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Gender-responsive sentencing for women defendants in Indonesia: Integrating living law and feminist legal reasoning

Abdul Mutalib[1], Pujiyono[1], Sukirno[1], Rahmat Hi. Abdullah[1,2*], Ota Musashi[3]

[1] Universitas Diponegoro, Semarang, Central Java, Indonesia
[2] Institut Agama Islam Negeri Ternate, North Maluku, Indonesia
[3] University of New South Wales, Sydney, Australia

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Abstract:

Sentencing women defendants in Indonesia risks overlooking experiences of violence, unequal power relations, and caregiving responsibilities. The recognition of customary law also requires scrutiny to prevent the reinforcement of gender discrimination in criminal judgments. This study aims to formulate a normative-prescriptive framework for gender-responsive sentencing of women defendants by systematically interpreting Articles 2 and 54 of Indonesia's National Criminal Code. The study employs a normative juridical method, drawing on statutory, conceptual, and doctrinal-analytical approaches. Legal materials are analyzed qualitatively through grammatical, teleological, and systematic interpretation to develop an accountable gender-responsive sentencing model. The findings reveal three main points. First, Article 2 conditionally recognizes *living law*, subjecting customary norms to constitutional and non-discrimination principles. Second, feminist legal reasoning applied to Article 54 allows consideration of socioeconomic circumstances, the consequences of punishment, victim forgiveness, community legal values, and relevant experiences of victimization, unequal power relations, and caregiving responsibilities. Third, the study develops a four-component model comprising the identification of customary legal norms, assessment of gender-related circumstances, formulation of integrated legal reasoning in sentencing, and accountability safeguards. Gender-responsive sentencing requires constitutional scrutiny of customary norms and a proportionate consideration of defendants' circumstances, supported by transparent legal reasoning, without compromising the principles of legality, criminal responsibility, or victims' rights. In practical terms, the proposed model could inform the development of judicial checklists and judicial training to assess customary norms, consider gender-related circumstances, and strengthen accountability in sentencing decisions, although further empirical validation remains necessary.

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***Corresponding author:** Rahmat Hi. Abdullah, Doctor of Law Program, Faculty of Law, Universitas Diponegoro, Semarang, Central Java, Indonesia; Institut Agama Islam Negeri Ternate, Ternate, North Maluku, Indonesia e-mail: abdullahrahmat@iain-ternate.ac.id

INTRODUCTION

Women defendants in Indonesia risk receiving sentences that insufficiently consider histories of violence, unequal power relations, and economic constraints relevant to their cases. This risk arises when sentencing focuses solely on the offense without examining the offender's relevant circumstances as established in the case. Munro et al. (2024) emphasize the importance of coercive control in domestic violence cases, while Tubex and Gately (2025) highlight the relationship between victimization, structural barriers, and women's pathways into imprisonment. Komnas Perempuan (2025) reported 10,098 women prisoners in April 2025 and 106 complaints of gender-based violence involving women in conflict with the law throughout 2024, including 15 cases involving sexual violence and torture during investigations. Komnas Perempuan (2021) also reported that 36% of 120 service organizations documented the criminalization of domestic violence victims. Although these figures represent different categories and do not indicate that all defendants have experienced victimization, they underscore the need for contextual assessment under Article 54 and scrutiny of customary norms under Article 2 of the National Criminal Code, without overlooking criminal responsibility or victims' rights.

Previous studies can be classified into three groups. First, research on *living law* examines substantive legality, recognition of customary law, legal certainty, and formalization through regional regulations (Gregorio et al., 2024; Tongat, 2022; Valerina & Rismana, 2024; Febrianty et al., 2023; Masyhar et al., 2025). Second, gender justice scholarship addresses the protection of victims of sexual violence, femicide, restorative justice, and structural barriers faced by women within the criminal justice system (Adyan & Anditya, 2025; Barr, 2023; Österman & Masson, 2018; Salamor et al., 2024; Zaltina & Nurtjahyo, 2024). Third, studies on sentencing reform examine the National Criminal Code's underlying paradigm, substantive justice, alternatives to imprisonment, sentencing disparities, and the harmonization of criminal sanctions (Faisal et al., 2024; Djatmika et al., 2025; Hadi et al., 2025; Prabawani et al., 2025; Purwanti et al., 2025). However, the reviewed literature has not integrated constitutional and non-discrimination scrutiny of customary norms with the assessment of gender-related circumstances and accountability in sentencing decisions. The novelty of this study lies in developing a normative-prescriptive model linking Articles 2 and 54 of the National Criminal Code through feminist legal reasoning, incorporating five indicators of gender responsiveness in customary norms, five contextual factors concerning women defendants, and four integrative components.

