

**APPLICATION OF ANGKOLA BATAK CUSTOMARY CRIMINAL LAW  
TOWARDS THE CRIMINAL ACT OF MILD THEFT FROM THE  
PERSPECTIVE OF THE NATIONAL CRIMINAL CODE**

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**ABSTRACT**

Customary criminal law is a law that lives and develops in society, including in the Batak Angkola indigenous community. The application of Batak Angkola customary criminal law to the crime of petty theft has little difference from the application of conventional criminal law, especially after the issuance of the National Criminal Code which prioritizes sanctions in contrast to customary criminal law which prioritizes mediation and discussion between the two parties, in the latest national criminal code, customary law is set aside in its criminal structure, where conventional criminal law is the main point in the basis for the implementation of criminal law in Indonesia.

Based on the research results, this study discusses the position of Batak Angkola customary criminal law in the Indonesian criminal law system, its application to petty theft crimes, and its existence from the perspective of the National Criminal Code. Batak Angkola customary criminal law is recognized as a living law in society and has a complementary position in the national legal system. In practice, the resolution of petty theft crimes is carried out through customary deliberations involving traditional leaders, perpetrators, victims, and families based on the values of Dalihan Na Tolu, and provides sanctions in the form of compensation, customary fines, or social sanctions aimed at restoring social harmony. However, the implementation of customary criminal law still faces obstacles such as the influence of modernization, reduced understanding of customary values, and the dominance of national criminal law. Therefore, synergy is needed between customary law and national law so that customary law continues to exist and is effective in resolving conflicts in society.

**Keywords: Customary criminal law, Batak Angkola, Petty Theft, Criminal Code.**

**A. Introduction**

Indonesia is a country based on law, in accordance with the realization of stability in every relationship in society which can be achieved by having legal regulations that are regulatory (regelen/invullen recht) and legal regulations that are coercive (dwingen recht) for every member of society to obey and comply with the law.<sup>1</sup> As stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, which states that "Indonesia is a state based on law." As a state based on law, all actions in national and state life must be regulated by applicable law. Law plays a vital role in society, with the primary goal of maintaining order, security, and justice within the state.

The classification of law in Indonesia has two types, namely written law and unwritten law or customary law, often also called customary law. Customary law or customary law is formed from a custom that is continuously carried out by indigenous communities. The existence of customary law in Indonesia is a form of Indonesian national wealth that has long lived and developed in the lives of the community, regulated and protected by the constitution of the Republic of Indonesia as stipulated in Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD RI) which states "the state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia as regulated in the Law".<sup>2</sup>

The Criminal Code hereinafter referred to as the National Criminal Code which is attached to the Criminal Law, the National Criminal Code is According to the positive law that is most relevant to the lives of Indonesian society, the Indonesian Criminal Code which is a codification of the Dutch Criminal Code (Wetboek Van Strafrecht) which has been used for a long time in Indonesia has turned out to be no longer appropriate along with the development of the times and is considered to have no legal certainty. The comparison between the old Criminal Code and the new Criminal Code is a juridical comparison to analyze the differences that exist both in the old Criminal Code and the new Criminal Code can see the existing shortcomings and make improvements that are considered important so that the new Criminal

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<sup>1</sup>Lubis, MTS (2021), Restorative Justice Principles in the Juvenile Penal System for Drug Offenders. In National Seminar on Social and Humanities Education Technology, No. 1, page 3.

<sup>2</sup>Suryani, D., & Sayuti AT, (2022) "Customary Sanctions for Marriages of the Same Clan in the Angkol Batak Community in Batang Angkola District, South Tapanuli Regency". Zaaken: Journal of Civil and Business Law, No.1 pages 7-8.

Code can provide a sense of justice, provide a sense of certainty and provide benefits to Indonesian society.

The National Criminal Code, hereinafter referred to as the Criminal Code, does not recognize the term minor crime but rather minor crimes. Minor crimes according to the Criminal Code are crimes that are threatened with imprisonment or confinement of a maximum of 3 months and/or a fine of up to IDR 7,500,000. This can be seen in Article 205 paragraph (1) of the Criminal Code which states that the examination procedure for minor crimes is a case where the threat of punishment does not exceed the limit mentioned above. In the Criminal Code, there is no explicit mention of minor crimes (*tipiring*) but in the Criminal Code only the offense is included. There are 7 offenses regarding minor terminology, namely,

