

Learning Empirical Legal Research Methods in Understanding Living Law in Society

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ABSTRACT

In essence, law cannot be separated from social life, as it emerges, develops, and functions to regulate patterns of relationships between individuals within a social order. The concept of living law emerged, namely law that lives and develops through customs, traditions, and behavioral patterns recognized as guidelines for action. This study aims to analyze the role of empirical legal research methods in identifying and understanding living law in society. This research method uses a juridical-empirical approach by observing legal practices, social behavior, and the interaction between written legal norms and prevailing social norms. The results show that the empirical legal method enables an understanding of law as a dynamic social reality, while simultaneously revealing the gap between normative law and actual legal practice. This approach is also capable of identifying social, cultural, economic factors, and public legal awareness that influence the effectiveness of law. Thus, the empirical legal research method is a crucial instrument for the development of legal science, particularly in formulating legal policies that are responsive to societal needs and realities. Understanding living law through an empirical approach can encourage the creation of a legal system that is not only formally valid but also effective, relevant, and socially just.

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1. INTRODUCTION

Law is inherently inseparable from social life, as it emerges, develops, and functions to regulate patterns of relationships between individuals within a social order. The validity of a legal norm is not solely determined by its formal legitimacy through legislation, but also by the extent to which the norm is accepted, complied with, and implemented in practice by society. Thus, the effectiveness of law depends heavily on its conformity to the values, legal awareness, and social needs present in society.

This view emphasizes that law cannot be understood solely as written norms (law on the books), but also as law that operates and is implemented in social practice (law in action). Eugen Ehrlich introduced the concept of living law to explain that the law that truly regulates social life often originates not from statutes, but from customs, traditions, and social behavior patterns that are actually adhered to and recognized as guidelines for action. This concept demonstrates that the center of legal development lies not always in legislative institutions or courts, but rather in society itself.

In social and cultural pluralism, the existence of living law is highly relevant. Customary law, local customs, and social values that exist within society still play a significant role in regulating legal relations, often even coexisting with state law. This aligns with Satjipto Rahardjo's view, which emphasizes that law must be understood as a dynamic social institution, not a closed and static normative system. Therefore, ignoring living law has the potential to render positive law ineffective and weaken its legitimacy in the eyes of society.

Recognition of living law within society also has a constitutional basis, particularly through the recognition of customary law communities and their traditional rights, as stipulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This regulation emphasizes that national law cannot be separated from social realities and local values that are still alive and developing. Therefore, the study of living law is crucial in building a legal system that is responsive, just, and in keeping with the character of Indonesian society.

Since the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) on January 2, 2026, there has been significant change regarding the recognition of living law, or customary law, as part of the national criminal system. Within the provisions of the New Criminal Code, the principle of living law is integrated as part of the principle of material legality, allowing behavior previously regulated by custom to be considered in criminal proceedings under certain conditions, as long as it complies with empirical criteria and prevailing norms within the local community. However, initial implementation has presented challenges with multiple interpretations at the judicial level regarding when and how customary norms are applied by judges.

Initial empirical research, published in *Al-Zayn: Journal of Social Sciences & Law*, indicates that in several regions, such as Bali and Papua, the integration of customary law into the criminal system has reduced the case backlog by approximately 22% and increased public perceptions of justice by up to 78% through the use of a hybrid double-track system approach. However, there are concerns that the phrase "living law in the community" could lead to jurisdictional inconsistencies between regions, as well as potential discrimination if patriarchal customary norms are applied without clear restrictions on human rights.

Another example reflecting the conflict between formal law and social norms emerged from the efforts of the local government in Maluku Province to align regional regulations with customary law in the implementation of the new Criminal Code, in response to legal pluralism in society. This movement demonstrates the need to accommodate living law in local policies to avoid conflict with social realities and long-standing customary practices.

In normative legal studies, law is often positioned as a closed system, focusing solely on the text of statutory regulations, legal principles, and dogmatic constructs. This approach views law as an autonomous norm, separate from the social context in which it applies. Despite its important role in ensuring legal certainty and the consistency of the legal system, the normative approach often fails to explain how law actually works in the realities of society.

This limitation is evident when various regulations that are normatively valid and binding are ineffective in practice and are even ignored by society. This demonstrates the gap between *das sollen* (the law as it should be) and *das sein* (the law as it actually is). Soerjono Soekanto emphasized that the effectiveness of law is determined not only by the quality of legal norms, but also by law enforcement factors, supporting facilities, and the legal culture of the surrounding community. Without the support of these factors, positive law has the potential to lose its social validity.

Conversely, in everyday life, we find various unwritten social practices that are widely adhered to and serve as binding guidelines for behavior. These practices, although not formalized in legislation, have real regulatory power because they arise from social needs and the collective consciousness of society. Eugen Ehrlich referred to this phenomenon as living law, namely law that is alive and effective because it is rooted in social reality, not solely in written legal texts. Thus, the existence of law cannot be separated from the social dynamics that shape and influence how it is implemented.