This study aims to formulate a normative-prescriptive framework for gender-responsive sentencing of women defendants by systematically interpreting Articles 2 and 54 of the National Criminal Code. It focuses on the limits of recognizing customary criminal law under constitutional and non-discrimination principles and on assessing women's personal and structural circumstances. The study addresses two questions: how do these provisions provide a normative basis for gender justice in sentencing women defendants, and how can feminist legal reasoning integrate scrutiny of customary norms with the assessment of gender-related circumstances into a proportionate and accountable sentencing model? Theoretically, the study connects *living law*, feminist legal theory, and individualized sentencing within a framework of legal reasoning. Practically, it proposes four components: identification of customary norms, assessment of gender-related circumstances, formulation of integrated legal reasoning in sentencing, and accountability safeguards for judicial decisions. The model could inform judicial guidelines for considering case-specific facts, maintaining proportionality in sentencing, and protecting victims' rights, although empirical validation remains necessary.

The central argument of this study rests on the distinct normative functions of Articles 2 and 54 of the National Criminal Code, which can be linked through integrative legal reasoning. Article 2 conditionally recognizes customary criminal law subject to constitutional scrutiny, whereas Article 54 governs sentencing considerations, including offenders' circumstances and community legal values. This relationship is important because applying customary norms without scrutiny may perpetuate discrimination, while sentencing without assessing gender-related circumstances risks undermining substantive justice. The study draws on Ehrlich's (1936) concept of *living law* to understand community norms, Chamallas's (2013) feminist legal theory and Bartlett's (1990) feminist legal methods to identify gender inequalities, and the doctrine of *daad-dader strafrecht* to balance consideration of the offense and the offender's circumstances. Accordingly, the study argues that scrutiny of customary norms and assessment of gender-related circumstances can be integrated into transparent, proportionate, and non-discriminatory sentencing considerations while respecting the principle of legality, criminal responsibility, and victims' rights.

METHOD

Research Approach

This study employs a normative juridical method combining statutory, conceptual, and doctrinal-analytical approaches to examine legal norms, principles, and doctrines (Marzuki, 2017). The statutory approach examines Articles 2 and 54 of Law No. 1 of 2023 on the National Criminal Code, considering customary criminal law adjustments under Law No. 1 of 2026 on Penal Adjustments and implementing provisions in Government Regulation No. 55 of 2025, alongside Article 5(1) of Law No. 48 of 2009, Law No. 12 of 2022, and Supreme Court Regulation No. 3 of 2017. The conceptual approach addresses living law (Ehrlich, 1936), feminist legal theory (Chamallas, 2013; Savitri, 2008), and individualized sentencing, balancing the offense and offender's circumstances. The doctrinal-analytical approach synthesizes these sources by identifying normative foundations, interpreting legal provisions, assessing gender-related circumstances, and formulating a normative-prescriptive model for gender-responsive sentencing.

Legal Materials and Selection Criteria

Materials were selected for relevance to the sentencing of women defendants, normative status, and legal validity. Primary materials comprise the 1945 Constitution of the Republic of Indonesia; Laws No. 1 of 2023, No. 1 of 2026, No. 48 of 2009, No. 12 of 2022, No. 23 of 2004, No. 7 of 1984 (ratifying CEDAW), and No. 12 of 2005 (ratifying the ICCPR); Government Regulation No. 55 of 2025; and Supreme Court Regulation No. 3 of 2017. Ratified CEDAW and ICCPR provide international human rights references; the *Bangkok Rules* provide non-binding international standards. Secondary materials include legal textbooks, doctrines, and academic articles on *living law*, feminist legal theory, legal pluralism, and sentencing, chosen for relevance, credibility, and recency, prioritizing works since 2018 while retaining classical theories. Tertiary materials clarify terminology. Qualitative analysis of all materials informed model development.

