

# The urgency of exploring local wisdom in criminal case resolution in the modernization era

Sahran Hadziq<sup>1\*</sup>, Satriawan<sup>1</sup>, and Bella Latifah<sup>1</sup>

<sup>1</sup> Universitas Ahmad Dahlan, Yogyakarta, Indonesia

\*Corresponding author email: [sahran.hadziq@law.uad.ac.id](mailto:sahran.hadziq@law.uad.ac.id)

## Abstract

Local wisdom is the ideas, concepts, and values maintained by communities to address all challenges in their lives. Community life exists in a dynamic environment, thus inherently changing over time. The modernization era has shifted communities from traditional to modern, with both positive and negative impacts. One negative impact is the increasingly diverse modus operandi of criminal acts. This situation presents challenges to the resolution of criminal cases, which have traditionally been traditional. However, local wisdom, as a dynamic guideline in community life, has in fact provided criminal case resolution efforts that can adapt to societal changes. Therefore, exploring local wisdom is urgently needed to address the challenges of criminal case resolution in the modernization era. This study is a normative legal study that uses secondary data, consisting of primary, secondary, and tertiary legal materials. The data were collected through literature review and analyzed using qualitative descriptive methods to draw conclusions. The results show that local wisdom is closely related to community life as a wise idea or concept for resolving conflicts. This is based on the living values embodied in the community's local wisdom as a guideline for living all aspects of life. The essence of local wisdom in resolving criminal cases lies in its goal of restoring cosmic balance, namely the relationship between humans, nature, and the beliefs held by the community. This goal is highly relevant to addressing changes in the modern era. Despite transformations in life, it remains consistent in protecting cosmic balance.

## Keywords

Local wisdom, Criminal case resolution, Modernization era

## Introduction

Settlement of criminal cases in the modern era faces various challenges [1]. The most fundamental issue is the change in values in society. The modernization era represents a social shift from traditional to modern, thus influencing the way of thinking and values within society. This modification can ultimately affect how criminal cases are resolved in both positive and negative ways [2]. The positive impact is ease of access to information and evidence, while the negative impact is a paradigm shift that distances the law from the essence of humanity and justice. This negative impact poses the greatest challenge

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in resolving criminal cases, as it can create a gap between regulations and the reality of achieving desired goals. This situation arises because there is no effort to explore and utilize local wisdom within the community as a basis for achieving the goal of resolving criminal cases in the modern era [3].

The study of local wisdom in resolving criminal cases is currently a crucial issue. This is due to the reform of Indonesian criminal law by expanding the principle of legality. This expansion refers to the regulation of the principle of material legality in Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). The principle of material legality emphasizes that the basis for determining a crime is not limited to provisions contained in the law (written law), but provisions contained in living law (unwritten law) can also be the basis for determining a crime [4]. These changes will create problems that could lead to a legal vacuum in regulating criminal case resolution based on existing law. This situation will then serve as a basis for emphasizing the importance of exploring local wisdom as a basis for resolving criminal cases in the future, ensuring that it aligns with these changes.

The dynamics of the use of local wisdom to resolve criminal cases have been extensively studied by previous researchers. Most of this research has examined the existence and harmonization of local wisdom in resolving criminal cases. This research, conducted by Ahmad Ulil Aedi [5] This study attempts to examine local wisdom in resolving minor crimes as part of the development of the national legal system. This study leads to a constructive paradigm for local wisdom to be harmonized in national legal reform as an alternative for resolving minor crimes. Furthermore, research conducted by Adam Sya Firnanda [6] by examining the existence of Balinese customary criminal law in the modern era through normative studies. This research suggests that the challenge of customary criminal law as an implementation of local wisdom lies in its position within the national legal system amidst the development of modernization. The results of this normative research demonstrate the existence of local wisdom based on the state constitution and, empirically, its continued existence and effectiveness in maintaining social order through deliberative and restorative resolution.