Therefore, empirical legal research methods are crucial for understanding law as a social phenomenon that lives and develops in society. Empirical legal research does not view law solely as written norms or rules, but rather as social behavior that can be observed, measured, and analyzed through facts on the ground. This approach allows researchers to observe how law is perceived, implemented, and complied with by society in specific social contexts.

By using an empirical approach, the concept of living law can be identified and analyzed more concretely. Law is no longer understood merely as an abstract formal rule, but as part of a social dynamic that truly influences and regulates societal behavior. Therefore, empirical legal research is a crucial instrument in bridging the gap between normative law and social reality, while also providing a foundation for the development of more responsive and equitable laws.

This research offers novelty by positioning living law not merely as a sociological concept or a complement to positive law, but as a normative reality that can be systematically identified through empirical legal research methods. Unlike previous research, which generally discusses living law theoretically or normatively, this study emphasizes that living law has patterns, structures, and compliance mechanisms that can be scientifically analyzed through observations of societal legal behavior.

2. METHODS

This research employs an empirical legal research method, namely legal research that focuses on observing community behavior and legal practices in the field. The approach employed is an empirical juridical approach, which examines the relationship between written legal norms and the social reality of their application. The data sources in this study consist of primary and secondary data. Primary data were obtained through interviews, observations, and field studies of legal subjects directly involved in the practice of law implementation. Meanwhile, secondary data were obtained from primary legal materials in the form of laws and regulations, and secondary legal materials in the form of books, scientific journals, and previous research results relevant to the topic of living law and empirical legal research.

The use of empirical legal research methods as the primary instrument for uncovering, mapping, and analyzing the actual existence of living law in society. This research views living law not merely as a theoretical concept, but as an empirically identifiable legal phenomenon, thereby bridging the gap between normative law and social reality, particularly in the context of contemporary Indonesian legal developments. Data analysis techniques were conducted qualitatively by interpreting empirical findings to identify patterns, trends, and congruences or inconsistencies between written law and the law that lives in society. This analysis aims to gain a comprehensive understanding of the role of empirical methods in uncovering living law.

3. FINDINGS AND DISCUSSION

Empirical legal research methods have significantly contributed to uncovering the existence of living law in society, particularly in the context of urban communities like Bandung, which experience complex social and cultural dynamics. Through direct observation and interaction with research subjects, it is clear that communities do not always rely on written law as the primary reference in resolving legal issues, but instead rely on social mechanisms deemed more effective, just, and in line with local values.

Living Law as a Mechanism for Resolving Social Disputes

Empirical legal research allows researchers to identify forms of living law that operate in practice, such as community deliberations, mediation by community leaders, or settlements based on social agreements. Empirical studies show that these mechanisms have a high level of compliance because they are based on social legitimacy, not state coercion. In this context, living law functions as an effective instrument of social control.

Empirical research in urban areas in Indonesia also shows that living law is not solely associated with indigenous communities, but also thrives within urban communities, including densely populated residential areas and kinship-based communities or administrative areas such as neighborhood associations (RW) and urban villages (kelurahan).

Field Interview Findings in Bandung City

Empirical interviews conducted in several areas of Bandung City indicate that social conflict resolution is often carried out through informal mechanisms before resorting to formal legal channels. A community leader in Coblong District, Bandung City, stated:

“If there are problems between residents, for example, small land disputes or family conflicts, we usually resolve them first through deliberation at the neighborhood unit (RT) or community unit (RW) level. Residents are more accepting of this method because it's quick and less complicated than going to court.”

Respondent 1, Neighborhood Unit Head in Coblong District, Bandung City
(Interview, January 31, 2026).

A similar view was expressed by a traditional leader and community elder in Ujungberung District. He stated that conflict resolution through local mechanisms is more readily accepted because it reflects the values of togetherness and maintains social harmony. He said:

“If we take it directly to the courts, relationships usually become damaged. Through customary deliberation, people can still respect each other, and problems are resolved without anyone feeling defeated.”

Respondent 2, Community Leader in Ujungberung District, Bandung City
(Interview, January 31, 2026).

Meanwhile, a village official in Bojongloa Kaler District revealed that the local government also encourages non-litigation conflict resolution as long as it does not involve serious crimes. He said:

“We at the village office usually facilitate mediation first. Many residents are more comfortable with that method. Once it's resolved at the neighborhood level, there usually aren't any further issues.”

Respondent 3, Village Official in Bojongloa Kaler District, Bandung City
(Interview, February 2, 2026).

The interview findings indicate that social norms and collective agreements remain the primary reference point in conflict resolution practices at the community level in Bandung City. Although these mechanisms are not formalized in legislation, the results of deliberation are generally adhered to by the parties due to their strong social legitimacy. Violations of these agreements often result in social consequences, such as moral sanctions, collective reprimands, or exclusion from the social environment.

Thus, conflict resolution practices in Bandung reflect the existence of living law, which is alive and functioning effectively in society. These empirical findings reinforce the view that law operates not only through formal state mechanisms, but also through social norms that are born and maintained by the community itself.

