

Revitalization of Indonesian criminal law through the acknowledgment of living law: An investigation of the *Sigajang Laleng Lipa'* customary law

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Abstract

Introduction to the Problem: The research article examines the *Sigajang Laleng Lipa'* tradition in South Sulawesi's Bugis community as a "living law" under Indonesia's new criminal code, specifically Article 2. The tradition's violent nature, often leading to fatal outcomes, may conflict with principles in the updated code.

Purpose/Study Objectives: The primary objective of this study is to conduct an analysis of criminal law regulations in Indonesia regarding the *Sigajang Laleng Lipa'* tradition and assess its alignment with Article 2 of the new Indonesian Criminal Code. The study aims to understand whether this traditional conflict resolution mechanism meets the legal standards set out in the new code, especially concerning the concept of living law.

Design/Methodology/Approach: This research employs a normative juridical method with a statutory and conceptual approach to legal recognition in Indonesian criminal law. Secondary data, gathered through literature sources like books and journals, facilitates an in-depth examination of the *Sigajang Laleng Lipa'* tradition and the Indonesian criminal code. The doctrine of proportionality guides this study, emphasizing that punishment should match the crime to ensure justice and prevent excessive penalties.

Findings: The findings reveal that the *Sigajang Laleng Lipa'* tradition, despite its historical and cultural significance in the Bugis community, involves violent practices that have led to fatal consequences. Moreover, it is observed that this tradition does not fulfill the criteria set forth in Article 2, Paragraph (2) of the new Criminal Code. This mismatch highlights a significant challenge in incorporating living law traditions into the modern legal framework of Indonesia. Due to its inconsistency with philosophical, juridical, and sociological principles, the tradition cannot be sustained. Consequently, its use as a punitive measure is unjustifiable, as it does not effectively achieve criminal justice objectives and provides minimal social benefit, lacking contribution to crime prevention efforts.

Paper Type: Research Article

Keywords: Revitalization; Indonesian Criminal Law; Customary Law; Criminal Justice; *Sigajang Laleng Lipa'*



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Introduction

As a nation governed by the rule of law, Indonesia not only incorporates a civil law legal system and an Islamic legal system but also upholds the significance of customary law. Customary law must be accorded equal recognition by the state as long as it aligns with the societal progress and the fundamental principles of the Unitary State of the Republic of Indonesia, as enshrined in Article 18B of the 1945 Constitution. Indonesia is a country made up of several islands with 38 provinces. Every province in Indonesia has different natural and historical conditions, apart from that the shape of this archipelagic state also causes a separation between one province and another, thus becoming an obstacle to inter-community relations. This circumstance fosters the cultural advancement in each respective region (Nada, 2022). This cultural progress gives rise to inherent practices observed among indigenous communities, encompassing beliefs, customs, and rituals that are transmitted across generations.

The customs observed by indigenous communities served as the foundation for formulating regulations that later evolved into legally binding statutes governing society. These laws, once institutionalized, hold a significant role as guiding principles in human life. Living law occupies a crucial position as it exerts a dominant and intimate influence on society (Harnadi, 2022). This notion is consistent with F.C. von Savigny's perspective, which posits that laws are not imposed by rulers but rather evolve and are discovered within society itself (Hadi, 2017). Indeed, within the framework of establishing positive law, living law frequently constitutes a substantial source of material legal principles. Thus, it is evident that law shares a close connection with the community, as it emerges directly from the community itself (Hadi, 2017).

Indonesia continues to preserve the presence of living laws that are actively observed within society. South Sulawesi stands as one of the regions where such laws persist and remain integral to the lives of its people. In the region of South Sulawesi, the Bugis tribe represents one of the largest indigenous groups residing there. Within their society, the Bugis people adhere to a prominent cultural practice known as *Siri Na Pacce'*, which serves as a way of life and holds the utmost legal significance in the value system of the Bugis community (Mukaromah et al., 2022). In the Makassar language,



Siri' denotes a profound sense of shame, and the Bugis people attach great importance to their sense of shame and self-respect (Mukti et al., 2017). By embracing the *Siri' Na Pacce* culture, they endeavor to uphold their dignity and refrain from engaging in any demeaning actions. This way of life also instills in the Bugis people a sense of reverence for the dignity of others (Safitri & Suharno, 2020).

According to the Bugis people, individual self-respect, honor, and dignity are elements that must never be diminished, humiliated, or violated. Consequently, when the Bugis people sense their self-esteem being compromised, they are prepared to defend it, even at the expense of their lives (Mukti et al., 2017). When confronted with a *Siri'* related issue, the Bugis people resort to a distinctive and lethal tradition known as *Sigajang Laleng Lipa'*, employed as a final option when all attempts at reconciliation have proven futile. This tradition, also referred to as *Tarung Sarong* or "slipcover fight", entails joining two men together in a sarong, who then engage in a knife fight using a *badik*, a type of machete (Mukaromah et al., 2022). Prior to partaking in this tradition, both parties establish an agreement where one party is exempted from facing any legal repercussions in the event that the other party succumbs during the course of this tradition (Mukaromah et al., 2022).