Analytical Indicators and Interpretive Techniques

The analysis proceeds in four stages. First, *living law* is examined for local applicability, for the absence of Criminal Code provisions regulating the relevant conduct, and for compliance with the requirements for recognizing customary criminal offenses under Government Regulation No. 55 of 2025. Compatibility with Article 2(2) is assessed against Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by

the community of nations. Gender responsiveness is evaluated through five indicators derived from normative synthesis: nondiscrimination, recognition of unequal power relations, freedom from coercion, protection against gender stereotypes, and respect for women's autonomy.

Second, women defendants' gender-related circumstances are assessed through histories of gender-based violence, unequal power relations, socioeconomic constraints, caregiving responsibilities, and sentencing consequences for children and dependants, drawing on Article 54(1) and (2), Article 51 of the National Criminal Code, and the *Bangkok Rules* (UNGA, 2010). Third, these findings are integrated into a sentencing framework addressing culpability, proportionality, and victims' rights. Fourth, accountability safeguards are formulated based on the clarity of legal grounds, the relevance of case-specific facts, the prohibition of gender stereotypes under Supreme Court Regulation No. 3 of 2017, and the transparency of legal reasoning.

Grammatical, teleological, and systematic interpretation (Mertokusumo, 2014) is employed to examine the meaning, objectives, and interrelationships of legal provisions. Normative consistency is assessed across legislation, legal doctrines, and international human rights principles. The qualitative analysis applies no numerical weighting and aims to ensure argumentative coherence and traceability rather than measure empirical effectiveness.

Methodological Limitations

This study has three limitations. First, the normative juridical approach does not capture how judges apply *living law* and consider gender-related circumstances in cases involving women defendants. Second, the indicators used to scrutinize customary norms and assess gender-related circumstances are derived from normative synthesis and have not been tested through judicial decision analysis or case simulations. Consequently, the model's consistency and practical feasibility remain empirically unverified. Third, variations in customary norms and social conditions limit the uniform application of the model across cases. Therefore, further research is needed through judicial decision analysis, case simulations, expert assessments, and interviews with judges, prosecutors, lawyers, and women defendants to evaluate the model's feasibility, potential biases, and consistency of application.

RESULTS AND DISCUSSION

Result

Living law and gender justice: Normative recognition and constitutional limits

Normative analysis indicates that Article 2 of Law No. 1 of 2023 on the National Criminal Code recognizes the law living in society (*living law*) as a source of substantive criminal law, subject to certain limitations. This recognition is consistent with Ehrlich's (1936) view of law as social norms that develop within communities. However, Article 2(2) restricts its applicability to areas where such law exists, provided that the relevant conduct is not regulated under the Criminal Code, and requires compatibility with Pancasila, the 1945 Constitution, human rights, and general principles of law. From the perspective of feminist legal theory, these limitations are important because customary practices may reproduce unequal power relations, stereotypes, and discrimination against women (Chamallas, 2013; Savitri, 2008).

Drawing on the principle of non-discrimination under Article 1 of CEDAW, ratified through Law No. 7 of 1984, and feminist legal theory, this study formulates five evaluative indicators of gender responsiveness: non-discriminatory treatment, recognition of unequal

power relations, freedom from coercion, protection against sanctions and stigma based on gender stereotypes, and respect for women's autonomy. These five indicators are derived from the author's normative synthesis rather than requirements explicitly stipulated in Article 2 of the National Criminal Code. They are used to assess the potential for protection or discrimination within customary practices.

The recognition of *living law* is further operationalized through Government Regulation No. 55 of 2025, which establishes the criteria and procedures for recognizing customary criminal offenses through regional regulations. Article 7 regulates the proposal and examination of customary criminal offenses, while Article 11 requires meaningful participation by customary law communities. These provisions provide opportunities to evaluate women's representation and participation in the formulation of customary norms, although participation does not necessarily guarantee gender equality. Meanwhile, Article 54(1)(k) of the National Criminal Code identifies the legal values and sense of justice prevailing in society as one of the considerations in sentencing. The distinct functions of these provisions demonstrate opportunities to integrate *living law* and gender justice into the sentencing of women defendants.