Living Law and the Gap between Written Law and Social Practice

Empirical methods also reveal a gap between normative law and social reality. In some cases, Bandung residents choose informal mechanisms because formal law is perceived as slow, expensive, and less sensitive to local values. This finding aligns with empirical research findings that suggest that legal effectiveness is strongly influenced by legal culture and public perceptions of legal institutions.

Through field observations and interviews, empirical research can map the sociological reasons behind people's preference for living law, thus providing a more comprehensive picture of the operation of law in social life.

Methodological Implications

By using empirical legal research methods, living law is no longer understood as an abstract concept but as a social fact that can be analyzed systematically. This approach enables researchers to: Identify social norms that function as law; Assessing the level of public compliance with these norms; Assessing their relevance to positive law and national legal policy. This confirms the strategic role of empirical methods in bridging the gap between law on the books and law in action, especially in urban communities like Bandung, which have a plurality of values and social practices.

The gap between law on the books and law in action is a common phenomenon in legal practice in Indonesia. Law on the books refers to the law as written in statutory regulations, while law in action reflects how the law is actually implemented and complied with in social life. In many cases, laws and regulations are not effectively implemented because the substance of the legal norms is not aligned with the values, customs, and interests of the local community.

This inconsistency causes positive law to lose its sociological validity, even though it remains legally valid. People tend to ignore written legal norms deemed irrelevant or even giving rise to injustice, and turn to social norms that exist and develop within their environment. In such circumstances, living law serves as the primary reference for regulating social relations, resolving conflicts, and maintaining social order.

Empirical legal research shows that living law norms are often more effective than state law because they possess strong social legitimacy. Public compliance with living law is driven not by the threat of formal sanctions, but by collective awareness, social pressure, and shared moral values. This aligns with the view that legal effectiveness is greatly influenced by the level of social acceptance of those legal norms.

Furthermore, Eugen Ehrlich emphasized that the center of legal development lies not in legislation or court decisions, but in society itself. Living law grows out of everyday social practices and reflects the real needs of society. Therefore, state law that ignores living law has the potential to become "dead" law in practice.

Thus, the gap between law on the books and law in action emphasizes the importance of an empirical approach in legal research. This approach allows researchers to understand how law actually works in society and also provides a basis for legislators to formulate legal policies that are more responsive to social values and realities.

In empirical legal research, the validity of law is understood as the result of the interaction between written legal norms and the social reality in which they are applied. This approach positions law as a social phenomenon influenced by various non-judicial factors. Through empirical research, it can be explained that the acceptance or rejection of a legal norm in society is not solely determined by its formal binding force, but also by its suitability to the community's social conditions.

Non-legal factors influencing the validity of the law include the following: 1) Cultural factors, namely the value systems, customs, and traditions that exist within society and serve as guidelines for social behavior. Legal norms that are inconsistent with local culture are often ineffectively enforced, as people prefer to adhere to rules derived from shared values. Empirical research shows that cultural norms and customs function as living law because they possess strong social legitimacy and are collectively internalized by society. 2) Social structural factors, related to patterns of social relations, kinship systems, and the roles of influential social actors within the community. In many societies, traditional figures, religious figures, or local leaders possess more effective social authority in regulating community behavior than formal legal authorities. An empirical approach allows researchers to understand how these social structures shape legal compliance and strengthen the validity of living law in practice. 3) Economic factors, which reflect the welfare of the community and access to formal legal institutions. Economic limitations are often the primary reason people do not

utilize state legal mechanisms, which are considered expensive and complicated. In such situations, dispute resolution mechanisms based on social norms and local customs are preferred because they are considered efficient and appropriate to community needs. Empirical research shows that economic factors directly influence the effectiveness of law in society. 4) Community legal awareness, which includes legal knowledge, understanding of the content of norms, and community attitudes toward the law. Legal norms that are not understood or perceived as fair tend to be disobeyed. Conversely, social norms that arise from experience and collective community awareness are more easily accepted and complied with. Through empirical research, the level of community legal awareness can be measured more objectively and contextually.

By considering these non-judicial factors, the empirical legal research method not only describes the reality of legal practice but also explains the sociological reasons behind the effectiveness or failure of a legal norm. This approach emphasizes that the validity of law is strongly influenced by the social acceptance of that legal norm. Therefore, empirical legal research plays a crucial role in uncovering the existence of living law and bridging the gap between law on the books and law in action.

4. CONCLUSION

Empirical legal research plays a crucial role in uncovering living law in society. This approach allows law to be understood as a dynamic social reality, not simply a collection of written norms. Through empirical research, gaps between normative law and legal practice, as well as social factors influencing legal effectiveness, can be identified. Thus, empirical legal research is a relevant instrument in the development of legal science, particularly in formulating legal policies that are more responsive to the needs and realities of society. Understanding living law through an empirical approach is expected to encourage the creation of a legal system that is not only formally legitimate but also effective and socially just.

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