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Punished Twice: Ne Bis in Idem between Dayak Kenyah Customary Sanctions and State Penal Liability

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Abstract: Indonesia's Criminal Code (Law Number 1 of 2023), effective since January 2026, recognises living law as a basis for criminal liability. However, this recognition does not automatically protect individuals from state prosecution after completing customary sanctions for conduct also criminalised by the Code. This article examines this problem through a documentary analysis of Dayak Kenyah customary justice in North Kalimantan. It employs doctrinal research combining statutory, conceptual, and comparative approaches, drawing on the United States dual sovereignty doctrine and Sarawak's Native Courts. The analysis identifies a structural paradox: Article 2's residual recognition of customary offences leaves sanctions for overlapping statutory offences without automatic ne bis in idem protection. It proposes a graduated interlock model under which completed customary sanctions would bar prosecution for minor and complaint-based offences and require sentencing credit for serious offences. Recognition would depend on identity of act and offender, functional equivalence of sanctions, completion, and compatibility with human rights. The model provides a framework for coordinating customary and state justice through prosecutorial and sentencing guidelines, protecting against double punishment while preserving accountability for serious offences.

Keywords: Ne bis in Idem, Costumary Sanction, Legal Pruralism, Double Jeopardy, Indonesian Criminal Code.

INTRODUCTION

The enactment of Law Number 1 of 2023 on the Criminal Code, which entered into force on 2 January 2026, opened a space that had long existed only in doctrinal discourse: punishment grounded in the law that lives within society. Article 2(1) provides that the principle of legality in Article 1(1) does not diminish the validity of the living law that determines that a person deserves punishment, even where the act is not regulated in the Code. This provision is rooted in the constitutional recognition of customary law communities under Article 18B(2) of the 1945 Constitution and continues the basis for punishing customary offences once supplied by Article 5(3)(b) of Emergency Law Number 1 of 1951. Some scholars read Article 2 as an act of decolonising criminal law, while others regard it as a threat to legal

certainty (Febrianty et al., 2023; I Made Bayu Masdyasa & Ni Made Jaya Senastri, 2026; Iwan Kurniawan et al., 2026). Both camps, however, share an assumption that is rarely made explicit: customary law is treated as an *additional* source of punishment, not as a system that may already have punished.

The literature produced since 2023 has examined Article 2 from several angles. It has dissected the tension between formal and material legality(Andini, 2024; Selajar & Martha, 2023), traced the risk of over-criminalisation and the difficulty of proving customary norms before state courts(Iwan Kurniawan et al., 2026), and questioned the capacity of regional regulations to capture customary law without distorting it (Musmuliady et al., 2022; Sumika Putri, 2023). More critical contributions warn that recognition operates through state-defined criteria that may absorb and co-opt indigenous normative orders (Niko et al., 2026), while others propose dedicated adat courts as the institutional answer to the Code's procedural silence (Faisal et al., 2026). Across this body of work, the gaze is directed almost exclusively at one question, namely how customary law may *expand* the reach of criminal liability. The reverse question, whether customary law may *terminate* criminal liability, has scarcely been posed.

That assumption is problematic because modern criminal law contains a firm prohibition on repeated punishment. Article 14(7) of the International Covenant on Civil and Political Rights, ratified by Indonesia through Law Number 12 of 2005, guarantees that no one shall be tried or punished again for an offence for which he or she has already been finally convicted or acquitted. Under the former Criminal Code, this guarantee was formulated in Article 76. The National Criminal Code relocates it to the provisions on the lapse of prosecutorial authority, which include, among other grounds, the existence of a final and binding court judgment concerning the same case and an out-of-court settlement "as regulated by law". Both categories presuppose an authority recognised by the state, whether a court or a mechanism granted a statutory basis. A decision of a customary institution falls within neither.

The rationale of the principle explains why this omission matters. *Ne bis in idem* protects the individual against the harassment, anxiety, and cumulative burden of repeated proceedings, and it protects the legal order by securing the finality of adjudication. In the Anglo-American tradition, the protection was historically expressed through the pleas of *autrefois acquit*, *autrefois convict*, and pardon, each of which barred a second prosecution for the same crime (Amar & Marcus, 1995). In its modern human rights formulation, the guarantee is framed as an individual entitlement rather than as a mere rule of judicial administration. A legal order that recognises a second normative system while ignoring the burdens that system imposes therefore reproduces, through the back door, the very cumulative punishment that the principle was designed to exclude.

The Dayak Kenyah communities of Malinau and Bulungan Regencies in North Kalimantan confront this void directly. Their customary order regulates conduct across the domains that state law separates into criminal, civil, and administrative matters, including the protection of *tana' ulen*, forest areas whose use is restricted by custom and whose violation attracts customary sanctions that also bind outsiders (A. et al., 2001; Anau et al., 2019). Across Dayak communities more broadly, sanctions are understood less as retribution than as a means of re-harmonising a social and cosmic order disturbed by wrongdoing(Efriani & Agustinus, 2021). The practical consequence is visible in documented Dayak cases in which a single homicide was subjected both to positive law and to a customary fine reported at Rp1.89 billion, with the customary process treated by the community as fully binding (Aunuh et al., 2024). From the perspective of the offender, the second process is a second punishment. From the perspective of the state, the customary settlement never legally occurred.

North Kalimantan provides an especially instructive setting for this inquiry. Dayak Kenyah villages along the Bahau and Pujungan rivers in Malinau Regency sustain customary regimes of forest governance that have been documented for more than two decades, and many

of these villages lie within or adjacent to Kayan Mentarang National Park, in the Heart of Borneo (Marthin et al., 2020). Their customary order is embedded in a spatial conception of territory that distinguishes settlements, fields, former village sites, and several categories of forest, each subject to its own rules (Samsoedin et al., 2010). The province also borders Sarawak, where Kenyah communities live under a legal system that has institutionalised native courts. The same community is thus exposed to two different state responses to its customary law, which makes it a natural laboratory for examining the relationship between customary sanctions and state criminal liability.

Legal pluralism theory explains why this situation arises. Semi-autonomous social fields generate their own rules and the means of inducing compliance, yet remain vulnerable to rules emanating from the larger society that surrounds them (Moore, 1973). The state, for its part, recognises other normative orders only insofar as they fit its own categories, a condition that Griffiths termed "weak" legal pluralism and that later scholarship has refined as a question of the interaction, rather than the mere coexistence, of legal orders (Engle Merry, 1988; Griffiths, 1986; Von Benda-Beckmann, 2002). Supreme Court Decision Number 1644 K/Pid/1988 once offered a route out of this impasse and is frequently cited for the proposition that an offender already sanctioned under customary law should not be tried again by a state court. That decision, however, was rendered under the regime of the 1951 Emergency Law, and its binding force under the National Criminal Code has never been tested.