1. Animal abuse
2. Mild insult
3. Minor assault
4. Petty theft
5. Light darkening
6. Minor fraud and
7. Light reception

Minor crimes are not only regulated in the National Criminal Code hereinafter referred to as the Criminal Code, but are also regulated in the Customary Law system. Customary law is the original Indonesian law that is not written in the form of legislation that contains religious elements, followed and obeyed by the community continuously, from one generation to the next, and unwritten law but lives in the traditional community historically-philosophically, customs and customary law are considered as the embodiment/or reflection of the personality of a nation and are the embodiment of the national soul (*volkgeist*) of a society of the country concerned from time to time.<sup>3</sup>

Talking about customs, there are several customs in Indonesia, one of which is the Batak Angkola custom, the Angkola tribe or often also called the Batak Angkola is one of the sub-ethnic groups of the Batak tribe, the Batak Angkola customary land is in the geographical region of Southern Tapanulis, with a patrilineal kinship system called *Dalihan Na Tolu*.

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<sup>3</sup>Aliyth Prakarsa and Rena Yulia, 2023, Customary Criminal Law, Kencana, Jakarta, page 1

The Batak Angkola community is a customary law community that has a customary legal system that regulates the creation of the Batak ancestors and until now is still recognized and obeyed by the customary community. In the life of the Batak Angkola customary community, if a social conflict occurs in the community, the way to resolve the conflict is in accordance with the rules of the Batak Angkola community's life order by means of *martahi* (deliberation). In the Batak Angkola kinship system, it is very close to family, therefore deliberation is the only way to resolve conflicts in society.<sup>4</sup>

The Batak Angkola have a set of customary legal rules contained in the *Pranata Tumbaga Holing Letter*. *Tumbaga Holing Letter* plays an important role in resolving social conflicts that occur in society, especially in cases of customary violations. In the *Pranata Tumbaga holing letter* there is a part called *Uhum dohot Patik*. *Uhum dohot Patik* This is a manifestation of customary law that has sanctions regulated within it. Therefore, if a violation of customary law is committed by an individual in society, the legal rules can be seen in *Uhum dohot Patik*. All types of crimes and violations within indigenous communities have regulations in place. These include prevention, surveillance, maintaining peace, and post-social conflict election procedures.<sup>5</sup>

Regarding this problem, it should also be found in QS AL Maidah Verse 38, which reads:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءُ بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ } } عَزِيزٌ حَكِيمٌ

It means:

"Men and women who steal, have their hands cut off as retribution for what they have done and as a punishment from Allah. Allah is All-Mighty, All-Wise." Therefore, this verse shows that Islam views theft as a highly reprehensible act because it violates the property rights of others and disrupts order and security in society. Therefore, Islam stipulates strict sanctions against perpetrators of theft as a form of protection for property and as a deterrent so that society does not commit similar acts. In Islamic criminal law, theft is included in the category of hudud crimes, namely crimes for which the form and type of punishment have been strictly determined by sharia. The punishment of amputation of the hand mentioned in the verse is not only intended as retribution, but also as an effort to maintain the public welfare, provide a

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<sup>4</sup>Suryani, D., & Sayuti AT, Loc cit pages 7-8

<sup>5</sup>Ibid., pages 7-8.

deterrent effect, and protect individual property rights. However, in the application of Islamic law there are very strict conditions before this punishment can be imposed, such as the value of the stolen goods reaching a certain limit (nisab), being done intentionally, the goods being under proper security, and not being done under duress or due to urgent needs.

This research is important to analyze the comparison between the two laws, namely Customary Law and the National Criminal Code, so that it can provide a clear picture of the advantages and disadvantages of each law. The author feels the need to conduct further research. Therefore, the author is encouraged to conduct a more in-depth study, the results of which are stated in a thesis entitled "The Application of Batak Angkola Customary Criminal Law to the Crime of Minor Theft in the Perspective of the National Criminal Code"

## **B. Research Methods**

A study cannot be called research if it does not have a research method.<sup>6</sup> Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>7</sup>

## **C. Discussion**

### **1. The Legal Position of Batak Angkola Customary Criminal Law in the Indonesian Criminal Law System**

Customary criminal law is an integral part of the Indonesian legal system, reflecting local wisdom and community culture. In the context of the Batak Angkola community, customary criminal law serves as a guideline for resolving conflicts and maintaining social balance. This law is constitutionally recognized as living law, meaning it adapts and evolves with social change. This aligns with the principle of legal pluralism adopted by the Indonesian legal system, where state law and customary law can coexist.