The *Sigajang Laleng Lipa'* tradition represents a long-standing customary practice within the Bugis community, employed as a means of seeking justice dating back to the era of the Bugis Kingdom, spanning several centuries ago. Nevertheless, as the years pass, this tradition is gradually fading away, with its existence nearly on the verge of being forgotten and abandoned (Hamdani, 2021). This shift in perspective is attributed to the belief that the *Sigajang Laleng Lipa'* tradition no longer aligns with the primary objectives of criminal law, which ought to promote societal welfare and deter crime. Furthermore, apart from its potential benefits, this tradition is seen as conflicting with the principles of human rights, particularly the right to life, which constitutes the fundamental and non-derogable right of every individual. The right to life demands safeguarding by both fellow individuals and the state (Marzuki, 2013).

In relation to the purpose of punishment, there are three theories of the purpose of punishment, namely the Absolute or Retaliation Theory, the Relative or Goal Theory, and the Combined Theory. In Indonesia, criminal law initially adhered to an absolute theory which prioritized punishment as retaliation. However, in the reform of criminal law, the purpose of punishment has changed to be relative (Muhammad, 2023). Muladi explained that regarding the relative theory, punishment is not merely to repay the perpetrator's mistakes, but as a means to achieve useful goals in protecting society and promoting prosperity. In this view, sanctions are emphasized on preventive purposes, namely preventing the occurrence of crime through emphasizing the role of rehabilitation and social reintegration (Rivanie et al., 2022).

In the context of the application of criminal law in Indonesia, especially in cases such as the *Sigajang Laleng Lipa'* tradition, where this tradition involves the practice of



violence and punishment, the use of Relative Theory as a basis for the purpose of punishment may be more appropriate. By viewing punishment as a means of preventing crime and protecting society, this approach can provide a stronger foothold in traditional punishment practices and align them with modern principles of justice and the needs of society (Fitriani, 2023).

Presently, Indonesia has undergone significant reforms in the criminal law system through the enactment of Law Number 1 of 2023 concerning the Criminal Code. This new Criminal Code introduces a novel concept distinct from its predecessors, as evident in Article 2, which now addresses the concept of living law. The principle of legality is further broadened in Article 2, paragraph (1), wherein the application of the law that prevails within society to determine criminal actions is recognized, even if such actions are not explicitly regulated in the Indonesian Criminal Code (KUHP). Subsequently, this provision is subject to limitations under paragraph (2), which stipulates that the applied law must align with the principles of Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and prevailing legal tenets acknowledged by the majority.

The components outlined in Article 2, paragraph (2) necessitate careful consideration, particularly with regard to human rights. The execution of customary traditions has the potential to give rise to human rights violations. Thus, the restriction established in Article 2, paragraph (2) assumes critical importance in preventing the implementation of customary practices that infringe upon human rights. Indonesia, as a nation obligated to safeguard human rights, possesses a legal framework, specifically Law no. 39 of 1999 concerning Human Rights, which extends to the national domain, encompassing indigenous communities and their respective traditions (Darma, 2022).

The application of customary law in Indonesia is regulated by criteria that ensure its integration with the national legal system. First, the Constitution and laws recognize customary law, especially in the 1945 Constitution Article 18B paragraph (2), which recognizes and respects customary law communities and their traditional rights as long as they are still relevant and in line with community development and the principles of the Indonesian state. country. Apart from that, Law Number 6 of 2014 concerning Villages also recognizes traditional villages and grants them autonomy to manage regional affairs based on customary law. Second, customary law must be in line with national law and not conflict with criminal, civil or state administrative law. Third, the application of customary law must respect internationally and nationally recognized human rights, avoid or adapt discriminatory practices, violence or rights violations.

Drawing from the aforementioned context, the primary objective of this research is to examine the implementation of the *Sigajang Laleng Lipa'* tradition and its implications within the frameworks of criminal law and human rights. The study

endeavors to shed light on how the *Sigajang Laleng Lipa'* tradition is practiced, while also scrutinizing its compliance with criminal law and human rights principles as one of the living laws observed in society.

Methodology

This study is categorized as normative legal research, conducted by extensively analyzing secondary literature, including research reports and journal articles, to provide a comprehensive understanding of the *Sigajang Laleng Lipa'* phenomenon. The primary legal materials utilized consist of the new Criminal Code and Law no. 39 of 1999 concerning Human Rights.

This research uses a legal approach, a conceptual approach and a historical approach (Fernando et al., 2023). Researchers use a statutory approach to study or examine regulations related to the *Sigajang Laleng Lipa'* tradition as a law that lives in society in Indonesian criminal law. Meanwhile, the conceptual approach used in this research is to examine doctrines, principles and concepts in legal sciences which then exist related to legal issues which are the subject of research studies (Djulaeka & Rahayu, 2020).