Several previous studies on the topic of local wisdom in criminal law have provided explanations for efforts to harmonize and establish the existence of local wisdom as part of the national legal system. This research differs fundamentally in its conceptual framework, focusing more on the urgency of exploring local wisdom as an empirical reality in community life that has been passed down through generations. This research not only seeks to describe the existence and harmonize local wisdom within the national legal system, but also demonstrates the importance of understanding local wisdom as ideas and ways of thinking passed down through generations [7]. Thus, this research will examine in depth the following questions: What is the meaning of local wisdom in the lives of people in the era of modernization; and What is the relevance of local wisdom as a basis for resolving criminal cases in the era of modernization?

## Method

This study uses a juridical-normative approach [8] to examine the urgency of exploring local wisdom in resolving criminal cases in the modern era. The data used to conduct this study is secondary data, namely data obtained from a literature review of legal materials. This study, which will examine local wisdom in resolving criminal cases, will utilize primary, secondary, and tertiary legal materials. Primary legal materials will include laws and regulations that serve as the legal basis for exploring local wisdom as an effort to resolve criminal cases in the modern era. Secondary legal materials will consist of supporting materials to the primary legal materials, which can include reference books, scientific articles, doctrines, and other materials related to the research problem. Tertiary legal materials complement other legal materials, including legal dictionaries and legal encyclopedias. The collected data will be analyzed using qualitative data analysis methods, namely, the collected data will be explained and described using sentences that are structured logically and systematically [9]. This study will provide the analysis's findings in a logical fashion, allowing conclusions to be made based on general principles and then explained to address the issues raised by the study.

## Results and discussion

### *The meaning of local wisdom in community life in the era of modernization*

Local wisdom etymologically consists of two words, namely wisdom which comes from the basic word wise and the word local. The meaning of the two words according to the Indonesian Dictionary, the word wise has two meanings, the first is to know or to know and the second meaning is clever, clever and wise, but if added the prefix "ke" and the suffix "an" then it can be interpreted as wisdom, intelligence, an attitude that fosters and maintains dignity, human values and the dignity of humans and the environment. The term "local" refers to a location where something grows or exists that may differ from other locations or is present in a location that has value and may be applicable locally or globally [5].

Local concepts, beliefs, and opinions that are wise, full of wisdom, and of good value and that are ingrained in and adhered to by community members can be viewed as the terminological meaning of local wisdom [10]. Local genius is a word used in anthropology. Quaritch Wales was the first to use this phrase [11]. Anthropologists have discussed extensively the meaning of local genius and in general, local genius is the identity or cultural personality of a nation that makes the nation capable of absorbing and processing foreign culture according to its own character and abilities [12]. In the meantime, Moendardjito asserts that regional cultural components have the capacity to be local geniuses since their resilience has been put to the test [13]:

- a. able to withstand external cultures;
- b. able to accommodate external cultural elements;

- c. able to integrate external cultural elements into the native culture;
- d. able to exercise control;
- e. able to provide direction for cultural development.

Sartini stated that local wisdom (local genius) is a truth that has become traditional or established in a region. Local wisdom is a combination of the sacred values of God's word and various existing values [7]. Local wisdom is formed as a result of the cultural excellence of local communities and broader geographical conditions. Local wisdom is a product of past cultures that should be continuously upheld as a guideline for life. Although originating locally, its values are universal. Conflict resolution should be tailored to the context and setting in which the conflict occurs. Therefore, general approaches are actually irrelevant for addressing local conflict, necessitating a specific model. A less widely studied but long-established approach to conflict resolution is local wisdom.

The era of modernization has brought many changes to people's lives. One impact is on the values and perspectives held by the community. This has led to attempts to forget local wisdom as a guideline for community life. The reality that occurs with these changes and developments has increasingly fostered a longing for these forgotten values, namely local wisdom. This condition is triggered by the inconsistency of the influence of the modernization era, which is dominated by values from outside the community to regulate their lives. Society in the modernization era is actually striving to make local wisdom a crucial, urgent position. Local wisdom is defined as the ideas, concepts, and values maintained by a community to overcome all problems in its life [3]. Philosophically, local wisdom is a dynamic guideline, so that it has a mechanism for resolving criminal cases that is inherently able to adapt to changes in society, including the complexity of modern crime [14]. Exploring, understanding, and re-implementing local wisdom is not merely an effort to preserve culture, but rather an urgent need to achieve substantial justice in the modern era. Thus, the current era of modernization has made local wisdom the primary guideline for maintaining balance within society.