Recognition of Batak Angkola customary criminal law can be seen in Article 18B paragraph (2) of the 1945 Constitution, which emphasizes that the state recognizes and respects

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<sup>6</sup> Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

<sup>7</sup> Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

the unity of customary law communities and their traditional rights. This serves as the basis for legitimacy for customary law, which functions not only as a complement but also as a legitimate source of law in resolving social conflicts. Thus, customary criminal law is important to understand, especially in the context of social justice and restoring relationships between community members.

The position of customary criminal law within the national legal system is also strengthened by Law Number 1 of 2023 concerning the Criminal Code. Article 2 of this law recognizes the existence of living law within society, which includes unwritten legal norms. This demonstrates that Angkola Batak customary criminal law holds a strong position and is recognized as part of the broader legal system in Indonesia.

Implementing Batak Angkola customary criminal law requires clear administrative steps, particularly at the local level. One way to achieve this is through regional regulations that inventory the prevailing laws within the community. These regulations serve to determine the criteria and types of customary criminal offenses that apply, ensuring that customary law can be applied effectively and appropriately to the local cultural context.

The Dalihan Na Tolu Traditional Institution plays a crucial role in this mechanism. As a consultative and cultural preservation institution, Dalihan Na Tolu serves not only as a mediator in conflict resolution but also as a guardian of prevailing customary norms. This institution provides communities with a channel for resolving disputes fairly and restoratively, without having to resort to the formal justice system, which can sometimes be inconsistent with local values.

The criteria for customary criminal offenses stipulated in regional regulations are also crucial. This ensures that customary criminal law serves not only as a means of punishment but also as a means of restoring disturbed social relations. With this approach, customary criminal law serves to restore social balance and strengthen bonds between community members.

Although the Angkola Batak customary criminal law enjoys a strong standing, its implementation remains challenging. One major challenge is the lack of a customary justice system formally integrated into the national justice system. This often results in customary criminal law being applied outside of court, which can reduce its effectiveness as a conflict resolution mechanism.

The need for a separate customary justice system is becoming increasingly urgent. This system will ensure that customary violations can be independently examined and adjudicated,

allowing this living law to contribute effectively to national law enforcement. With a customary justice system, communities will have greater trust in the existing legal system and feel that justice can be achieved through channels consistent with their values.

The opportunities for integration between customary law and national law are also enormous. By recognizing the laws that exist within society, we can create a more inclusive and just legal system. This will strengthen legal pluralism in Indonesia and ensure that all levels of society, including indigenous peoples, have access to justice that aligns with their culture and norms.

## **2. Application of Batak Angkola customary criminal law to the crime of petty theft.**

Customary criminal law is a set of unwritten norms followed by communities to resolve violations. In the Batak Angkola context, this law is based on the values of family and deliberation. Unlike national criminal law, which emphasizes formal sanctions, customary criminal law focuses on restoring social relationships disrupted by violations.

The primary goal of implementing customary criminal law is to restore social balance and improve relationships between individuals within the community. In the Batak Angkola community, minor theft is viewed not only from a material perspective but also from a family honor perspective. Therefore, conflict resolution through customary deliberation is crucial for maintaining harmony within the community.

By recognizing the existing law within the community, Batak Angkola customary criminal law serves as a relevant alternative for resolving disputes, especially in the modern era. This demonstrates that despite the existence of national law, customary law still holds a vital place in the social order.

The resolution of petty theft crimes under Batak Angkola customary law is carried out through a customary council (*desa adat*). In this forum, all parties involved, both perpetrators and victims, are summoned to discuss and find a solution. This process is led by the customary king, who has decision-making authority, but is also accompanied by community members such as religious and community leaders.

One of the key principles in this resolution is *Ida Bargot Doalna*, which requires customary councils to consider the perpetrator's background before imposing sanctions. If theft is committed due to an emergency, such as the need for food, the sanctions imposed tend to be lighter. This approach demonstrates that customary law serves not only as a tool for punishment but also for understanding and restoring relationships between individuals.

Thus, the resolution mechanism through customary gatherings aims to create restorative justice, where perpetrators and victims can forgive each other and return to interacting in society without resentment.

Although the Angkola Batak customary criminal law possesses strong values, its implementation faces increasing challenges in the modern era. Factors such as urbanization, formal education, and the influence of state law have led to a decline in the effectiveness of customary sanctions. Younger generations are increasingly using faster and more anonymous national legal channels, forgoing the more lengthy and open customary process.