Current scholarship on the relationship between customary law and criminal law in Indonesia develops along three streams that intersect without truly meeting. The first stream is theoretical and debates the tension between formal and material legality, the limits that should constrain living law, and its epistemic affinity with other socially embedded norms such as *'urf* in Islamic jurisprudence (Asmawi et al., 2025). The second stream treats customary settlement as a form of restorative justice and examines it through Prosecutorial Regulation Number 15 of 2020, National Police Regulation Number 8 of 2021, and Supreme Court Regulation Number 1 of 2024. Studies in this stream show that restorative mechanisms now operate at both the front end and the back end of the criminal process, and that local wisdom has been invoked to justify the termination of prosecution for minor cases (Jungkung Madyo, 2023; Madjid & Istiqomah, 2023). The third stream, largely ethnographic, documents the types of offences and sanctions within Dayak communities but stops at description without testing their consequences for state criminal proceedings (Balai Besar Penelitian Dipterokarpa & Wiati, 2013; Dawi et al., 2022; Fetrus et al., 2024). Recent work on "hybrid justice" has begun to connect these streams, yet it continues to frame customary law as something to be integrated into state adjudication rather than as a prior adjudication that the state must respect (Pratama et al., 2025; Sueni et al., 2025).

International literature has gone further in addressing whether sanctions imposed by indigenous institutions bind state prosecution, although it has produced opposing answers. In the United States, *United States v. Wheeler* (1978) and *Denezpi v. United States* (2022) established that prosecution by a tribal court and by a federal court for the same conduct does not violate the Double Jeopardy Clause, because the two prosecutions derive from distinct sovereigns ("Fifth Amendment. Double Jeopardy and the Doctrine of Dual Sovereignty," 1978a). This doctrine has been criticised for imposing a disproportionate risk of double punishment on members of indigenous communities and, more generally, for subordinating the individual protection that the Clause was designed to secure (Burns, 1978; Dawson, 1992). The opposite approach is found in Sarawak, Malaysia, where the Native Courts Ordinance 1992 places native courts, including those serving Kenyah communities, within the formal judicial structure of the state, so that their decisions possess the status of court judgments (Universiti Teknologi MARA (UiTM) Sarawak et al., 2023). These two models are rarely read

together for the Indonesian context, still less with an indigenous community living on both sides of the border as their point of convergence.

No existing study has answered when a customary sanction already served must bar or reduce state criminal liability under the National Criminal Code. This void is sharpest precisely for acts that constitute both a customary offence and a statutory offence, because Article 2 applies only insofar as the act is not regulated in the Code. This article therefore poses two research questions. First, what is the legal status of Dayak Kenyah customary sanctions in relation to the provisions on the lapse of prosecutorial authority? Second, what criteria render a customary sanction eligible to be treated as *idem*? The answer offered takes the form of a graduated interlock model, which constitutes the novelty of this article and may be adopted directly in the Government Regulation implementing Article 2 and in prosecutorial guidelines.

The article proceeds as follows. After setting out the method, the discussion first reconstructs the structure and function of Kenyah customary sanctions. It then analyses their legal status under the National Criminal Code and identifies the paradox created by the condition "insofar as not regulated". The third part examines the patterns through which double punishment arises in practice. The fourth part compares the United States model of separate sovereignty with the Sarawak model of institutional integration. The fifth part formulates the graduated interlock model, and the final part draws out its implications for criminal law reform and for the theory of legal pluralism before the conclusion answers the research questions.

METHODS

This study employs doctrinal legal research with a prescriptive orientation to formulate rules governing the relationship between customary sanctions and state punishment. It relies exclusively on documentary sources and combines statutory, case, conceptual, and comparative approaches. No fieldwork or interviews were conducted.Primary legal materials comprise the 1945 Constitution, legislation, institutional regulations, and judicial decisions. The statutory analysis focuses on Article 2 and Article 597 of the National Criminal Code, customary obligations as an additional penalty, the lapse of prosecutorial authority, and regulations concerning restorative justice and customary law communities. The case analysis examines Supreme Court Decision Number 1644 K/Pid/1988 and United States Supreme Court decisions on dual sovereignty. Secondary materials include journal articles, scholarly books, and published ethnographic studies. Literature searches used Scite, prioritising recent publications alongside seminal works.The conceptual approach examines the identity of the act and offender, the nature of customary adjudication, and the conditions for ne bis in idem protection. Legal pluralism provides the framework for analysing relations between customary and state legal orders (Marglin & Letteney, 2024).

The comparative approach examines the United States dual sovereignty doctrine and Sarawak's Native Courts to develop a model suited to Indonesia. Sarawak provides a relevant comparison because Kenyah communities inhabit both sides of the Indonesia Malaysia border.

Materials are analysed through qualitative content analysis and grammatical, systematic, and teleological interpretation. Published accounts of Kenyah customary sanctions are compared across sources, while studies concerning other Dayak groups serve only as illustrations and are identified accordingly. The analysis reconstructs customary sanctions, assesses their legal status, identifies risks of double punishment, and draws comparative lessons to formulate the proposed model. Sources are checked for bibliographic accuracy, and claims about customary practice remain limited to documented accounts.

RESULTS AND DISCUSSION

The Structure and Function of Dayak Kenyah Customary Sanctions

Kenyah customary law does not recognise the sharp separation between civil wrongs and criminal offences that characterises state law. A violation is understood as a disturbance of the equilibrium among the offender, the victim, the community, and the cosmic order, and its sanction is directed at restoring that equilibrium. This conception is shared widely across Dayak communities: ethnographic work on the Tamambaloh Dayak shows that sanctions function as symbols of balancing or re-harmonising a universe thrown into disorder by human action, so that they are experienced less as punishment than as a cultural process (Efriani & Agustinus, 2021). Doctrinal analyses of Article 2 reach a convergent conclusion from the opposite direction, observing that customary law draws no separation between criminal and civil matters, so that violators may be pursued under both kinds of norms (Sumika Putri, 2023). This character is decisive for the analysis of *ne bis in idem*: a customary sanction cannot simply be equated with civil compensation, which ordinarily does not bar criminal prosecution.