Table 1
Living Law Recognition and Gender-Responsive Screening: Indonesia's Criminal Code

No.	Normative Basis	Analytical Findings	Implications for Gender Justice
1	Article 2(1) of the National Criminal Code	Recognition of *living law* expands the sources of criminal law by accommodating customary criminal offenses not regulated under the Criminal Code.	Recognition of customary norms does not automatically legitimize practices that harm or discriminate against women.
2	Article 2(2) of the National Criminal Code	The applicability of *living law* is limited by its territorial scope, the absence of relevant provisions in the Criminal Code, and compatibility with Pancasila, the 1945 Constitution, human rights, and general principles of law.	Provides a normative basis for assessing and excluding customary practices that conflict with equality and non-discrimination.
3	CEDAW and feminist legal theory	The principle of non-discrimination is developed into evaluative indicators concerning equal treatment, power relations, voluntariness, gender stereotypes, and women's autonomy.	Establishes a gender-based screening framework to distinguish gender-responsive customary practices from potentially discriminatory practices.
4	Government Regulation No. 55 of 2025	Recognition of customary criminal offenses requires compliance with normative criteria, examination, the enactment of regional regulations, and participation by customary law communities.	Provides opportunities to assess women's representation and participation in the recognition and formulation of customary legal norms.
5	Article 54(1)(k) of the National Criminal Code	The legal values and sense of justice prevailing in society constitute one of the factors that must be considered in sentencing.	Provides a normative basis for considering non-discriminatory community legal values when sentencing women defendants.

Source: Author's normative analysis based on Law No. 1 of 2023, Law No. 7 of 1984, Government Regulation No. 55 of 2025, and feminist legal theory, 2026.

Table 1 demonstrates that the recognition of *living law* is limited and requires scrutiny based on constitutional and non-discrimination principles. However, the unwritten, localized, and diverse nature of customary law continues to pose challenges to legal certainty and consistency in its application (Komeni & Widjajanti, 2024; Masyhar et al., 2025). These conditions underscore the need for gender-based normative screening to

ensure that the recognition of customary practices does not legitimize unequal power relations, stereotypes, or discrimination against women.

The analysis indicates that customary practices involving forced forgiveness, the justification of violence, or the imposition of sanctions based on gender stereotypes may conflict with non-discrimination principles. Conversely, customary deliberation and restorative dispute resolution may be considered more gender-responsive when they ensure voluntariness, equality between the parties, and the protection of women's rights, while respecting applicable legal provisions and victims' interests. Accordingly, this finding establishes a gender-based normative screening framework that distinguishes between customary practices that may support justice and those that are discriminatory. This framework provides the foundation for integrating *living law* and feminist legal reasoning into the sentencing of women defendants under Article 54 of the National Criminal Code.

Feminist legal reasoning in gender-responsive sentencing under article 54

Normative analysis of Article 54 of the National Criminal Code indicates that it provides a basis for integrating gender-related contextual considerations into the sentencing of women defendants. Article 54(1)(g) and (h) require judges to consider the offender's personal history, socioeconomic circumstances, and the impact of punishment on the offender's future. Meanwhile, subparagraphs (j) and (k) address considerations concerning forgiveness by victims and the legal values and sense of justice prevailing in society. Article 54(2) also allows judges to refrain from imposing a sentence or measure based on the minor nature of the offense, the offender's personal circumstances, or the circumstances surrounding the offense, while taking justice and humanity into account. When interpreted systematically alongside the sentencing objectives established in Article 51, these provisions provide a normative foundation for assessments that consider both the offense and the offender's individual circumstances.

From the perspective of feminist legal theory, the circumstances of women defendants must be understood in light of their experiences and the structural inequalities that may influence their actions (Chamallas, 2013; Savitri, 2008). This study identifies five relevant contextual factors: histories of gender-based violence, unequal power relations, socioeconomic constraints, caregiving responsibilities, and the consequences of sentencing for children and dependants. This approach is consistent with the principle of individualized sentencing and the *Bangkok Rules*, particularly Rules 61 and 64, which emphasize consideration of women's backgrounds, caregiving responsibilities, and the possibility of non-custodial sentences in light of the circumstances of each case (UNGA, 2010). Such reasoning is not intended to eliminate criminal responsibility on the basis of gender but rather to ensure that assessments of culpability and sentencing are proportionate without overlooking relevant structural circumstances.