To answer the research problem, the research continued by analyzing legal materials, namely by reviewing the relationship between the norms of various laws and regulations which are related to each other. Then, this research uses data analysis techniques using deductive logic, deductive logic or processing legal materials in a deductive way, namely explaining something general and then drawing it to a more specific conclusion (Marzuki, 2017).

One of the doctrines relevant to this tradition is proportionality, which emphasizes the need for conformity between the punishment imposed and the offense committed. It is important to ensure that its implementation remains consistent with broader principles of justice, including the protection of human rights and individual safety (Valerian, 2022).

Results and Discussion

Implementation of the Sigajang Laleng Lipa' Tradition

Reforms to criminal law related to living law provide clearer recognition of customary law such as the *Sigajang Laleng Lipa'* Tradition from the Bugis tribe. The expansion of the principle of legality in Article 2 is the basis for recognizing that the *Sigajang Laleng Lipa'* Tradition, as an example of living law, can be the basis for determining whether a person deserves to be punished, even if the act is not specifically regulated in the Law. It was also emphasized that applicable laws must remain consistent with the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, Human Rights, as well as legal principles recognized by the majority of society. To see whether punishment is based on *Sigajang Laleng Lipa'* customary law, it needs to be seen based on the theory of the purpose of punishment which prioritizes the Relative or



Goal Theory as a means to achieve useful goals. in protecting society and improving welfare ([Hadi, 2017](#)).

Sigajang Laleng Lipa' is intrinsically linked to the cultural significance of *Siri' Na Pacce*, which occupies the highest position in the value system of Bugis society and is regarded as a way of life ([Mukaromah et al., 2022](#)). In the Makassar language, *Siri'* conveys the concept of shame, and the Bugis people attach great significance to their sense of shame and self-esteem ([Mukti et al., 2017](#)). According to their beliefs, self-respect, honor, and dignity are qualities that must never be diminished, humiliated, or violated. When a Bugis individual senses a threat to their pride, they are prepared to defend it, even at the cost of their own life.

According to the Bugis indigenous community, the *Sigajang Laleng Lipa'* tradition is regarded as a just means of conflict resolution, aimed at safeguarding their sense of shame, self-esteem, and honor. This resolution involves inflicting injury or even taking the life of the opponents who are bound together in a single sheath, utilizing a *badik* (machete). The act of being in a sarong signifies a deep bond of unity among individuals, representing a place where they come together and unite with one another ([Mukaromah et al., 2022](#)). The tradition of *Sigajang Laleng Lipa'* has endured for centuries, dating back to the era of the Bugis kingdom. This practice is frequently invoked in response to conflicts or disputes revolving around matters of self-esteem (*siri'*). In the past, *Sigajang Laleng Lipa'* was resorted to when two feuding families encountered unresolved issues that could not be settled through deliberation. As a conclusive measure, *Sigajang Laleng Lipa'* served as a final settlement to cease ongoing disputes and prevent their recurrence ([Mukaromah et al., 2022](#)).

The *Sigajang Laleng Lipa'* tradition is not merely a hasty recourse to fighting during disputes. Rather, it involves a systematic three-step problem-solving sequence known as "*Tellu Cappa*" that must be followed before reaching this tradition. *Tellu Cappa* is a philosophy of the Bugis people which has been passed down from generation to generation as a form of adaptation or survival when living in someone else's country so as not to be humiliated. The first step, *Cappa' Lila*, signifies employing deliberation and communication to address the issue. The second step, *Cappa' Laso*, denotes utilizing marriage as a means of resolution. And finally, the third step, *Cappa' Badi'*, involves resorting to the *Sigajang Laleng Lipa'* tradition, symbolized by the use of the *badik* (machete), if prior methods prove unsuccessful ([Anggraini, 2018](#)). The execution of *Sigajang Laleng Lipa'* involves specific essential components that must be satisfied, namely the attempted act of causing harm or murder between men, the infliction of humiliation upon one's self-esteem, the presence of feelings of shame (*siri'*), and a mutual consensus between both parties and society.

If mediation efforts fail to reach a resolution, the tradition of *Sigajang Laleng Lipa'* is considered as an option, subject to the mutual agreement of both parties. Once an agreement is established, the parties enter into a pact that ensures one party will not



face any sanctions should the other party lose their life during the tradition. With a shared consensus in place, both parties present the matter to the local customary leader for further deliberation. Subsequently, the customary leader determines the precise date for the execution of *Sigajang Laleng Lipa'*. In preparation for the tradition, both parties observe a day of fasting as a gesture of reverence to their ancestors, seeking permission for the smooth conduct of this customary practice (Mukti et al., 2017).