The procedural setting in which Dayak sanctions are imposed reinforces this point. Customary adjudication typically brings the disputing parties before customary heads and elders, who first determine whether a customary offence has occurred and then deliberate on the victim's demands, which crystallise into the customary sanction (Fetrus et al., 2024). In Central Kalimantan, the Dayak Customary Council has conducted formal customary trials whose decisions are grounded in the 1894 Tumbang Anoi peace agreement and aim at restoring cosmic balance while realising the justice sought by the parties (Pujirahayu & Wulandari, 2021). Such decisions are commonly recorded in writing. The existence of written minutes matters for present purposes because it gives customary decisions a documentary form that state authorities are able to examine.

Kenyah sanctions generally take the form of an obligation to hand over objects of customary value, the payment of money, the performance of a restorative ceremony, or a combination of these, with the amount determined by the gravity of the violation and the standing of the parties. Documented practice elsewhere in Kalimantan shows that customary valuables such as jars are now frequently converted into monetary equivalents agreed by the customary institution, a development that has made some customary fines very substantial (Aunuh et al., 2024). Among the Kenyah, the rules governing *tane' olen* in Setulang village are reported to derive from the ancestral customary rules of the Kenyah Oma' Longh, preserved since the community's earlier settlement on the upper Pujungan River (Balai Besar Penelitian Dipterokarpa & Wiati, 2013). Kenyah land and forest management is embedded in a broader customary spatial order that distinguishes settlements, former village sites, fields, and different categories of forest, each governed by its own rules (Samsoedin et al., 2010).

The published record of *tana' ulen* allows a more precise reconstruction of its normative content. A *tana' ulen* typically encompasses one river or several small rivers from their mouths to the springs of their tributaries, bounded by the ridges along which those rivers flow. Within it, felling trees, burning the forest, opening fields, and other destructive activities are prohibited, and only certain products, such as agarwood, rattan, cinnamon, fruits, fish, and game, may be taken, and then only at particular times and for communal purposes (A. et al., 2001). In Setulang village, *tane' olen* is understood literally as land that is "kept", and its restrictions are designed to ensure that all villagers can benefit from it fairly and sustainably; other Kenyah groups describe the same institution as a prohibited forest whose use is determined by custom (Balai Besar Penelitian Dipterokarpa & Wiati, 2013). The use of *tana' ulen* products requires the permission of the village head and the customary head (Anau et al., 2019).

These features have three implications for the present analysis. First, *tana' ulen* rules possess the structure of prohibitive norms coupled with sanctions, which is the structure that

criminal law recognises as an offence. Second, the rules are enforced by identifiable customary authorities, which makes it possible to determine who imposed a sanction and when. Third, the rules apply to outsiders as well as members, which means that the question of double punishment is not confined to intra-community disputes but extends to any person who enters the protected area. In Long Alango, the customary forest covers approximately 11,000 hectares within the traditional zone of the national park and is administered by a management body composed of local residents, whose authority is reinforced by customary law (Merang & Sari, 2024). The coexistence of that customary authority with the authority of the national park administration has not always been harmonious, and legal scholarship from the region has called for the harmonisation of state law with the traditional rights of the communities concerned (Marthin et al., 2020).

The ecological dimension gives the Kenyah sanctioning system a distinctive profile. In Long Alango, in Bahau Hulu District, *tana' ulen* forest is administered by a management body whose authority is reinforced by customary law, and the customary rules prohibit, among other acts, felling trees, hunting, opening fields, and fishing along the protected river, with resources used only for collective purposes such as harvest festivals and weddings (Merang & Sari, 2024). The origin of the institution lies in reserves once held by the aristocracy, which were later transformed into village forests managed for the benefit of the whole community (A. et al., 2001). The customary rules also bind outsiders who enter and take forest products without permission, with violations attracting sanctions under the customary regulations (Anau et al., 2019). Because many of these areas lie within the traditional zone of Kayan Mentarang National Park, a single act of felling or hunting may simultaneously satisfy the elements of a customary offence and of a forestry or conservation offence under sectoral legislation (Marthin et al., 2020).

This overlap renders the environmental domain one of the most exposed sites of double punishment. Indonesia's restorative justice framework, which might otherwise have offered an exit from the state process, explicitly excludes environmental offences from resolution through the prosecutorial restorative justice mechanism (Madjid & Istiqomah, 2023). The paradox is striking. The very customary institution that has sustained forest protection for generations cannot, through its own sanction, close a case that state law characterises as an environmental crime. The Kanayat'n Dayak case shows that customary law can articulate a restorative response to environmental damage, through a codified customary deliberation that specifies sanctions for forest fires caused by shifting cultivation (Dawi et al., 2022). Yet such responses remain legally invisible to state prosecutors.

The Kanayat'n example also shows that customary sanctioning is not necessarily unwritten or indeterminate. The provisions of the Kanayat'n customary deliberation of Sengah Temila District, adopted in March 2010, contain articles on customary violations ranging from minor to serious, and one of these provisions specifies the sanction to be imposed on farmers whose shifting cultivation causes forest fires (Dawi et al., 2022). Written customary compilations of this kind, like the written documentation of customs and customary law undertaken by Tamambaloh customary administrators (Efriani & Agustinus, 2021), provide an evidentiary basis on which state authorities could verify both the norm applied and the sanction imposed. Their existence weakens the argument that customary sanctions are too uncertain to be given legal effect.

Functionally, the Kenyah customary sanction contains three elements that are also recognised among the purposes of state punishment: the condemnation of the act, the reparation of the victim's loss, and the restoration of social relations. The National Criminal Code formulates the purposes of punishment as including the prevention of crime, the rehabilitation of the offender, the resolution of conflicts and restoration of balance, and the fostering of remorse. This functional parallel supports the argument that customary sanctions, at least under

certain conditions, are not mere "peace settlements" but punishment in the material sense. The parallel must nevertheless be qualified by attention to victims. Research on Dayak customary responses to indecent acts in West Kalimantan indicates that monetary fines do not always satisfy victims' sense of justice or deter offenders (Fetrus et al., 2024). Functional equivalence is therefore a matter to be established case by case, not a presumption to be granted wholesale.

The functional reading adopted here is consistent with the way the Code itself characterises customary sanctions. Scholarship on the relationship between living law and *'urf* notes that the Code allows customary sanctions to operate as a form of redress rather than as retaliation, emphasising their restorative rather than retributive character (Asmawi et al., 2025). Studies of the Code's treatment of theft similarly observe that the new legislation integrates retributive, rehabilitative, and restorative orientations and aligns restorative mechanisms with adat traditions (Pratama et al., 2025). If the state accepts that customary sanctions pursue purposes it shares, it is difficult to justify treating those sanctions as legally non-existent when the same conduct is later prosecuted.