Table 2
Normative Foundations of Feminist Legal Reasoning in Sentencing Women Defendants

No.	Legal Provision	Normative Focus	Implications for Gender-Responsive Sentencing
1	Article 54(1)(g)	The offender's personal history and social and economic circumstances.	Provides scope for considering relevant experiences of violence, economic dependence, and structural constraints.
2	Article 54(1)(h)	The impact of punishment on the offender's future.	Allows assessment of the consequences of sentencing for the defendant's future well-being, caregiving responsibilities, and family obligations.
3	Article 54(1)(j)	Forgiveness by the victim and/or the victim's family.	Allows consideration of forgiveness without overlooking voluntariness, unequal power relations,

			and the protection of victims' rights.
4	Article 54(1)(k)	Legal values and the sense of justice prevailing in society.	Connects sentencing considerations with *living law* that is consistent with equality and non-discrimination principles.
5	Article 54(2)	The offender's personal circumstances, circumstances of the offense, justice, and humanity.	Provides the possibility of judicial pardon (*rechterlijk pardon*) based on the circumstances of the case and legally accountable considerations.
6	Articles 5–6 of Supreme Court Regulation No. 3 of 2017	Prohibition of gender stereotypes and legal interpretation that ensures equality.	Strengthens legal reasoning that considers gender inequalities without legitimizing discrimination through customary practices.

Source: Author's normative analysis based on Law No. 1 of 2023, Supreme Court Regulation No. 3 of 2017, and the principles of the Bangkok Rules, 2026.

Table 2 demonstrates that Article 54 provides a normative foundation for integrating women's structural experiences into sentencing considerations. The provisions concerning socioeconomic circumstances and the impact of punishment on the offender's future allow judges to assess women defendants' circumstances in context, while victim forgiveness and community legal values establish connections to gender-responsive *living law* practices. This interpretation is reinforced by Articles 5 and 6 of Supreme Court Regulation No. 3 of 2017, which prohibit gender stereotypes and direct judges to interpret written and unwritten law in accordance with the principles of equality and non-discrimination. Accordingly, feminist legal reasoning considers not only defendants' personal circumstances but also examines how power relations and structural inequalities affect criminal responsibility and sentencing decisions.

However, such integration remains subject to normative limitations. Histories of victimization, economic pressures, and caregiving responsibilities do not automatically negate culpability or justify sentence reductions. Instead, they must be assessed in light of the facts established at trial, the degree of culpability, the victims' interests, and sentencing objectives. Similarly, victims' right to recovery under Article 70 of Law No. 12 of 2022 on Sexual Violence Crimes must not be equated with defendants' right to contextualized sentencing considerations. The possible application of *rechterlijk pardon*, probationary sentences, or community service sentences must also satisfy their respective legal requirements. Thus, this finding establishes a framework of feminist legal reasoning that integrates women's structural circumstances, non-discriminatory community legal values, and the principle of proportionality in sentencing. This framework provides the foundation for developing the gender-responsive sentencing model presented in the following finding.

An integrated model of gender-responsive sentencing for women defendants

Based on a synthesis of analyses of Articles 2 and 54 of the National Criminal Code and feminist legal theory, this study develops a gender-responsive sentencing model that integrates the law as it is lived in society (*living law*) and feminist legal reasoning. The model consists of four interrelated components: identification of gender-responsive *living law*, assessment of the gender-related circumstances of women defendants, formulation of integrated legal reasoning in sentencing, and accountability safeguards for judicial decisions. These four components establish a normative-prescriptive framework to ensure that community legal values are not used to justify discrimination and that women's structural circumstances are proportionately considered in sentencing.

