fines ranging from 2 to 12 Ringgit, and the stolen goods must be returned or their value compensated.

4.3. Theft in the Criminal Law

In the Indonesian Criminal Code (KUHP) (Moeljatno, 2021) cases of theft are covered in Chapter 22, Articles 362 to 367, with the following provisions:

No	Articles and Their Sanction
1	Article 362: Anyone who steals an item belonging to another person, in whole or in part, with the intent to take it unlawfully, shall be subject to theft charges and may be sentenced to a maximum imprisonment of five years or a fine of up to nine hundred rupiahs.
2	Article 363: 1) Punishable by imprisonment for up to seven years: 1. Theft of livestock; 2. Theft occurring during a fire, explosion, flood, earthquake, volcanic eruption, shipwreck, ship grounding, train accident, riot, rebellion, or threat of war; 3. Theft at night in a closed house or within a yard that has a house, committed by a person who is not known there or not authorized by the authorities; 4. Theft committed by two or more people; 5. Theft carried out to gain access to the crime scene or stolen goods by damaging, cutting, or climbing, or by using a false key, false order, or fake official uniform. 2) If theft as stated in number 3 is committed along with one of the points in numbers 4 and 5, it may be punishable by imprisonment for up to nine years.
3	Article 364: The acts mentioned in Article 362 and Article 363(4), as well as the acts mentioned in Article 363(5), if not committed inside a closed house or within a fenced yard, and if the value of the stolen goods does not exceed twenty-five rupiahs, shall be considered petty theft and shall be punishable by imprisonment for no more than three months or a fine of no more than two hundred fifty rupiahs.
4	Article 365: 1) Punishable by a maximum imprisonment of nine years for theft preceded by threats of violence or violence against a person, intended to prepare for or facilitate the theft, or if the perpetrator is caught in the act and uses violence to enable escape for themselves or others, or to retain stolen goods. 2) Punishable by a maximum imprisonment of twelve years if: 1. The crime is committed at night in a closed house or within a fenced yard with a house; 2. The act is committed by two or more people together; 3. Entry to the crime scene is gained by breaking in, climbing, using a false key, a fake order, or a fake uniform; 4. The act results in serious injury. 3) If the act results in death, it is punishable by a maximum imprisonment of fifteen years. 4) Punishable by the death penalty, life imprisonment, or a maximum imprisonment of twenty years if the act results in serious injury or death and is committed by two or more people together, accompanied by any of the conditions mentioned in paragraphs 1 and 3.

5	Article 366: If the punishment is based on one of the violations specified in Articles 362, 363, and 865, the revocation of rights may be carried out based on Article 35 (2). 1-4.
6	Article 367: 1) If the perpetrator or accomplice of any of the crimes mentioned in this chapter is the spouse of the person who is the target of the crime and does not have their own table and bed or separate property, no criminal charges can be brought against them. 2) If they are a spouse whose table and bed are separate or whose property is separate, or if they are a blood relative or in-law in a direct or collateral line, prosecution is only possible if there is a complaint from the victim. 3) In a matriarchal system, if paternal authority is exercised by someone other than the biological father, the provisions in the above paragraphs also apply to that person.

The lowest criminal penalty in the Criminal Code (KUHP) is an imprisonment term of three months, and the highest penalty is life imprisonment, with fines ranging from 250 to 900 Indonesian Rupiahs.

4.4 Settlement of Cases Between the Criminal Code (KUHP) and the Simbur Cahaya Law

The comparison between criminal law and dispute resolution under Simbur Cahaya Law can be understood through a case study. This is illustrated in the case of car theft involving Anto (the perpetrator) and Bagus (the victim). Bagus' stolen car was sold by Anto (to Clara, a dismantler who later died when her car was destroyed in an accident), while Anto enjoyed himself and indulged in spending the money.

Subsequently, Bagus filed a report or complaint with the police through legal channels and requested his right to have the suspect prosecuted according to the law. After arresting and detaining Anto for approximately 20 to 60 days, the case was handed over to the prosecutor's office. Following several legal processes, the prosecutor's office would transfer the case to court, where negotiations (through appeals or cassation) take place before a verdict is reached. This negotiation process can take months or even years, and Anto is typically sentenced to two months to two years in prison (since judges rarely impose the maximum four-year sentence for theft charges). His sentence is also reduced due to the time he spent as a suspect in detention.

Meanwhile, Bagus, as the victim, is left empty-handed, as the stolen car is gone and not replaced by Anto. If Bagus wants compensation, he must file a criminal lawsuit simultaneously, in accordance with Articles 98 to 101 of the Criminal Procedure Code (KUHAP). Otherwise, Bagus can only seek compensation through a civil lawsuit under Article 1365 of the Civil Code (KUH Perdata) to recover losses related to his car or other damages. This legal process is just as lengthy as the previous one, due to possible appeals and cassations. Bagus might have to wait up to three years for a final decision on his appeal. By that time, Anto would have completed his sentence and disappeared without a trace.