The customary leader also plays a pivotal role in designating a secluded location, away from settlements, for the execution of *Sigajang Laleng Lipa'*. This decision is based on the understanding that *Sigajang Laleng Lipa'* is not a spectacle to be displayed publicly. The outcome of the battle during *Sigajang Laleng Lipa'* may result in the death of one or both parties, or it could also conclude without any fatalities. In any case, all involved must accept the outcome gracefully and refrain from raising the matter again in the future (Mukti et al., 2017). Given the pre-established agreement between the parties not to contest the consequences of their actions, the Bugis people strictly abide by the principle of never retreating when confronted with the badik (machete). They firmly believe that once a promise is made, it must not be casually reneged upon. Going back on their word would render them as losers, leading to societal ostracism and a further decline in family self-esteem (Mukti et al., 2017). This stance aligns perfectly with the concept of *Siri'*, wherein the Bugis people place great emphasis on their sense of shame and self-esteem, even if it demands the ultimate sacrifice of their lives.

In contemporary society, the practice of *Sigajang Laleng Lipa'* has been abandoned by the Bugis community and is no longer employed as a means of conflict resolution. This transformation is caused by several factors. First, the increasing understanding of universal values such as justice, human dignity and human rights may have encouraged society to realize that practices involving violence are no longer in accordance with these values. Apart from that, the influence of modernization which brings changes in education, technology and access to information can also influence views on resolving societal conflicts. This modernization process may make them increasingly inclined to seek solutions that are more oriented towards positive law and more structured procedures. On the other hand, the role of the state and Indonesia's formal legal system may also play a role in this change, with stricter law enforcement and criminal law reforms making practices such as *Sigajang Laleng Lipa'* increasingly legally unacceptable. Finally, awareness of the negative impacts of practices such as *Sigajang Laleng Lipa'* on individuals and society as a whole may also have influenced society's assessment of the effectiveness and fairness of these practices. Thus, this change is caused by a combination of interacting social, cultural, economic and political factors. These practices are no longer relevant to the demands and values of the modern era, so they are abandoned as part of a cultural heritage that is no longer appropriate to today's life.

Criminal Law Perspective

The Criminal Code in Indonesia underwent a comprehensive revision through the enactment of Law No. 1 of 2023 concerning the Criminal Code. The introductory provisions of this new Criminal Code center around the principle of legality, wherein it stipulates that actions or deeds that contravene material provisions are subject to sanctions. Conversely, if an action is not covered by material provisions, no sanctions can be imposed on that particular act. This principle of legality establishes legal constraints, ensuring that sanctions are only applicable to acts that are deemed to be criminally justifiable. Consequently, situations may arise wherein an act violates the law and causes harm, yet it remains beyond prosecution solely because it lacks material regulation ([Setyaningsih & Kayuan, 2022](#)).

Within the framework of reforming the Criminal Code, the principle of legality retains its status as the foremost fundamental principle ([Mallarangan, 2021](#)). The new Criminal Code introduces a novel concept distinct from its predecessors, specifically concerning the living law, expounded in Article 2. This renewal in Article 2 expands the scope of the principle of legality, as regulated in paragraph (1), by clarifying that laws that emerge from the living practices of people can serve as a basis for imposing penalties on individuals, even if their actions are not explicitly outlined in written statutes. The referred sentence denotes a traditional form of punishment employed for resolving cases deemed as customary transgressions. This clause underscores that the sentencing process also encompasses uncodified regulations that hold substantial acknowledgment within society.

Various regions in Indonesia continue to uphold and enforce laws that are specific to their respective communities as a means of local governance ([Abbas & Murziqin, 2021](#)). One such example is the Bugis tribe residing in South Sulawesi, where the Bugis people adhere to a cultural code known as *Siri' Na Pacce*. This cultural norm represents an indigenous form of law that holds the highest legal standing within Bugis society. Any transgression of *Siri'* leads to the imposition of customary law sanctions. The Bugis community categorizes these sanctions into two forms, either involving fatal consequences or non-lethal penalties ([Alimuddin, 2004](#)). Nevertheless, a recurring occurrence involves customary law sanctions executed through lethal means, framed as an act of "self-defense", to redress grievances when a mutually agreeable resolution cannot be reached. This form of sanction, recognized as *sigajang*, is employed to reinstate the honor of a family that has been tarnished due to a breach of *Siri'* committed by another individual.

In accordance with Bugis tradition, self-defense through lethal means is deemed acceptable as a recourse to seek justice in specific circumstances, including cases of sister rape, adultery, elopement (*silariang*), kidnapping (*nilariang*), and attempted murder ([Thontowi, 2007](#)). This form of sanction, involving lethal action, is typically executed through a tradition known as *Sigajang Laleng Lipa'*, serving as a customary crime resolution within the Bugis community. This aligns with the objective specified



in Article 2, paragraph (1) of the new Criminal Code, where *Sigajang Laleng Lipa'* as a manifestation of living law aims to accommodate customary offenses that enjoy the trust and acceptance of the community (Setyaningsih & Kayuan, 2022).

Article 2, paragraph (1) seeks to facilitate the incorporation of customary offenses as the foundation for punishment, thereby promoting the resurgence of customary justice and the codification of customary law through the establishment of regional regulations governing relevant customary crimes that remain in force within the local domain. Additionally, the rules governing the process of developing customary institutions, specific to each region, have been mandated to all Governors in Indonesia by virtue of Regulation of the Minister of Home Affairs Number 11 of 1984 concerning Fostering and Developing Customs at the Village Level.