The model is operationalized by verifying customary norms under Article 2(2) of the National Criminal Code and Government Regulation No. 55 of 2025, alongside an assessment of five gender-related factors: histories of violence, unequal power relations, socioeconomic constraints, caregiving responsibilities, and the impact of imprisonment on dependants. This assessment draws on Article 54 of the National Criminal Code and the principles of the *Bangkok Rules*, particularly Rules 61 and 64 (UNGA, 2010). The findings from both assessments are subsequently integrated into written judicial reasoning, taking into account the principles of equality, non-discrimination, and accountability, as emphasized in Supreme Court Regulation No. 3 of 2017. The model's components and operational indicators are presented in Table 3.

Table 3
Integrated Gender-Responsive Sentencing Model: Living Law, Feminist Legal Reasoning

No.	Components	Functions	Operational Indicators and Legal References
1	Identification of Gender-Responsive *Living Law*	Identifies and assesses the suitability of customary norms relevant to the case.	Verification through customary legal sources, expert testimony, community leaders, and customary institutions; assessment of compliance with Article 2(2) of the National Criminal Code and Government Regulation No. 55 of 2025; and screening of discriminatory practices (Halawa, 2025; Nova, 2023).
2	Assessment of Gender-Related Circumstances of Women Defendants	Operationalizes the consideration of women's personal circumstances and structural conditions in sentencing.	Assessment of five factors: histories of violence, power relations, socioeconomic constraints, caregiving responsibilities, and the impact of imprisonment on dependants, based on Article 54(1)(g) and (h), Article 54(2), and the *Bangkok Rules* (UNGA, 2010, Rules 61 and 64).
3	Formulation of Integrated Legal Reasoning in Sentencing	Connects *living law*, gender-related circumstances, and sentencing decisions within judicial legal reasoning.	Written judicial reasoning addresses the relevance of community legal values, analysis of gender-related circumstances, and the legal basis for sentencing, including the possibility of judicial pardon (*rechterlijk pardon*), probationary sentences, or community service sentences, subject to applicable legal requirements.
4	Accountability Safeguards	Prevents arbitrariness and promotes transparency and legal certainty.	Assessment based on verified facts established during trial, prohibition of gender stereotypes under Articles 5–6 of Supreme Court Regulation No. 3 of 2017, transparent legal reasoning, and judicial review through appeals and cassation in accordance with applicable legal provisions.

Source: Author's normative synthesis based on Law No. 1 of 2023, Law No. 1 of 2026, Government Regulation No. 55 of 2025, Supreme Court Regulation No. 3 of 2017, and the Bangkok Rules, 2026.

Table 3 demonstrates that the four components establish a gender-responsive sentencing framework that connects the recognition of *living law* with the assessment of women defendants' structural circumstances and legally accountable judicial reasoning. This integration positions the scrutiny of customary norms and the assessment of gender-related circumstances as the foundation for formulating sentencing considerations, while accountability safeguards ensure consistency with the principles of legality, equality, and non-discrimination. Accordingly, feminist legal reasoning is employed not only to identify women's vulnerabilities but also to assess their relevance to sentencing decisions based on established facts and applicable legal provisions.

The principal contribution of this study lies in developing a normative-prescriptive model that integrates *living law*, feminist legal reasoning, and judicial accountability into the

sentencing of women defendants. The model is not intended to automatically reduce sentences based on gender or circumstances of vulnerability. Rather, it offers an assessment framework that considers the degree of culpability, individual circumstances, victims' interests, and proportionality in sentencing. The application of judicial pardon (*rechterlijk pardon*), probationary sentences, or community service sentences remains subject to the fulfillment of their respective legal requirements. As the model was developed through normative analysis and has not been tested in judicial practice, further validation through the analysis of court decisions is necessary to assess its applicability and consistency.

Discussion

This study identifies three main findings regarding the integration of living law and feminist legal reasoning in sentencing women defendants. First, Article 2 of the National Criminal Code recognizes living law within certain limitations and provides a constitutional basis for assessing customary practices against the principles of equality and nondiscrimination. Second, Article 54 provides scope for gender-responsive sentencing by considering socioeconomic circumstances, the impact of punishment on the offender's future, victim forgiveness, prevailing community legal values, and the defendant's personal circumstances. Feminist legal reasoning enables consideration of histories of victimization, unequal power relations, and caregiving responsibilities. Third, this study develops an integrative model comprising four components: the identification of customary norms, the assessment of gender-related circumstances, the formulation of integrative legal considerations, and the accountability mechanisms. This normative-prescriptive model offers a framework for proportionate, nondiscriminatory, and accountable sentencing, although its practical application still requires empirical validation.