The ruling on the civil lawsuit may not benefit Bagus as he hoped. If Anto denies the claim or lacks assets, enforcing the ruling becomes even more complicated. Civil lawsuits take a long time, and Bagus is left clinging to his hard-earned court victory, which ultimately proves useless to him. He may win the case, but he ends up spending more money than the car's actual value in legal expenses. His suffering is complete—like the saying, "adding insult to injury."

Does the law we uphold truly deliver justice to all parties? The legal framework, originally established by the Dutch in 1886–1872, was implemented on January 1, 1873, and later officially codified in the Criminal Code (KUH Pidana). Are we satisfied with this system? It has been in use until today under Law No. 1 of 1946, Law No. 73 of 1958, and the Dutch Civil Code of 1815 (BW).

If this case were resolved under customary criminal law, the victim (Bagus) would file a complaint with the authorities. Various community leaders, including village, sub-district, and district officials, as policy enforcers, would summon both Bagus and Anto, along with their families, for an adat (customary) deliberation. Through this deliberation, a decision would be made regarding Anto's punishment for violating the law, as stipulated in Articles 20 to 26 of the Simbur Cahaya Palembang. According to these provisions, every thief must pay a fine ranging from 2 to 12 Ringgit and compensate for the stolen goods or their value. As a result, besides paying the customary fine, Anto would also be required to reimburse Bagus with an amount equivalent to the value of the stolen car.

When considering efficiency, this dispute resolution process is significantly quicker. The time required depends on the willingness of the suspect and his family. If execution is carried out promptly, the entire case can be resolved within one to two weeks without complaints. Customary rulings are generally accepted by all parties and do not lead to unrest, protests, or violent incidents. No lives are lost, and no property is damaged. Ultimately, justice is achieved, fostering peace and harmony throughout society.

4.5 Customary Law in the Indonesian Legislative System

The term 'between there and not' has emerged in discussions on the existence of customary law. This concept has given rise to arguments regarding the study of customary criminal law, which is gradually disappearing between 'between there and not.' The convergence between customary law and legislation can be examined from several perspectives that could potentially eliminate the notion of customary law as being 'between there and not,' affirming its existence as 'there.'

First, from the perspective of legality, both formal and material, several provisions highlight this issue:

1. Article 1(1) of the Indonesian Penal Code (KUHP) states: "An act cannot be punished unless it is based on the authority of an existing criminal provision."
2. Article 2(1) of the 2022 Draft Penal Code states: "The provision in Article 1(1) does not eliminate the validity of existing laws within society, which dictate that a person must be punished even if the act is not regulated in this law."

These principles must be upheld by aligning them with national legislation. According to the principle of legality, an individual's actions must be judged based on the laws in effect before the act was committed. The doctrine of substantive validity, in turn, governs how legal foundations should be applied, including unwritten law or customary law in accordance with local community life. Unfortunately, customary law is not accommodated in national legislation. The provisions in Article 1 of the Penal Code regarding 'living law' in society offer no space for it.

As a result, customary offenses that have traditionally existed within communities tend to vanish due to the implementation of the Penal Code. This situation is closely linked to the colonial policies of the Dutch authorities, who sought to eliminate unwritten law according to their interests. Had the political landscape evolved differently post-independence, a different approach might have been taken. Customary law was systematically suppressed to the point that it could neither be concretely applied in criminal proceedings nor thoroughly researched, hindering both legal traditions and academic discourse. When studied, it is often only in a limited and imperfect manner.

Second, Article V(3)(b) of Emergency Law No. 1 (1951) still acknowledged the term 'customary court.' However, this term disappeared following the enactment of Article X of Law No. 14 (1970) on the Principles of Judicial Authority. Subsequent amendments, including Law No. 35 (1999), Law No. 4 (2004), and Law No. 48 (2009), further consolidated this shift, replacing customary courts with the general judicial system. Nevertheless, in Aceh, the *Gampong* (village) or Peace Courts are still recognized under Law No. 11 (2006). Although Law No. 14 (1970) and its amendments do not formally recognize customary courts, they persist in practice. Even when reviewed through the jurisprudence of the District Courts and the Supreme Court, these courts still acknowledge the existence of customary adjudication.