Therefore, revitalizing customary criminal law is crucial to ensure that customary norms remain relevant and effective in resolving conflicts within society. State recognition of customary law, as stipulated in the 1945 Constitution, can be a first step toward integrating customary law with national law.

By optimizing the potential of customary law through collaboration with the national legal system, we can create more comprehensive solutions to the social problems facing society today. This will not only strengthen cultural identity but also enhance a sense of justice and harmony within the Batak Angkola community.

### **3. The Existence and Obstacles to the Implementation of Batak Angkola Customary Criminal Law in the Crime of Minor Theft from the Perspective of the National Criminal Code**

The Batak Angkola customary criminal law is an integral part of the Indonesian legal system and its existence must be recognized. In the context of modernization, it is important to understand that customary criminal law not only functions as a social norm but also possesses strong sociological and philosophical legitimacy. This law reflects the values entrenched within the community, which serve as the basis for resolving conflicts at the local level.

One important aspect of the existence of customary criminal law is its recognition in the National Criminal Code, which states that existing laws within a community can serve as the basis for criminal penalties. This demonstrates that despite our formal national legal system, customary law still has a place and relevance in law enforcement in Indonesia.

Thus, Batak Angkola customary criminal law is not merely a cultural heritage, but also a dynamic and contextual mechanism for achieving justice. Through a more humanistic approach, customary law allows for more restorative solutions, emphasizing the restoration of social relations rather than simply imposing sanctions.



Although customary criminal law enjoys strong legitimacy, its implementation in practice is not without challenges. One major obstacle is the risk of formalizing customary law through Regional Regulations. When dynamic and unwritten customary law is forced to be codified in the form of rigid regulations, this can undermine its original character.

Furthermore, the dominance of the state legal system often limits the authority of customary institutions to resolve criminal cases. Although indigenous communities have effective conflict resolution mechanisms, state law enforcement officials often take over cases that should be resolved through customary law.

Rapid social change also presents challenges. Modernization and globalization have altered society's perspectives on law and social norms. People are now more inclined to report crimes to state law enforcement rather than resolve them through customary mechanisms. This highlights the need for greater efforts to maintain and promote customary criminal law in this evolving context.

Batak Angkola customary criminal law makes a significant contribution to law enforcement, particularly in resolving local conflicts. One of the main advantages of customary criminal law is its restorative justice approach. In this context, case resolution focuses not only on punishment but also on restoring relationships between the perpetrator, victim, and community.

This principle of restorative justice is particularly relevant in cases of petty theft, where perpetrators often have complex social backgrounds. By considering the perpetrator's circumstances and conditions, customary law can provide more humane solutions and prioritize the restoration of social order.

Going forward, there is an opportunity to harmonize customary law and national law. With stronger recognition of customary law within the national legal system, it is hoped that a positive synergy will be created, where the two legal systems can complement and strengthen each other. This is a crucial step to ensure that justice is accessible to all levels of society, without neglecting existing cultural values.

#### **D. Conclusion**

That the position of Batak Angkola customary criminal law in the Indonesian criminal law system is basically still recognized as a living law in society. This recognition is seen in Article 18B paragraph (2) of the 1945 Constitution which states that the state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in

accordance with the development of society. In addition, Article 2 of the National Criminal Code (Law Number 1 of 2023) also mentions the recognition of living law in society. Thus, Batak Angkola customary criminal law still has a position in the Indonesian legal system, especially as a complement in resolving cases in society that aims to maintain social balance and order. The application of Batak Angkola customary criminal law to petty theft is essentially carried out through customary resolution mechanisms that emphasize deliberation, the perpetrator's responsibility, and the restoration of social relations within the community. In practice, the perpetrator is not only asked to return the stolen goods, but is also given customary sanctions aimed at restoring balance and harmony in the community. The resolution process is carried out through the role of traditional leaders and elements of *Dalihan Na Tolu*, so that the decisions taken can be accepted by both parties without causing prolonged conflict. Thus, the application of Batak Angkola customary criminal law in cases of petty theft focuses more on familial resolution and the restoration of social balance, rather than the imposition of repressive punishments as in the national criminal law system. The Batak Angkola customary criminal law still has a strong presence in resolving petty theft crimes, both in terms of social values and recognition in national law. However, this existence still faces various obstacles, particularly related to limited regulations, the dominance of the formal criminal justice system, and changes in community social values. Therefore, efforts are needed to harmonize customary criminal law and national criminal law so that customary law can continue to function as an effective conflict resolution instrument while remaining in line with the principles of a modern rule of law.

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