The social context of this study is reflected in cases involving women who come into conflict with the law and have histories of violence, coercive control, or economic vulnerability that may remain unrecognized in sentencing decisions (Munro et al., 2024; Tubex & Gately, 2025). In Indonesia, Komnas Perempuan (2025) reported 10,098 women prisoners as of April 2025 and 106 complaints of gender-based violence involving women in conflict with the law throughout 2024. An earlier report also documented the criminalization of victims of domestic violence (Komnas Perempuan, 2021). These figures represent different categories and do not indicate that all women prisoners have experienced victimization. Nevertheless, this context highlights the need for legal reasoning that extends beyond individual culpability (Savitri, 2008; Kuswandi & Madianwati, 2025). This study addresses this need by requiring the examination of customary norms under Article 2 when customary criminal law is invoked, alongside an assessment of the offender's circumstances under Article 54. As discussed by McPherson (2024), histories of victimization should be assessed according to their relevance without eliminating criminal responsibility, thereby enabling sentencing decisions to be more sensitive to gender inequalities.

Theoretically, this study brings together Ehrlich's (1936) concept of living law, Chamallas's (2013) critique of legal neutrality, and Bartlett's (1990) feminist legal reasoning methodology. This integration suggests that the existence of customary norms does not automatically justify their application. Article 2 of the National Criminal Code requires local applicability, the absence of relevant provisions in the Criminal Code, and compliance with constitutional limitations. Such examination prevents the recognition of customary practices that perpetuate discrimination and women's vulnerability. Meanwhile, the balance between the offense and the offender, together with the principle of individualized sentencing (Muladi & Arief, 2010; Hiariej & Santoso, 2025), supports an interpretation of Article 54 as

providing scope for considering women defendants' circumstances insofar as they are relevant to the facts of the case. The tension between recognizing community legal norms and ensuring legal certainty, as highlighted by Tongat (2022) and Valerina and Rismana (2024), underscores the risks of judicial discretion without clear parameters. Accordingly, the theoretical contribution of this study does not lie in automatically combining customary norms with gender perspectives, but in establishing a sequence of normative assessment, gender-context analysis, sentencing considerations, and accountability mechanisms that maintains a balance between substantive justice and legality.

A fundamental lesson from this study is that justice for women defendants cannot be achieved solely through the uniform application of legal rules. Laws that appear neutral may overlook inequalities in social experiences, as criticized in feminist legal theory (Chamallas, 2013; Savitri, 2008). However, sensitivity to women's experiences should not lead to the assumption that every defendant is a victim or that vulnerability necessarily constitutes a mitigating factor. Discussions of individualized sentencing by Plesničar (2013) and Dancig-Rosenberg and Dagan (2019) demonstrate the importance of considering the offender's circumstances alongside the seriousness of the offense. This study therefore emphasizes the need to avoid two forms of oversimplification: accepting customary norms merely because they are practiced within a community and assessing criminal conduct without examining relevant gender-related circumstances. Judicial reasoning can be considered gender-responsive only when the reasons for accepting or rejecting customary norms, the weight assigned to personal circumstances, and the protection of victims' rights are clearly articulated, allowing the decision to be examined and critically evaluated by the parties involved and the public.

Previous studies share concerns about the limitations of gender-neutral approaches but differ in their objects of analysis and research outcomes. Campos and Bussinguer (2023) examined equality and proportionality in the sentencing of women in Brazil. While the present study similarly recognizes gender-related circumstances as relevant considerations, it grounds its analysis in Article 54 of the National Criminal Code. Seear and Mulcahy (2022) identified the neglect of gender in a human rights examination of Australian drug policies, whereas Parodi (2025) demonstrated variations in how Chilean judges understand gender perspectives. Unlike these studies, which focus on policy processes and judicial practices, the present study proposes a structure of legal reasoning that can be assessed through normative analysis. Nurlaelawati and Witriani (2023) demonstrated the use of local practices in religious courts to accommodate women's rights. The present study extends this inquiry to criminal law by examining when customary norms may legitimately be recognized and how the circumstances of women defendants should be assessed. Its scholarly contribution lies in developing a four-component model that connects the limits of living law applicability, individualized sentencing, and accountability without claiming practical effectiveness that has yet to be empirically established.