Several rulings have upheld the customary justice system. In 1991, the Indonesian Supreme Court issued Decision No. 1644 K/Pid/1988, which stated that an individual who had already received customary sanctions could not be tried or punished again by a state court for the same offense. This ruling was in line with Article V(3)(b) of Emergency Law No. 1 (1951). As a result, the charges were dismissed. In 1996, the Supreme Court made a similar ruling in an adultery case (Decision No. 984 K/Pid/1996), reaffirming that a person who had undergone customary sanctions could not be punished twice. The prosecutor's charges were deemed inadmissible as they contradicted the customary law that had already been applied. In 2009, the Makassar High Court issued Decision No. 427/Pid/2008/PT.MKS regarding an immoral act committed by an adult outside of marriage. The judges found no comparable provision in the Penal Code and thus decided to apply customary law instead.

Third, from normative and practical perspectives, the existence and enforcement of customary law are structured under Article V(3)(b) of Emergency Law No. 1 (1951), which states:

> Material civil law and, for the time being, material criminal civil law that still applies to the people of autonomous regions and those formerly tried by customary courts shall remain applicable to them, with the understanding that if an act is considered a criminal offense under customary law but has no equivalent in the Penal Code, it shall carry a penalty of up to three months' imprisonment and/or a fine of five hundred rupiah. This alternative penalty applies if the convicted individual fails to comply with the customary sanction, as determined appropriate by the judge based on the severity of the offense. However, if the customary punishment exceeds what the judge deems proportionate, the substitute penalty may be as high as ten years of imprisonment. If an act considered criminal under customary law has an equivalent in the Penal Code, it shall be punishable by the corresponding statutory provision most similar to the customary offense.

These decisions are based on principles of justice. Though phrased differently, they affirm the existence of customary law, as seen in the following statement:

> In principle, the Supreme Court affirms the High Court's view that a legal case may lose its criminal nature not only through legislative provisions but also through justice or unwritten rules. This principle is generally applicable because the High Court considered a formal embezzlement case proven against the defendant.

Hoadley (1994) has stated that the existence of customary law, as a living legal system within Indonesian society, is increasingly being abandoned. Customary law, which historically provided fair solutions to disputes, is gradually disappearing. The current reality in Indonesia reveals various conflicts involving customary law, particularly when indigenous community rights clash with foreign capital interests, where national legal systems are often imposed instead.

Given that common law reflects the legal consciousness embedded in society, some customary legal institutions remain crucial in shaping Indonesia's legal framework. Customary law is dynamic, not static. According to Von Savigny, as cited in Arbiansyah (2024), common law is considered a 'living law' because it embodies the true sense of justice within society. Like life itself, common law grows and evolves. If a law contradicts or fails to align with the prevailing values and norms of society, it will inevitably face rejection. At the national level, customary law is the law that lives within Indonesian society. Similarly, common law can serve as a source of legal reference for judges when required by legislation.

4.6 The Relevance of Simbur Cahaya Law in Theft Cases to Indonesian Legislation

From the example previously explained, a defendant who has already undergone customary sanctions cannot be prosecuted, charged, or punished again through criminal court proceedings under national law, as there is no double jeopardy for the same act. In other words, someone who has been punished under customary law will not be punished again by the state.

Comparing Indonesia's criminal law, as outlined in the Criminal Code (KUHP) created by the Dutch, with Islamic law and the laws of Islamic kingdoms in the Nusantara (such as Majapahit), it is evident that the applied laws did not take into account the victims' property or possessions. The punishments imposed were only around three to four months, and the KUHP did not require the defendant to compensate the victim for their losses, resulting in very minimal fines (e.g., 900 for theft). Meanwhile, the Simbur Cahaya Law, on the other hand, mandated that criminals or convicted individuals compensate the victims for stolen property. In contrast, our national laws are supposed to protect individuals' property rights from being taken by force, but Article 28 (40) of the 1945 Constitution has been largely ignored. Therefore, customary law and the values it embodies should serve as references and sources of law to be applied at the national level.

Additionally, various efforts have been made to preserve the existence of the Simbur Cahaya Law, particularly through academic forums such as seminars and other discussions. In 2012, the Palembang royal authorities were once invited by the Indonesian House of Representatives (DPR) and the Regional Representative Council (DPD) to contribute to the drafting of a customary law bill. In the draft, several articles from the Simbur Cahaya Law were proposed for adoption into national legislation. This consideration is logical, as customary law has always been a source of legal material and plays a role in the formulation of laws in the Nusantara.

Furthermore, Mulyadi (2012) stated, "The existence of customary criminal law in Indonesia is positioned within the domains of legal dogma, legal theory, and legal philosophy." Thus, overall, customary law can activate layers of legal knowledge in practice. Consequently, customary criminal law is undeniably effective as a distinctive feature of Indonesian legal practice.