The "Insofar as Not Regulated" Paradox: The Legal Status of Customary Sanctions under the National Criminal Code

Article 2(2) of the Criminal Code limits the application of living law through three conditions: it applies in the place where that law lives, insofar as the matter is not regulated in the Code, and insofar as it accords with Pancasila, the 1945 Constitution, human rights, and the general principles of law recognised by the community of nations. The second condition separates the application of customary offences from offences already regulated in the Code. It does not, by itself, determine the legal effect of a customary settlement concerning conduct that also constitutes a Code offence. The distinction between the legal basis for punishment and the effect of an earlier settlement is central to the analysis.

The resulting paradox concerns the different routes through which customary norms, decisions, and completed obligations acquire legal effect. For purely customary offences, Articles 2 and 597, read with Article 66(1)(f) and the amendments introduced by Law No. 1 of 2026, provide a statutory route for imposing the fulfilment of customary obligations. Earlier scholarship identified the difficulty that formal legality creates for protecting victims of conduct prohibited by custom but not expressly criminalised by statute (Yuherawan et al., 2021). Recognition of such offences, however, must be distinguished from recognition of a customary settlement already completed. Likewise, the protection associated with a final state judgment does not arise automatically from the customary decision that preceded it.

Government Regulation No. 55 of 2025, effective from 3 January 2026, substantially qualifies any claim that customary settlements have no effect within the state system. Article 20 provides for applications by customary institutions for judicial orders through the chief district prosecutor. Article 21 identifies circumstances in which customary-offence cases cannot be processed through criminal proceedings, including the completion of customary obligations, while Article 22 regulates further proceedings where obligations remain unfulfilled. These mechanisms operate within the Regulation's scope. Under Article 3, conduct whose elements coincide with, or are equivalent to, offences in the Code is dealt with under the Code. Accordingly, Article 21 cannot be treated as a general bar to prosecution following every customary settlement.

The architecture of regional recognition must also be assessed against this regulatory development. Earlier commentators identified uncertainty over the territorial, personal, and protective scope of customary criminal law and the material content of regional regulations (Sumika Putri, 2023). Others warned of overlapping regional competence and the risk that formalisation would render flexible customary norms rigid (Musmuliady et al., 2022). Article 10 of Government Regulation No. 55 of 2025 now specifies minimum content for regional

regulations. The remaining question is therefore whether these requirements adequately resolve questions of authority and coordination, rather than whether any regulatory framework exists.

These questions affect the recognition of completed settlements. A state authority must be able to establish the identity of the person concerned, the conduct addressed, the customary institution's authority, the decision reached, and the obligations actually performed. Territorial, personal, and protective scope remain relevant to that inquiry (Sumika Putri, 2023), as do calls for transparent verification of living law (Iwan Kurniawan et al., 2026). Scholarship connecting living law with 'urf similarly stresses constitutional and juridical qualifications for recognition (Asmawi et al., 2025).By analogy, those qualifications support the scrutiny of customary decisions, although satisfying them does not automatically transform a customary decision into a final state judgment.

Article 132 of the Criminal Code supplies a further distinction. Article 132(1)(a), read with Article 134, concerns a final and binding court judgment involving the same person and matter. Article 132(1)(f) concerns withdrawal of a complaint in complaint-based offences, whereas Article 132(1)(g) concerns out-of-court settlement as regulated by statute. These are separate grounds for the lapse of prosecutorial authority. A customary settlement is therefore neither automatically protected by *ne bis in idem* nor automatically equivalent to withdrawal of a complaint or a settlement satisfying statutory requirements.

Earlier studies of Prosecutorial Regulation No. 15 of 2020 remain relevant to the development of restorative justice. They discuss the introduction of settlement-based termination (Elvaretta et al., 2022), doubts about its statutory foundation under the former legal framework (Jungkung Madyo, 2023), and uncertainty arising from possible pre-trial challenges (Ariefulloh, 2023). Those observations should not be presented as a complete account of the current position. Law No. 20 of 2025 on Criminal Procedure now provides statutory restorative justice mechanisms, against which the effect of customary settlements concerning Code offences must be examined.

A more specific coordination question nevertheless remains. Articles 83 and 85 of the new Criminal Procedure Code require settlement agreements before the competent investigator or prosecutor, while Article 79(5) connects completed agreements with termination and judicial confirmation. These provisions do not expressly specify how obligations already performed through a customary settlement are to be incorporated into a subsequent formal agreement. The analytical issue is therefore how state authorities verify and recognise prior performance when applying the statutory restorative justice mechanism.

The graduated interlock model can address this issue as a proposal to develop the existing framework. For offences meeting Article 80 and falling outside the exclusions in Article 82, the competent authority should verify the customary settlement and record both completed and outstanding obligations in the formal agreement. Any termination would derive from the applicable statutory mechanism. Procedural details could be developed within the implementing framework contemplated by Article 88. A broader, independent bar to prosecution, particularly for excluded offences, would require an adequate statutory basis and cannot be created merely by extending Article 21 of Government Regulation No. 55 of 2025 beyond its scope.

Where prosecution continues, Article 54(1) of the Criminal Code already requires consideration of relevant post-offence conduct, forgiveness by the victim or family, and living values of law and justice. These considerations provide a basis for assessing a completed customary settlement, but they do not establish an automatic deduction from the state sentence. The model therefore proposes a reasoned assessment distinguishing compensation, restoration, and any punitive burden already borne. A mandatory crediting rule would require further legislative specification; it should not be presented as an existing consequence of customary settlement. Comparative regional literature must be used within corresponding evidentiary

limits. Recognition of Dayak customary institutions in Central Kalimantan illustrates the relationship between institutional legitimacy and state law (Pujirahayu & Wulandari, 2021). Scholarship on other indigenous communities likewise demonstrates how recognition depends on the design of regional regulation (Adnyani et al., 2021).Neither establishes the frequency of overlapping offences or successive punishment among the Kenyah.

Supreme Court Decision No. 1644 K/Pid/1988 also requires qualification because its primary text has not been examined in this study. Mulyadi (2010) reports a customary sexual offence without an equivalent offence under the former Code and describes the subsequent prosecution as inadmissible following customary settlement. Ismantara (2023), however, characterises the underlying proceedings differently, including a reference to rape. These secondary accounts do not permit a definitive reconstruction of the charge, completed sanction, or precise ratio of the judgment. The decision is therefore treated as a reported historical precedent rather than verified authority establishing a general bar for overlapping offences. Its reported foundation in Article 5(3)(b) of Emergency Law No. 1 of 1951 must also be distinguished from the current framework, following that provision's repeal under Article 622 of the Criminal Code.