These findings suggest three areas for further action. First, in judicial practice, judges should use a checklist to assess the applicability and constitutional compatibility of customary criminal norms when Article 2 is invoked, while documenting histories of victimization, power relations, and caregiving responsibilities that are demonstrably relevant to sentencing under Article 54. Such assessments must also consider the degree of culpability and victims' rights. Second, at the policy level, the Supreme Court, in collaboration with judicial training institutions and Komnas Perempuan, could develop training programs, standardized formats for documenting gender-related circumstances, and examples of judicial reasoning based on the model's four components. Third, in the field of

scholarly development, researchers should assess the model's feasibility through judicial decision reviews, case simulations, and feedback from judges and legal advocates. Such evaluations should assess consistency in application, the risk of stereotyping, and the transparency of judicial reasoning before the model is considered for broader use as a guideline. Initial implementation should therefore take the form of limited pilot testing rather than automatic nationwide adoption.

CONCLUSION

Overall, this study demonstrates that gender-responsive sentencing requires an integration of the limited recognition of living law, individualized sentencing, and accountability in judicial reasoning. Article 2 of the National Criminal Code permits the conditional application of customary criminal law, requiring that proposed norms be assessed against constitutional limitations and the principle of nondiscrimination. Article 54 provides scope for considering the offender's personal and socioeconomic circumstances, the impact of sentencing, and victim forgiveness. Histories of victimization, unequal power relations, and caregiving responsibilities may also be considered insofar as they are relevant to the case and supported by evidence. The synthesis of these three findings produces a four-component model: identification of customary norms, assessment of gender-related circumstances, formulation of integrative legal considerations, and accountability mechanisms. The central finding is that substantive justice cannot be achieved solely through the recognition of customary norms or judicial discretion, but requires transparent and proportionate legal reasoning that continues to respect criminal responsibility and victims' rights.

Theoretically, this study does not establish a new theory but develops a normative-prescriptive framework by integrating the perspectives of living law, feminist legal reasoning, and the balance between the offense and the offender's circumstances. Its contribution lies in translating the relationship between legal pluralism, substantive justice, and legal certainty into four components that can be used to evaluate sentencing arguments. In practical terms, this model may serve as a basis for developing judicial checklists to assess customary norms, examine gender-related circumstances, and explain the weight assigned to sentencing considerations. Judicial training institutions and policymakers may also use the model to develop training programs and guidelines for preparing structured, transparent, and publicly reviewable judicial decisions. However, these benefits remain potential until the model's application is evaluated in actual cases.

This study has three limitations that provide directions for future research. First, the normative-doctrinal approach does not capture how judges apply Articles 2 and 54 in practice. Future research should therefore analyze judicial decisions involving women defendants, particularly cases in which customary law is invoked or histories of victimization are presented, to assess patterns of judicial reasoning and sentencing consistency. Second, the clarity and feasibility of the model's four components have not yet been tested. Pilot testing through case simulations, interviews with judges, and expert assessments is needed to evaluate consistency, potential stereotyping, and transparency in judicial reasoning. Third, the model remains focused on Indonesia. Comparative studies involving countries with plural legal traditions are necessary to identify components that may be applicable across jurisdictions and the contextual adjustments required, including safeguards for victims' rights.

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The authors declare no conflicts of interest related to this research or its publication.

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Abdul Mutalib: Conceptualization; Data Curation; Formal Analysis; Methodology; Visualization; Writing Original Draft; Writing Review & Editing. **Pujiyono**: Formal Analysis; Visualization; Writing Review & Editing. **Sukirno**: Formal Analysis; Methodology; Validation; Writing Review & Editing. **Rahmat Hi Abdullah**: Conceptualization; Data Curation; Formal Analysis; Methodology; Writing Original Draft; Writing Review & Editing. **Ota Musashi**: Conceptualization; Formal Analysis; Writing Review & Editing.

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