The perspective on the *Sigajang Laleng Lipa'* tradition, within the confines of its application as delineated in Article 2, paragraph (2), warrants examination from philosophical, juridical, and sociological standpoints. From a philosophical standpoint, the *Sigajang Laleng Lipa'* tradition encompasses actions that run counter to Pancasila, particularly the second principle concerning human values. This principle serves as the bedrock, ensuring that all individuals have the entitlement to social justice across various domains, ranging from the economy to education. Furthermore, this tradition contradicts the local wisdom cherished by the Bugis community, known as *Siri' Na Pacce*, which holds profound philosophical significance in their way of life. *Siri' Na Pacce* serves as a cornerstone of mutual respect among individuals within the community (Hastangka et al., 2018). Hence, when scrutinized in light of the restrictions outlined in Article 2, paragraph (2), this tradition fails to align with the essential elements of conformity with Pancasila.

The 1945 Constitution, as the embodiment of Pancasila values, also encompasses human values from a juridical standpoint. The 4th paragraph of the constitution preamble explicitly addresses human values and the pursuit of social justice. The human values enshrined in Pancasila and the 1945 Constitution reflect a legal humanistic perspective that elevates the status of human beings to a position of utmost significance, importance, and centrality in life (Hastangka et al., 2018). This concept of legal humanism is closely tied to the principle of living law, where law originates, thrives, and evolves within society. Accordingly, the law should be employed to serve the welfare and benefit of humanity (Supriyono & Kusumawati, 2020). Consequently, the perspectives on *Sigajang Laleng Lipa'* within the scope of Article 2, paragraph (2) limitations do not align with the elements that can be incorporated into the Criminal Code. The application of this tradition, resulting in violence and loss of life, stands in contrast to human values, rendering it incongruent with the principles upheld in the Criminal Code.

From a juridical perspective, this can be observed in the contents of Article 2 of the Criminal Code, which aligns with the directives of Article 18B, paragraph (2) of the



Constitution. In essence, Article 18B, paragraph (2) stipulates that the state must acknowledge and uphold customary law and traditional rights in society, as long as they are in harmony with the progress and foundational principles of the Unitary State of the Republic of Indonesia. Nevertheless, the *Sigajang Laleng Lipa'* tradition does not conform to the limitations specified in Article 2, paragraph (2). Furthermore, this tradition runs contrary to national legislation, specifically Law no. 39 of 1999 concerning Human Rights. The connection between Human Rights Law and the practice of *Sigajang Laleng Lipa'* is rooted in the fact that this tradition entails elements of violence, including the potential loss of human life, which constitutes a violation of human rights (Faried et al., 2022).

From a sociological perspective, the *Sigajang Laleng Lipa'* tradition, once employed as a customary sanction within the Bugis community, is now being forsaken with the passage of time. This shift is attributed to the fact that the application of this tradition is incongruent with the principles of humanity and modern state law. Therefore, it becomes imperative to formulate laws that serve the best interests of humanity (Wibawa & Ali, 2022). Hence, the incorporation of the provisions found in Article 2 of the Criminal Code reflects a legal system that is grounded in the collective consciousness of its people. It underscores the imperative that laws should align with the prevailing sentiments and values of the society at large.

The *Sigajang Laleng Lipa'* tradition can also be seen from a cultural perspective. That this tradition is a concrete example of how to recognize the Living Law. In a cultural context, this tradition is a reflection of the close relationship between law and the cultural values of the Bugis community. Living Law recognizes that law is not static, but rather grows and develops in accordance with cultural developments and local values that exist in society. In this case, *Sigajang Laleng Lipa'* is not only a customary law practice, but also an expression of a strong cultural identity and rich cultural heritage. By understanding this tradition in a cultural context, we can see how law not only functions as a guide to behavior, but also as a custodian and successor of cultural values that are highly upheld in Bugis society (Pratama et al., 2024).

Apart from being seen from various perspectives, this tradition must also be seen in the context of the theory of the purpose of punishment. The execution of the *Sigajang Laleng Lipa'* tradition is intrinsically linked to the theory of sentencing objectives, specifically the theory of absolute or retaliation. As implied by its name, the absolute theory posits that the fundamental purpose of punishment is solely to mete out retaliation for the committed offense (Wulandari, 2012). The absolute theory's goal orientation centers on retaliation as a means of holding individuals accountable for their wrongdoings. The commission of a mistake or crime becomes the rationale for imposing a criminal sentence. Additionally, the absolute theory advocates the principle of "a crime for a crime", whereby this theory is perceived as a form of seeking revenge (Toatubun, 2016). In addition to the objective of retaliation, this theory neglects to consider other advantages of imposing a sentence, such as the

potential for rehabilitating the perpetrator of the crime. This oversight disregards human values, which are one of the elements delineated in Article 2, paragraph (2), as a requirement for the implementation of living law.