The available Kenyah material supports a further distinction between customary governance and documented case sequences. Eghenter (2021) describes *tana' ulen* governance, resource restrictions, and customary sanctions in Bahau Hulu and Pujungan. It does not establish an identifiable sequence in which an individual completed a customary sanction and subsequently faced state prosecution for the same conduct. Table 1 therefore separates normative routes from the information supplied by particular sources. Its categories represent analytical possibilities rather than findings about their frequency or the incidence of double punishment.

Table 1. Legal Mapping of Customary Settlements and the Limits of Case Support

Part and unit of analysis	Community, location, and conduct	Customary decision and performance	State proceedings or legal effect	Legal basis or source and limitation
Normative route: purely customary offence within the Regulation's scope	No individual case asserted; conduct must satisfy Article 2 and the applicable regulatory requirements.	Completion of customary obligations must be established.	Article 20 provides a route to a judicial order; Article 21 specifies circumstances barring criminal proceedings.	Government Regulation No. 55 of 2025, Articles 3 and 20–22. This is an existing legal mechanism, not evidence of a Kenyah case sequence.
Normative route: conduct also constituting a Code offence, including complaint-based offences	The applicable offence and its procedural requirements must be identified.	A customary settlement does not automatically establish a final judgment or statutory termination ground.	Withdrawal of a complaint may engage Article 132(1)(f); qualifying statutory settlement may engage Article 132(1)(g) and the Criminal Procedure Code. Otherwise, prior performance may be considered at sentencing.	Criminal Code, Articles 54, 132 and 134; Criminal Procedure Code, Articles 79–88. Eligibility and exclusions require separate examination.

Kenyah source: customary resource governance	Bahau Hulu and Pujungan, North Kalimantan; restrictions associated with *tana' ulen*.	Monetary or material sanctions are described generally; completion in an identifiable individual case is not established.	No sequence of completed customary sanction followed by prosecution for the same conduct is established.	Supports analysis of customary governance, but does not establish a sectoral offence or double punishment.
Comparative Dayak source: customary settlement	A Dayak customary proceeding in Palangka Raya concerning statements attributed to Thamrin Amal Tomagola.	Apology, retraction, and a monetary obligation are reported; complete performance of all obligations is not established.	No subsequent state prosecution for the same statements is established by the cited account.	Comparative material concerning another Dayak context, not a Kenyah case.
Historical judicial account	Reportedly a Tolaki customary case in Parauna, Unaaha; secondary sources differ in characterising the conduct.	*Prohala* involving a buffalo and *kaci* cloth is reported; performance has not been verified against the primary judgment.	Secondary literature reports that prosecution was declared inadmissible under the former statutory framework.	The precise holding and its present scope remain unverified.

Source Author (2026)

The paradox consequently concerns the limits and coordination of existing recognition mechanisms. Three analytical routes must be distinguished: a bar operating within Government Regulation No. 55 of 2025; formal recognition of prior customary performance through an applicable restorative justice mechanism; and consideration of that performance where prosecution continues. The model's contribution lies in specifying verification, recording completed obligations, and requiring reasons for their legal treatment. These proposals address a normative coordination problem without presuming either an automatic customary *ne bis in idem* rule or empirical proof of double punishment among the Kenyah.

The Anatomy of Double Punishment in Practice

Double punishment in Kenyah customary cases may arise through at least three patterns. The first is reporting after customary settlement, in which the victim or the victim's family, dissatisfied with the customary sanction or encouraged by outside parties, reports the matter to the police. The second is investigation initiated by state authorities, which is common for ordinary offences that attract public attention and for forestry violations monitored by sectoral officials. The third is parallel proceedings, in which the customary forum and the state investigation run concurrently without either taking account of the other. The West Kutai homicide case, in which the same killing was treated under both positive law and a customary fine, illustrates how parallel tracks can coexist without any mechanism of coordination (Aunuh et al., 2024).

In all three patterns, the customary sanction usually surfaces at trial merely as a mitigating circumstance. The National Criminal Code does open space for this: its sentencing guidelines direct judges to consider, among other factors, forgiveness by the victim or the victim's family and the values of law and justice living in society. A space for consideration, however, is not an entitlement. Judges remain free to assess its weight, and there is no obligation to deduct a customary sanction already served from the sentence imposed. For the defendant, the difference between "considered" and "credited" determines whether he or she

is punished once or twice. There is a further dimension that is rarely acknowledged: double punishment may erode the function of the customary sanction itself. If customary settlement offers no assurance that the case is closed, offenders lose the incentive to submit to the customary forum, and customary institutions lose authority in the eyes of their communities. Ironically, Article 2, which was intended to honour customary law, may thereby accelerate the erosion of compliance with it. This risk accords with the critique that recognition through state-defined criteria can restrict the autonomy of the very norms it purports to validate (Niko et al., 2026). Symbolic recognition without procedural consequence becomes a subtler form of disregard.

The pattern is not unique to North Kalimantan. Across Kalimantan, customary institutions continue to resolve criminal matters through deliberation and restorative procedures, often with the explicit aim of restoring cosmic balance, while state institutions proceed on the assumption that such settlements have no legal effect (Pujirahayu & Wulandari, 2021). Proposals to address the problem through dedicated adat courts would formalise customary adjudication but would also require institutional reforms that the Code itself did not contemplate (Faisal et al., 2026). The more immediate question is how the existing system can recognise the effect of a customary decision without converting customary forums into state courts. The broader literature on legal pluralism cautions against assuming that recognition is inherently benign. Recognition by the state is itself an exercise of power that determines which normative orders count as law and on what terms (Michaels, 2009; Von Benda-Beckmann, 2002). Legal pluralism, properly understood as a category of analysis, directs attention to the relations and power differentials between legal orders rather than to their mere coexistence (Marglin & Letteney, 2024). Seen through this lens, the absence of any rule on customary *ne bis in idem* is not a neutral gap. It is a choice that allocates the costs of plurality to the individual who stands at the intersection of the two orders.

Double punishment also undermines the social control function that proponents attribute to living law. Supporters of Article 2 argue that living law operates through the awareness and cooperation of community members, so that enforcement proceeds naturally in the service of order and public morality (Selajar & Martha, 2023). That function presupposes that the community's decision is final within its own sphere. When a customary decision can be overridden or duplicated at will by state authorities, the incentive structure on which customary social control depends is weakened, and the community's capacity to resolve conflicts without state intervention is diminished rather than strengthened.