### *Criminal case resolution based on local wisdom in the era of modernization*

The enforcement of criminal law in the building of legal theory that is currently believed and felt by the community in its application is not as dynamic as the development of the times, sometimes there are conflicts between positive law, legal science and legal philosophy in the harmonization stage for its implementation. The development of national criminal law development according to Barda Nawawi Arief emphasized that the failure to replace or update the Criminal Code as the parent of the criminal law system, not only has a negative impact on the field of law enforcement, but also in the field of legislation and criminal law education [15]. He also emphasized that the long and slow pace of efforts to reform criminal law, even the obstruction or stalling of criminal law reform, was not impossible as a result of the lack of proper preparation (or perhaps

even the complete absence) of knowledge about national criminal law reform in various higher legal education programs so far.

The much-discussed transitional efforts currently involve the interests of many parties in absorbing and rediscovering the values of justice. The empowerment of grassroots communities has given rise to a new agreement: that the people have a decisive role in the implementation of development and are not objects of marginalization [5]. The expansion of fundamental ideas regarding the role of institutions with democratic content and the increased role of society are inseparable from the process of change. This condition indicates a massive deconstruction that is not only related to institutions but also encompasses the paradigms within the deconstructed thinking.

The implications of deconstruction in nearly every area of society have led to what could be called major confusion, both social and economic, political and cultural. One area that is inextricably linked to this influence is the law. This condition cannot be called a clean legal system. This perspective is only a small scope when examining the changes in the current era of modernization, as we enter the new millennium. The polarization of world culture and civilization has given rise to stereotypical prejudices that often lead to conflicts, influenced also by location and geography, as well as by worldviews, political streams, civilizations, and cultures.

The conservative, corrective, innovative, and aspirational character of law in facing the development of public awareness is expected to resolve conflicts that occur in society. This is because the law is a guideline for the behavior of members of society and also provides sanctions, the law should apply in the long term and also not be submerged by changes in society according to time and place. Van Kan's opinion that law always lags behind the development of society is indeed true, however, this opinion has been answered by Mochtar Kusumaatmadja, that law must be placed in the forefront and lead the direction of change in society to be more modern or better than the previous period [16]. This statement, when linked to an understanding of local wisdom as a living legal basis, implies that the values and ideas inherent in community life must always be explored and preserved. Justice is a primary spiritual need in social relations; it is part of a society's spiritual structure. A society has a sense of what is appropriate and inappropriate, right and wrong, even if there are no written laws.

Law enforcement, particularly criminal law enforcement, is fundamentally a component of efforts to combat crime through criminal legislation. The explanation that criminal law policy is an integral component of law enforcement policy is based on this assertion [17]. Efforts and policies to create effective criminal law regulations are fundamentally inseparable from the goal of crime prevention. The primary goal is to achieve justice, certainty, and benefit in every effort undertaken. The current reality is that crime prevention efforts prioritize legal certainty over the other two goals, resulting in a rejection of retributive justice and a replacement for restorative justice. This is also evident in the National Criminal Code's objectives and guidelines for sentencing, which prioritize justice in cases of conflict with legal certainty [18].