The theory of retaliation is no longer relevant to the current Indonesian criminal justice system. This is also in line with the new concept regulated in the Criminal Code, where it is clearly stated in Article 52 that the purpose of punishment is not to cause suffering and also to degrade human dignity (Irmawanti & Arief, 2021). The new concept introduced in the Criminal Code departs from the theory of retaliation and instead adopts the theory of relative punishment. The relative theory places greater emphasis on the expediency of punishment to establish societal order, signifying a departure from the principles of retaliation theory. The aim of this expediency is to look ahead to the future, with the intention of deterring individuals from repeating their actions. Moreover, punishment also serves as a platform for the perpetrator's self-improvement, fostering personal growth and enabling them to become individuals better equipped for engaging in positive social interactions.

In actuality, the *Sigajang Laleng Lipa'* tradition is incongruent with the predominant sentencing theory embraced in the new Criminal Code, which is the relative theory. *Sigajang Laleng Lipa'* continues to prioritize punishment rooted in revenge, as the inception of this tradition was triggered by an individual's error that resulted in the tarnishing of another person's self-esteem. Therefore, it can be concluded that customary sanctions in the form of the *Sigajang Laleng Lipa'* tradition cannot be regarded as a valid form of punishment. This is due to the fact that certain values are compromised in its application, specifically human values as delineated in Article 2, paragraph (2) of the new Criminal Code.

The implementation of traditional penalties in Indonesia is subject to significant constraints that warrant careful consideration in analysis. Traditional penalties must adhere to national legal principles, ensuring they do not contradict the Criminal Code or other legislation governing criminal sanctions. Moreover, the enforcement of traditional penalties must adhere to transparent and equitable legal procedures, safeguarding the right to a fair defense. Additionally, these penalties must not infringe upon universally recognized human rights, such as the right to be free from torture and the right to privacy. Furthermore, it is crucial to assess their compatibility with contemporary values and societal advancements, allowing for the reevaluation or adjustment of traditional practices that may no longer be applicable in today's context. Adhering to these limitations ensures that the application of traditional penalties in Indonesia is conducted appropriately, upholding principles of justice and human rights (Apriyani, 2018).

Human Rights Perspective

A vital and foundational facet of human rights pertains to the right to life (Fernando, Wulandari, et al., 2023). Given the paramount significance of human rights, this facet



remains a central subject of scrutiny on both domestic and global scales (Tomuschat, 2010). The United Nations assumes a pivotal role in safeguarding human rights and has formulated a series of human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), among numerous other accords. These instruments collectively endeavor to ensure the protection of human rights across diverse spheres of existence (Triantono & Marizal, 2022).

Human rights, including the right to life, are enshrined in the constitution, as evidenced by Article 28A of the 1945 Constitution. Assessing the practice of *Sigajang Laleng Lipa'*, where two individuals engage in a combat wielding sharp weapon, resulting in the death of one or inflicting severe injuries, it becomes evident that the implementation of *Sigajang Laleng Lipa'* may be construed as manslaughter or persecution. As such, it is unequivocally evident that such actions are in direct opposition to the tenets of Article 28A of the Constitution, which upholds an individual's right to life. Furthermore, Article 28A finds reinforcement through Article 28I, wherein the right to life is articulated as encompassing an individual's intrinsic freedom, which must remain inviolable under all circumstances (Tongat, 2024).

The provisions laid out in Articles 28A to 28I of the Constitution subsequently led to the development of complementary legislation in the form of laws aimed at bolstering the safeguarding and implementation of human rights. One such legislation is Law no. 39 of 1999 concerning Human Rights, which serves as the principal statute that offers robust assurances for the equitable protection, promotion, and preservation of human rights (Setiawan et al., 2022). The acknowledgment of human rights by the state is also governed by Article 2 of the Human Rights Law, stipulating that the state must duly acknowledge and uphold human rights. Furthermore, the state assumes the role of a duty bearer, with its primary responsibility being to respect, fulfill, and safeguard human rights. The state's obligations towards humanity also necessitate its attentiveness to both victims and perpetrators, entailing the provision of assistance and support as required.

Aside from addressing the right to life, the Human Rights Law also governs the right to security, as specified in Article 33, paragraph (1) and (2). Paragraph (1) upholds an individual's entitlement to be free from torture and any form of inhumane treatment that diminishes human dignity. Subsequently, in paragraph (2), it is proclaimed that every person possesses the right to safeguard and not loss of their life. The reference to "loss of life" in this context pertains to an unlawful killing executed without due judicial process or, in other words, an act of arbitrary homicide. When juxtaposed with the *Sigajang Laleng Lipa'* tradition, the execution of this custom has indeed encompassed the elements specified in Article 33 of the Human Rights Law, indicating a clear infringement of human rights (Wibawa & Ali, 2022).