Two Comparative Models: Separate Sovereignty and Institutional Integration

The United States and Sarawak illustrate different ways of organising relations between customary and general criminal jurisdiction. Their comparative value depends on distinguishing the authority to adjudicate, the finality of a decision, and its effect on subsequent prosecution. Neither separate sovereignty nor institutional integration, considered alone, determines how the cumulative burden imposed on an individual should be addressed. The United States model rests on the doctrine of dual sovereignty. In *United States v. Wheeler*, 435 U.S. 313 (1978), the Supreme Court treated the Navajo Tribe's authority to punis its members as an aspect of retained sovereignty rather than delegated federal power. Tribal and federal prosecutions were consequently attributable to different sovereigns. Contemporary commentary identified this distinction as decisive to the permissibility of the subsequent prosecution ("Fifth Amendment. Double Jeopardy and the Doctrine of Dual Sovereignty," 1978). In *Gamble v. United States*, 587 U.S. 678 (2019), the Court reaffirmed the doctrine in the state–federal context: offences defined by different sovereigns are not the same offence for the purposes of the Double Jeopardy Clause (Escobar, 2019). The doctrine therefore permits successive prosecutions without requiring them.

The facts of *Wheeler* demonstrate the practical significance of that distinction. The defendant pleaded guilty in tribal court to disorderly conduct and contributing to the delinquency of a minor before facing a federal indictment for statutory rape arising from the same incident. The contributing offence was treated as a lesser included offence for the double jeopardy issue ("Fifth Amendment. Double Jeopardy and the Doctrine of Dual Sovereignty," 1978). The Court nevertheless allowed the federal prosecution because tribal authority had a separate source. However, the judgment expressly states that the record did not reveal how the tribal sentence was carried out. The case establishes the permissibility of successive proceedings rather than verified completion of two punishments.

Academic criticism shifts attention from sovereign authority to the defendant's exposure. Burns (1978) examines overlapping criminal jurisdiction in Indian country. Dawson (1992) challenges the doctrine through popular sovereignty, while Amar and Marcus (1995) reconsider successive prosecutions against the historical pleas of *autrefois acquit* and *autrefois convict*. Holzhaus's (1986) proposal based on incremental culpability is particularly relevant because it asks what culpability remains unaddressed by the first proceeding. These criticisms distinguish permission to prosecute from justification for imposing an additional burden. Escobar's (2019) discussion of *Gamble* similarly sustains the inquiry into safeguards against successive prosecution. For Indonesia, the useful question concerns the treatment of prior sanctions, rather than an assumption that recognising multiple legal orders necessarily justifies cumulative punishment.

The constitutional premises also differ. Article 18B(2) of the Indonesian Constitution recognises customary law communities subject to constitutional conditions within a unitary state. It does not confer the separate sovereign criminal authority recognised in *Wheeler*. For purposes of enforceability within the state system, conditional recognition resembles Griffiths's (1986) account of weak legal pluralism. This characterisation concerns the terms of state recognition; it does not imply that the state created the customary order. Indonesia's coordination problem must therefore be addressed through its own constitutional and statutory framework.

Sarawak offers a model of statutory institutionalisation, although its significance for successive prosecution requires qualification. Official accounts of restructuring proposals distinguish the existing Native Courts from their proposed transformation into a more autonomous judicial institution Native Courts of Sarawak, 2023. These proposals concern institutional organisation and professional capacity. They do not establish that existing customary judgments automatically prevent prosecution under the Penal Code.

Section 28(b) of the Native Courts Ordinance 1992 excludes trials of Penal Code offences, subject to its opening qualification referring to sections 5, 20 and 23. Section 5 covers specified customary matters and minor customary criminal cases; section 20 concerns personal-law status and section 23 concerns contempt. These provisions require separate examination rather than an inference of unrestricted criminal jurisdiction. The federal Native Courts Criminal Jurisdiction Act 1991 supplies an additional constraint: section 2 confers limited criminal jurisdiction but expressly excludes an offence that is also an offence under the Penal Code. The Ordinance must be read alongside this federal restriction. Criminal adjudication must also be distinguished from any related customary claim for compensation.

The Ordinance separately regulates coordination and appellate finality. Section 5(5) assigns qualifying concurrent proceedings to the court first seized, subject to transfer, while sections 5(6)–(7) provide for transfer and rehearing. Sections 12–16 govern appeals and revision. Section 5(1), proviso (ii), and section 13(1)(b) make specified Chief's Superior Court decisions final against further appeal. These provisions allocate proceedings and regulate challenges within the statutory structure; they do not expressly establish a general bar to a distinct criminal prosecution.

Judicial decisions reinforce the importance of identifying the relevant jurisdictional question. In *Haji Laugan Tarki bin Mohd Noor v. Mahkamah Anak Negeri Penampang* [1988] 2 MLJ 85, the Native Court imposed imprisonment for slander while police investigated related allegations potentially attracting Penal Code liability. The Supreme Court quashed the Native Court's decision and rejected its assertion of jurisdiction over conduct constituting a Penal Code offence. Because the case concerned Sabah under the legislation preceding the 1991 federal Act, it supplies a historical example of jurisdictional scrutiny rather than a direct interpretation of Sarawak's 1992 Ordinance. Its disposition did not establish that the customary conviction barred a subsequent criminal prosecution.

A directly relevant Sarawak authority is *Lynawati Abdullah v. Abang Sukori Abang Hj Gobil & Anor*, Civil Appeal No. Q-01-203-05-2013 (2015). The Court of Appeal identified the federal restriction on Native Courts' criminal jurisdiction, including the exclusion of offences also falling under the Penal Code (para. 24). It further held that decisions of the Native Court of Appeal of Sarawak are amenable to judicial review by the High Court. Although arising from a land dispute, the judgment establishes the availability of external judicial supervision. Its relevance is confined to jurisdiction and reviewability; it supplies no holding on whether a customary criminal judgment prevents subsequent prosecution.

That latter question requires examination of the applicable double jeopardy provisions. Article 7(2) of Malaysia's Federal Constitution protects against retrial for the same offence following conviction or acquittal, subject to the specified exception for a superior court ordering retrial after quashing the earlier result. Section 302(1) of the Criminal Procedure Code requires an earlier trial by a court of competent jurisdiction and a conviction or acquittal remaining in force; it also protects against specified alternative charges arising from the same facts. Crucially, section 302(4) permits a subsequent trial for another offence constituted by the same acts where the first court lacked competence to try that later offence. Consequently, a customary judgment's effect depends on the first court's competence, the character of its disposition, and the relationship between the offences. Neither institutional status nor finality against appeal substitutes for those inquiries.