Criminal law enforcement, as a form of criminal case resolution that has undergone changes in the current era of modernization, has provided an opportunity for the justice desired by society. This justice is intended to be justice that is in accordance with the values and beliefs of the community, thus providing a place for local wisdom in the process of resolving criminal cases. This condition is an effort to rediscover the values of local wisdom as the basis of customary law to build a national criminal law system. In general, the goal to be achieved in resolving criminal cases based on local wisdom is to maintain the disturbed cosmic balance. Cosmic balance is the balance between the real world (sekala) and the supernatural world (niskala) [19]. Thus, the settlement of criminal cases expected by the community through customary law as an implementation of local wisdom is to achieve this goal, this is based on the inherent nature of customary law, namely: [20][21]

- a. Customary law is religious-magical in nature, founded on the community's views or convictions and influenced by religious teachings; as a result, it embraces both the supernatural realm (niskala) and life in the physical world (sekala).
- b. Because customary law is communal in character, the public or community interest takes precedence over individual interests since human life is always seen as a group as a whole.
- c. Because customary law is democratic in nature, it frequently employs a system of discussion and consensus involving all members of society and always prioritises the resolution of a matter through a sense of unity.
- d. Because customary law is static and traditional, it consistently upholds the core principles that have been passed down through the generations.
- e. Customary law is dynamic-adaptive; it constantly adjusts to the dynamics of societal settings and keeps up with changes and advancements over time.

The concept of resolving criminal cases based on local wisdom in the modern era is to accommodate provisions rooted in the values inherent in society. These values serve as the basis for determining the efforts to be undertaken and the reactions to restore cosmic balance. One philosophy upheld to this day is the philosophy of harmony, which focuses on restoration rather than retaliation. It also seeks to resolve every conflict through deliberation and consensus [22]. In general, procedures for resolving criminal cases based on local wisdom can pay attention to 3 (three) principles which are the main benchmarks, namely: [23]

- a. *The Asas Rukun* (Principle of Harmony) serves as the foundation for both realising harmonisation of village etiquette and getting things back to normal. Whether a party wins or loses is not determined by this premise.
- b. In order to prevent discrimination in their standing and honour as village customs, *Asas Patut* (Principle of Propriety), the foundation for settling customary problems, must uphold each party's good name.

- c. *Asas Keselarasan*, or the Principle of Balance, is the foundation for understanding the emotions and realities that permeate society and are ingrained in customs passed down through the generations. In order for decisions to be accepted by members of society, the principle of harmony is implemented by paying attention to place, time, and circumstances (*desa, kala, patra*).

Implementing the characteristics and principles inherent in each community's local wisdom is crucial as a basis for resolving criminal cases in the modern era. This is inseparable from the need to realize a sense of justice consistent with the values entrenched in society. The concrete reality of this implementation can be seen in the regulation of *wicara lan pamidanda* contained in every *awig-awig* in Bali. The regulation of *wicara lan pamidanda* essentially serves as the basis for customary village communities in Bali to regulate and resolve disputes that arise within their territories [24]. The provisions contained in this section may indicate an effort to explore and preserve local wisdom as a means of resolving disputes or criminal cases that have been passed down through generations. The philosophy embodied in these provisions is *Tri Hita Karana*, which refers to the existence of three (3) relationships whose harmony must be maintained: *Parahyangan*, *Palemahan*, and *Pawongan* [25]. Specifically, this philosophy is still maintained to this day and is effective in maintaining harmony in the era of modernization, so that the regulation of *wicara lan pamidanda* will always be based on the philosophy of *Tri Hita Karana* [26]. Thus, the local wisdom of traditional villages in Bali in regulating *wicara lan pamidanda* can be used as a concrete manifestation of how important local wisdom is as an effort to resolve disputes in the era of modernization through the realization of the welfare of the community.

## Conclusion

Local wisdom holds profound significance in the lives of people in the modern era. This is based on public awareness to explore the essence of local wisdom as a guide in living their lives. Furthermore, local wisdom serves as the foundation for upholding the values entrenched in society, particularly the value of justice. The modern era has brought many changes to societal values, but it cannot alter the essence of local wisdom, which must always be maintained and preserved.

Criminal cases resolution based on local wisdom in the modern era is an alternative for realizing justice that aligns with societal values. This situation underscores the importance of exploring every local wisdom found in community life, so that criminal case resolutions can achieve the desired goals. The concept of criminal case resolution embedded in local wisdom can actually bring closer to the sense of justice desired by all parties involved.

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