5. Conclusion

From the discussion that has been presented, the author concludes the following provisions:

1. When comparing Indonesian criminal law as stated in the Criminal Code (KUHP, created by the Dutch) with Islamic law and the law of Islamic kingdoms in the Nusantara (such as Majapahit), it appears that the law applied does not take into account the property or ownership rights of the victims involved.
2. The Nusantara region is not an Islamic state, so Islamic law cannot be fully applied.
3. Customary law is valid and applicable according to both formal and material legality principles. Formal legality is stated in Article 1, Paragraph (1) of the Criminal Code, which reads: "No act shall be punishable except by virtue of a pre-existing penal provision." Meanwhile, material legality is established in Article 2, Paragraph (1) of the Draft Criminal Code (RUU KUHP) of 2022, which states: "The provisions in Article 1, Paragraph 1 do not diminish the validity of the laws prevailing in society that determine a person should be punished, even if the act is not regulated by legislation."
4. The application of theft sanctions in the Criminal Code does not require the convicted person to compensate the victim, leaving the victim without restitution for the stolen property.
5. The application of theft sanctions in the Simbur Cahaya Law requires the perpetrator or convict to compensate the victim for their losses.
6. The application of law must be based on the principle of justice or unwritten legal principles, in accordance with Article V (3) section b of Emergency Law No. 1 (1951).
7. The Simbur Cahaya Law contains values of justice that should serve as a relevant legal reference and should be implemented on a national scale.

References

Adil, M. (2014). Dinamika Pembauran Hukum Islam di Palembang: Mengurai Isi Undang-Undang Simbur Cahaya. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, *14*(2), 57–76.

Adil, M., & Hadi, A. (2018). Kearifan Lokal dalam Perspektif Fikih Lingkungan sebagai Kontribusi Konsep Kebun Raya Sumatera Selatan. *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, *3*(1), 141–160.

Aditya, Z. F., & Yulistyaputri, R. (2019). Romantisme sistem hukum di Indonesia : Kajian atas kontribusi hukum adat dan hukum Islam terhadap pembangunan hukum di Indonesia. *Rechtsvinding: Media Pembinaan Hukum Nasional*, *8*(1), 37–54.

Amri, P., & Maharani, S. D. (2018). Tradisi ziarah kubro masyarakat Kota Palembang dalam perspektif hierarki nilai Max Scheler. *Jurnal Filsafat*, *28*(2), 160–179.

Arbiansyah, F. A. (2024). *Obstacles and Solutions in Upholding Customary Law in Indonesia: R. Soepomo's Perspective*. Universitas Islam Indonesia.

Endrayadi, E. C. (2016). *Kesultanan Palembang Darussalam: Sejarah dan Warisan Budayanya*.

Hoadley, M. C. (1994). *Selective judicial competence: the Cirebon-Priangan legal administration, 1680-1792* (Issue 15). SEAP Publications.

Kasuma, G., & Santoso, L. (2009). *" Dende" Tafsir Tradisional K1tab Simboer Tjahaja Dalam Relasi Gender: Dinamika Hukum Adat Dan Adaptasi Budaya Lokal Di Ogan Kometing IIir, Sumatera Selatan*.

Marzuki, P. M. (2005). *Penelitian hukum*.

Moeljatno, S. H. (2021). *KUHP (Kitab undang-undang hukum pidana)*. Bumi Aksara.

Mulyadi, L. (2012). *Hukum Acara Pidana: Normatif, Teoretis, Praktik dan Permasalahannya*.

Mulyadi, L. (2013). Eksistensi Hukum Pidana Adat Di Indonesia: Pengkajian Asas, Norma, Teori, Praktik dan Prosedurnya. *Jurnal Hukum Dan Peradilan*, *2*(2), 225–246.

Nurasiah, N. (2016). Pelaksanaan Dan Pengalaman Hukum Keluarga Islam Dan Undang-Undang Simboer Tjahaya. *Jurnal Penelitian Medan Agama*, *17*, 671–696.

Prayogo, R. T. (2016). Penerapan asas kepastian hukum dalam peraturan mahkamah agung nomor 1 tahun 2011 tentang hak uji materiil dan dalam peraturan mahkamah konstitusi nomor 06/PMK/2005 tentang pedoman beracara dalam pengujian undang-undang. *Jurnal Legislasi Indonesia*, *13*(2), 191–201.

Rais, M. D. (2001). *Teori Politik Islam*. Gema Insani.

Rato, D. (2010). *Filsafat hukum mencari: Memahami dan memahami hukum*. Yogyakarta: Laksbang Pressindo.

Sunny, I. (1988). Tradisi dan Inovasi KeIslaman di Indonesia Dalam Bidang Hukum Islam. In *Hukum Islam dalam 'Tatanan Masyarakat Indonesia*. Logoz Publishing.

Syarifuddin, L. (2019). Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana. *Risalah Hukum*, 1–10.