Sarawak's broader experience also cautions against treating institutional recognition as a complete solution. Nelson et al (2016) emphasise the relationship between adat, social relations, and norms that are not fully codified. Criticism of *TR Sandah* concerns judicial recognition of customary land rights and statutory interpretation (Zubir & Wook, 2024). Those civil land proceedings cannot establish criminal preclusion. Studies of forest legislation and Bidayuh customary law, together with historical analysis of state expansion over native land, likewise identify substantive tensions between legal orders (Cooke, 2006; Nelson et al., 2016). Institutionalisation can structure their interaction while leaving disputes over the content and legal recognition of custom unresolved.

The distinction matters for Indonesia. Coordination through jurisdictional boundaries can determine which forum should proceed before adjudication. Recognition of a completed customary settlement as a prosecution bar addresses a different situation: obligations may already have been performed before state authorities become involved. Sarawak provides support for explicit rules on competence, transfer, review, and records. The authorities examined here do not establish a general rule that completion of Native Court proceedings bars prosecution for conduct also constituting a Penal Code offence. The treatment of prior customary performance must therefore be justified through the applicable statutory mechanism.

Neither comparative model warrants wholesale adoption for Kenyah customary settlements. The United States demonstrates that recognition of autonomous authority can coexist with successive proceedings. Sarawak demonstrates statutory coordination constrained by jurisdiction and judicial supervision. The graduated interlock model draws on these

distinctions to specify interaction within Indonesia's existing framework, including Government Regulation No. 55 of 2025, Article 132 of the Criminal Code, and the Criminal Procedure Code's restorative justice mechanisms. It requires separate justification for termination, incorporation of completed obligations into a restorative agreement, and consideration of prior performance at sentencing. This approach accords with scholarship emphasising procedures for managing hybrid legal spaces (Berman, 2018) and relations between overlapping normative orders (Zumbansen, 2010). The model's contribution lies in making those consequences explicit without presuming that institutional recognition itself resolves successive punishment.

The Graduated Interlock Model: Criteria of a Customary Idem and Its Legal Consequences

The model proposed in this article is termed the graduated interlock model. It is an "interlock" because a customary sanction must pass two layers of testing before it acquires binding effect in state proceedings: a test of identity and a test of eligibility. It is "graduated" because its legal consequences are not uniform but depend on the gravity of the state offence concerned. The model thereby translates the logic of incremental culpability into a pluralist setting, while preserving the autonomy of the customary forum.

Table 2 summarises the criteria and legal consequences under the proposed model. Each criterion is derived from the classical elements of ne bis in idem and adapted to the character of customary sanctions. The criteria are formulated operationally so that they can be applied by investigators, prosecutors, and judges.

Table 2. Criteria and Legal Consequences under the Graduated Interlock Model

Layer	Criterion	Test question	Normative source
Identity	*Idem factum*	Are the facts settled under custom the same as the facts under investigation or charged?	Doctrine of *ne bis in idem*; ICCPR, Article 14(7)
Identity	*Idem persona*	Is the person sanctioned under custom the same person as the suspect or defendant?	Doctrine of *ne bis in idem*
Identity	Functional equivalence (*idem ratio*)	Does the customary sanction contain elements of condemnation and restoration comparable to the purposes of punishment under the Code?	Purposes of punishment under the National Criminal Code
Eligibility	Completion (*consummatum*)	Has the sanction been fully executed and accepted by the victim, as evidenced by documents or the testimony of customary leaders?	Proposed
Eligibility	Human rights compatibility	Do the process and sanction meet the conditions of Article 2(2), including voluntariness, non-discrimination, and proportionality?	Article 2(2) of the Criminal Code
Consequence	Tier I: full bar	Complaint-based offences and offences	Proposed for the Government

		carrying light penalties: prosecutorial authority lapses	Regulation implementing Article 2
Consequence	Tier II: mandatory credit	Serious offences: prosecution proceeds, but the customary sanction must be credited against the sentence	Proposed; analogous to the deduction of pre-trial detention

Source: Author 2026

The criteria deliberately place completion and human rights compatibility as conditions of eligibility rather than of identity. Two acts may be identical and the offender the same, yet a customary sanction imposed under pressure, discriminatory towards women, or not yet executed is not fit to close state liability. This two-layer distinction prevents the model from becoming a channel of impunity, particularly for offenders who occupy powerful positions within the customary structure. It is especially relevant to violence against women and children, which must not end in customary forums alone.

The eligibility layer draws support from both statute and scholarship. Law Number 12 of 2022 on Sexual Violence Crimes restricts the resolution of sexual violence outside the judicial process, reflecting a legislative judgment that certain harms demand public adjudication. Scholarship on the limits of living law similarly insists that recognition must be conditioned on the protection of human rights and the prevention of criminalisation, and that customary law must respect fundamental rights such as gender equality and protection against inhumane treatment (Febrianty et al., 2023). The documented dissatisfaction of Dayak victims of indecent acts with purely monetary customary sanctions confirms that these safeguards are not merely theoretical (Fetrus et al., 2024).

The division of consequences into tiers follows the logic of proportionality. For complaint-based and minor offences, the public interest in prosecution is relatively small compared with the interest in restoring social relations, so that a customary settlement that passes the tests deserves to end the case. For serious offences, the public interest continues to demand state proceedings, but the defendant is entitled to have the burden already borne taken into account. The principle of crediting is not foreign to Indonesian criminal law: the deduction of periods of arrest and detention from the sentence imposed expresses the same idea that a burden already served must not be ignored. It also echoes Holzhaus's argument that a second prosecution should reach only culpability not yet punished (Holzhaus, 1986).

Converting customary sanctions into units of state punishment requires a benchmark. The Code's provision equating the fulfilment of customary obligations with a fine of a specified category can serve as a starting point. This approach carries a risk of monetisation, reducing the symbolic meaning of customary sanctions to a figure, a concern that echoes the earlier critique of the degradation of customary penalties in the drafting of the Code (Yuherawan et al., 2021). That risk is nonetheless smaller than the risk of not counting customary sanctions at all. To mitigate the reduction, judges can be required to hear customary leaders on the weight of the sanction within the Kenyah value system before undertaking any conversion.

The boundary between Tier I and Tier II need not be invented from nothing. The National Criminal Code already accepts that prosecutorial authority lapses where the offender voluntarily pays the maximum fine for offences punishable only by a fine of a low category, or for offences punishable by imprisonment of not more than one year or by a fine of a specified higher category, and where a complaint is withdrawn in complaint-based offences. These provisions reveal a legislative judgment that, for a defined band of low-gravity offences, the public interest in prosecution yields once the offender has borne a specified burden. The graduated interlock model aligns Tier I with that band: where the Code already allows a

voluntary monetary payment to terminate prosecution, a completed customary sanction that passes the tests of identity and eligibility should have the same effect. For offences above that band, Tier II applies.