The implementation of the *Sigajang Laleng Lipa'* tradition involves a punitive element wherein two individuals engage in a duel within a sarong, deliberately aiming to inflict harm and pain upon their adversary. As per the agreement, the winner of this duel is determined by the one who endures the battle for the longest duration. In simpler terms, the longer the duel proceeds, the greater the extent of torture and suffering inflicted upon the participants. Furthermore, in the context of Article 33, paragraph (2) of the Human Rights Law, the *Sigajang Laleng Lipa'* tradition likewise encompasses elements of "loss of life" as described in the aforementioned paragraph. This loss of life results from the combative encounter between two individuals engaged in the duel. As stipulated in their agreement, the culmination of this duel is marked by the death of one of the participants. The lack of a legal foundation for a court judgment renders the practice of *Sigajang Laleng Lipa'* tantamount to an arbitrary killing. Therefore, it can be deduced that the customary enforcement of *Sigajang Laleng Lipa'* does not align with the mandate articulated in Article 33, paragraph (2) of the Human Rights Law (Syarof & Tobroni, 2020).

Through the infliction of murder or grave injuries, the *Sigajang Laleng Lipa'* tradition can potentially lead to a new offense, aligning with the provisions outlined in Article 340 of the former Criminal Code, or now specified in Article 459 of the new Criminal Code, which pertains to premeditated murder. Such criminal acts may be punishable with sentences that include death penalty, life imprisonment, or a maximum term of 20 years of imprisonment. Moreover, with the presence of the element of persecution, the practice of *Sigajang Laleng Lipa'* could also be subject to charges under Article 351 of the former Criminal Code or Article 466 of the new Criminal Code concerning persecution. The specific type of persecution that corresponds with *Sigajang Laleng Lipa'* falls within paragraph (2), involving persecution resulting in serious injuries, and the potential punishment may involve imprisonment for up to 5 (five) years. Additionally, persecution leading to the death of an individual is governed in the subsequent paragraph, namely paragraph (3), with a maximum penalty of 7 (seven) years of imprisonment (Sumampouw, 2019).

Thus, the concrete application of criminal law in the *Sigajang Laleng Lipa'* tradition is important to uphold justice and avoid criminal acts that are detrimental to society. The steps that can be taken are to create clear and transparent procedural arrangements regarding the implementation of this tradition, including the right to self-defense and a fair trial process (Amarini et al., 2024). Apart from that, providing alternatives for perpetrators of violations to receive guidance or rehabilitation as a substitute for physical punishment can also help improve the perpetrator's behavior and prevent future crimes. Active community involvement in decision making regarding the implementation of the *Sigajang Laleng Lipa'* tradition can reflect the cultural values and justice accepted by the local community. By adopting this approach, the application of criminal law in the *Sigajang Laleng Lipa'* tradition can be more in line with modern legal principles and protect individual rights more effectively (Wibawa & Ali, 2022).



The mentioned regulations demonstrate that taking a life is not acceptable under any circumstances, even if it is associated with customary traditions. This is due to the fact that killings and persecution are connected to infringements on an individual's right to life, which ought to be recognized, respected, and safeguarded. National criminal law is intricately linked to customary law, as it emerges from the perspectives inherent in the lives of the people. Nevertheless, when applying criminal law, customary law must also be examined with a rational approach to achieve enhanced criminal objectives. This implies that the intent behind criminal acts should align with the cultural values of society and be constructed based on the people's life perspectives (Arief, 2016). Conversely, criminal objectives should also consider preventive aspects and the effectiveness of their functions in the context of people's lives. The laws in place must be aligned with humanist values that prioritize humanity without resorting to taking someone's life. If the current laws do not uphold this value, then a thorough review of the laws is warranted (Wibawa & Ali, 2022).

The implementation of the *Sigajang Laleng Lipa'* tradition, in reality, does not align with the desired objectives of more effective criminal sanctions, as it fails to deliver the desired benefits as a customary punishment. The society perceives that criminal sanctions should aim to administer justice and deter crime, rather than leading to the loss of lives. Consequently, the *Sigajang Laleng Lipa'* tradition gradually began to be abandoned because it was no longer considered a valid legal practice in society. Currently, law enforcement focuses more on the principles of justice and effectiveness as the main priority. Therefore, the practice of *Sigajang Laleng Lipa'* has shifted from being just a legal mechanism to becoming an integral part of cultural identity that must be respected and preserved.

There is a need to revitalize or strengthen the *Sigajang Laleng Lipa'* tradition by forming implementing regulations at the regional level based on living legal principles and norms. This can be implemented by formulating the principles and norms of customary criminal law into the Criminal Code, so that the principle of material legality can apply effectively. Implementers of this tradition must also be in line with Pancasila values, human rights and universally applicable legal principles. All of these steps are not only aimed at preserving culture and customary law, but also at preparing ourselves for the enactment of the Criminal Code which recognizes the existence of customary criminal law (Sukirno, 2018).



Table 1. Incompatibility of the *Sigajang Laleng Lipa'* Tradition with Legislation

Legislation	Articles	Article content
The 1945 Constitution of the Republic of Indonesia	28A	"All individuals possess the inherent right to life and hold the entitlement to safeguard their lives and existence."
	28I (1)	"Human rights, including the right to life, the right to be free from torture, the right to freedom of thought and conscience, the right to practice one's religion, the right to be free from slavery, the right to be recognized as a person before the law, and the right not to be subjected to retroactive prosecution, are fundamental rights that are inviolable and cannot be diminished or restricted under any circumstances."
UU No. 39 of 1999 concerning Human Rights	33 (1)	"All individuals possess the entitlement to be safeguarded against torture, penalties, or any form of cruel, inhuman, or degrading treatment, thereby preserving their inherent human dignity."
	33 (2)	"Everyone has the right to be free from enforced disappearance and loss of life."
UU No. 1 of 2023 (Criminal Code)	459	"Any individual who intentionally and premeditatedly causes the death of another person shall be subjected to the penalty of premeditated murder, which may result in a sentence of death, life imprisonment, or a maximum imprisonment of 20 (twenty) years."
	466 (2)	"Anyone who engages in abusive behavior leading to serious injury shall be subject to a maximum imprisonment of 5 (five) years as a punishment."
	466 (3)	"Any individual responsible for maltreatment resulting in the death of another person shall face a maximum imprisonment of 7 (seven) years as a penalty."

The incompatibility between the *Sigajang Laleng Lipa'* tradition and Indonesian legal regulations can be understood through various legal theories that emphasize the primacy of human rights and the rule of law. Natural law theory underscores the universal moral imperatives of the right to life and the prohibition of inhumane treatment, both of which are foundational to the 1945 Constitution and Law No. 39 of 1999 on Human Rights. This theory suggests that the lethal duels inherent in the *Sigajang Laleng Lipa'* tradition are fundamentally at odds with these universal principles, making the practice unjustifiable within a legal system that prioritizes moral rights. From a legal positivist perspective, the incompatibility is clear-cut, the



tradition violates established legal norms, specifically the provisions of the new Indonesian Criminal Code (KUHP) that criminalize premeditated murder and assaults leading to death. Legal positivism emphasizes that adherence to these codified laws is mandatory, and thus, the tradition must be abandoned to comply with the state's legal standards.

Legal realism adds another dimension by considering the social context in which the *Sigajang Laleng Lipa'* tradition exists, yet still recognizes the need to reevaluate such practices in light of contemporary legal standards that prioritize human rights and social justice. This reflects the broader shift in Indonesian law towards protecting individual rights, as seen in the 1945 Constitution and the new KUHP. Critical legal studies would further critique the tradition by exposing how it may perpetuate social injustice or reinforce hierarchical power structures, which contradict the egalitarian principles enshrined in Indonesian law. Finally, human rights theory highlights that the *Sigajang Laleng Lipa'* tradition is inherently incompatible with the protection of fundamental human rights, which Indonesian law increasingly aligns with, especially through its incorporation of international human rights norms.

These legal theories collectively illustrate that the *Sigajang Laleng Lipa'* tradition, rooted in lethal duels, cannot be reconciled with the contemporary Indonesian legal framework, which is grounded in the protection of life, human dignity, and social justice.

Conclusion

Recognition of living law is limited as stated in Article 2 paragraph (2) of the new Criminal Code. The criteria utilized are aligned with the principles of Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and universally recognized legal principles. When evaluating the *Sigajang Laleng Lipa'* tradition in light of Article 2 of the new Criminal Code, it must be approached from philosophical, sociological, and juridical perspectives. Philosophically, this tradition contradicts both Pancasila and local customs. Sociologically, laws should align with the general consensus of the community and harmonize with societal values. Juridically, *Sigajang Laleng Lipa'* is inconsistent with national law, specifically Law No. 39 of 1999 concerning Human Rights.

The *Sigajang Laleng Lipa'* tradition has historical value as a living legal form for resolving disputes, but is not in accordance with human rights principles. This customary practice is contrary to Article 33 paragraph (1) and paragraph (2) of the Human Rights Law which prohibits abuse and arbitrary deprivation of life. Human rights violations that occur as a result of the practice of suicide show that this tradition can be subject to Article 340 of the old Criminal Code or Article 459 of the new Criminal Code which regulates premeditated murder, as well as Article 351 of the old Criminal Code or Article 466 of the new Criminal Code concerning abuse. If analyzed as a means of punishment, it is clear that this tradition is ineffective for criminal

purposes because it provides little social benefit and even causes many fatalities. As a result, gradually this tradition began to be abandoned as part of the laws that live in society because it was inappropriate and impractical. Revitalization is needed, whether by improving the criminal system by prioritizing Pancasila values, human rights and general legal provisions that apply universally or preserving the Sigajang Laleng Lipa' tradition as a culture that must be respected and protected.

The application of customary punishments in Indonesia must adhere to national legal principles and comply with transparent and fair legal procedures. It is crucial to ensure that customary punishments do not violate internationally recognized human rights. Considering modern values and social developments, aspects of customary punishments that may no longer be relevant should be reassessed or adjusted. This is essential to ensure that the application of customary punishments in Indonesia respects justice and human rights.

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