The model must also guard against collusive or sham customary proceedings designed to evade state prosecution. Three safeguards serve this purpose. First, the completion criterion requires that the sanction actually be executed and accepted by the victim, not merely pronounced. Second, the human rights criterion allows the state authority to examine whether the victim participated voluntarily and whether the process was free from coercion by more powerful parties. Third, where the customary proceeding took place after the state investigation had commenced, the prosecutor should be entitled to scrutinise whether it was initiated in good faith or merely to obstruct the investigation. These safeguards preserve the integrity of the model without subjecting genuine customary adjudication to suspicion by default.

The position of the victim deserves separate attention. The graduated interlock model does not grant the victim a veto over the effect of a customary sanction, because such a veto would allow the double punishment problem to re-enter through the victim's later change of mind, which is precisely the first pattern of double punishment identified above. The victim's interests are instead protected at the point of eligibility, through the requirement that the sanction be accepted and executed and that the process respect the victim's rights. Once those conditions are met, the finality of the customary settlement serves the victim as well, by sparing him or her a second process that may reopen the harm.

The model also requires procedural rules on proof and timing. The burden of raising a prior customary sanction should rest on the suspect or defendant, in the manner of a plea in bar, but the standard of proof should be realistic. Written minutes of the customary proceeding, where they exist, should be admissible as prima facie evidence, and the testimony of the customary leaders who presided over the proceeding should suffice where no written record exists. Ethnographic work on Dayak communities shows that customary administrators increasingly document customary rules and decisions in writing, which makes such proof feasible (Efriani & Agustinus, 2021). The plea should be assessable at the earliest possible stage, preferably by the prosecutor before the case is transferred to court, so that Tier I cases are closed without the burden of trial and Tier II credits are known when the charge is framed.

Three illustrations clarify how the model would operate. In the first, a Kenyah villager assaults a neighbour, causing minor injury; the customary forum imposes a sanction, which is paid and accepted by the victim, and the victim later reports the matter to the police under pressure from relatives. The act, the offender, and the function of the sanction are identical, the sanction has been completed, and no human rights concern arises, so that under Tier I the prosecution should lapse. In the second, an outsider fells trees within *tana' ulen*, is sanctioned by the customary institution, and is subsequently investigated for a forestry offence. Identity and completion are satisfied, but the gravity of the environmental offence places the case in Tier II, so that prosecution may proceed while the customary sanction must be credited against the sentence. In the third, a sexual offence against a woman is settled through a customary fine paid to her family. The eligibility test fails, because the process lacks the victim's own voluntary participation and because statute restricts the resolution of sexual violence outside the courts, so that the customary sanction neither bars prosecution nor necessarily reduces the sentence, although it may still be considered under the general sentencing guidelines.

Institutionally, the model can be implemented without amending the Code. The Government Regulation on the procedures and criteria for determining living law, mandated by Article 2(3), is the appropriate vehicle. It could designate customary settlements that meet the criteria as "out-of-court settlements" for the purposes of Tier I. The phrase "as regulated by law" in the provision on the lapse of prosecutorial authority, however, raises doubts as to whether a Government Regulation suffices. A more robust route is therefore to insert a clause

recognising customary settlement into the criminal procedure legislation or into a statute on customary law communities. Meanwhile, internal prosecutorial and judicial guidelines on restorative justice can bridge the gap through prosecutorial discretion and sentencing practice.

The model also has implications for the border region. Kenyah communities in Malinau and Bulungan maintain kinship ties with Kenyah communities in Sarawak, and cross-border mobility makes it possible for an act to be settled under custom on one side of the border and prosecuted by the state on the other. The criteria of *idem* proposed here could be extended to assess customary settlements concluded outside Indonesian territory, particularly where those settlements were rendered by native courts whose decisions possess judicial status under Sarawak law (Universiti Teknologi MARA (UiTM) Sarawak et al., 2023). That question, however, engages issues of jurisdiction and international cooperation in criminal matters that warrant separate study.

CONCLUSION AND RECOMMENDATIONS

Conclusion

This article has shown that Article 2 of the National Criminal Code recognises living law without providing rules for its coordination with state punishment. The condition "insofar as not regulated" closes the route to integration for acts that are simultaneously customary offences and offences under the Code. As a result, Dayak Kenyah customary sanctions for such acts lie beyond the reach of the provisions on the lapse of prosecutorial authority. The protection of ne bis in idem operates only by accident: through the victim's choice in complaint-based offences or through absorption into a court judgment for purely customary offences. In answer to the second research question, the article proposes the graduated interlock model. A customary sanction is treated as idem where it satisfies the test of identity, covering the act, the offender, and the function of the sanction, and the test of eligibility, covering completion and human rights compatibility. A sanction that passes both tests operates as a bar to prosecution for complaint-based and minor offences and as a mandatory sentencing credit for serious offences. The model rejects the logic of dual sovereignty, which legitimates double punishment, while avoiding the bureaucratisation of customary law entailed by the Sarawak model of integration. The article contributes a conceptual shift by reframing the recognition of living law from a question of which customary norms may expand state punishment to a question of how completed customary adjudication should limit it. That shift exposes a procedural dimension of legal pluralism that Indonesian scholarship has largely overlooked and offers a vocabulary identity, eligibility, bar, and credit through which that dimension can be regulated. The limitations of this study lie in its single focus on the Kenyah community, its reliance on documentary and secondary data, and the prescriptive character of a model not yet tested in judicial practice. Further research may test the model in other customary communities, examine how law enforcement officials perceive it, and develop a framework for recognising customary settlements across national borders.

Recommendations

The normative recommendations operate at three levels. First, the Government Regulation implementing Article 2 should set out the criteria of a customary idem and the means of proving them. Second, criminal procedure legislation or a statute on customary law communities should confirm customary settlement as a ground for the lapse of prosecutorial authority within defined limits. Third, prosecutorial and sentencing guidelines should make it mandatory to credit customary sanctions already served. Beyond its doctrinal recommendations, the article contributes a conceptual shift. It reframes the recognition of living law from a question of which customary norms may expand state punishment to a question of how completed customary adjudication should limit it. That shift exposes a

procedural dimension of legal pluralism that Indonesian scholarship has largely overlooked and offers a vocabulary, identity, eligibility, bar, and credit, through which that dimension can be regulated.

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