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Integration of Customary Law and Restorative Justice in the Resolution of Criminal Offenses within Indigenous Communities

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Abstract

Customary law plays a crucial role in the social order of Indonesian society by maintaining social harmony within specific communities or groups. The dynamics and evolution of community life influence the development of customary criminal law. This study aims to examine in depth the role of customary law in supporting restorative justice processes for resolving criminal cases within indigenous communities. Specifically, the research seeks to understand the regulatory framework for restorative justice in these communities and to analyze the role of customary law in its implementation. Adopting a normative legal research methodology, the study employs both conceptual and statutory approaches. The findings indicate that first, the regulation of restorative justice for resolving cases in indigenous communities rests on a robust legal foundation-both constitutionally and within statutory law. Constitutionally, the recognition of the existence and rights of indigenous legal communities is affirmed in Article 18B , paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as in Law Number 1 of 2023 concerning the Criminal Code. Second, customary law plays a strategic role in implementing restorative justice within indigenous communities, supporting a case-resolution mechanism oriented toward restoration rather than merely imposing sanctions on the offender. Consequently, customary law functions not only as a norm governing community behavior but also as a conflict-resolution instrument possessing preventive, repressive, and restorative dimensions.

Keywords: Conflict; customary law; indigenous communities; restorative justice.

Abstrak

Hukum adat memainkan peran penting dalam tatanan sosial masyarakat Indonesia dengan menjaga keharmonisan sosial di dalam komunitas atau kelompok tertentu. Dinamika dan perkembangan kehidupan masyarakat memengaruhi perkembangan hukum pidana adat.

Penelitian ini bertujuan untuk mengkaji secara mendalam peran hukum adat dalam mendukung proses keadilan restoratif (restorative justice) untuk penyelesaian perkara pidana pada masyarakat adat. Secara khusus, penelitian ini berupaya memahami kerangka pengaturan keadilan restoratif pada masyarakat tersebut dan menganalisis peran hukum adat dalam implementasinya. Mengadopsi metodologi penelitian hukum normatif, studi ini menggunakan pendekatan konseptual dan peraturan perundang-undangan. Temuan penelitian menunjukkan bahwa pertama, pengaturan keadilan restoratif dalam penyelesaian perkara pada masyarakat adat berlandaskan pada dasar hukum yang kokoh—baik secara konstitusional maupun dalam peraturan perundang-undangan. Secara konstitusional, pengakuan atas keberadaan dan hak-hak masyarakat hukum adat ditegaskan dalam Pasal 18B ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, serta dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP). Kedua, hukum adat memegang peranan strategis dalam penerapan keadilan restoratif pada masyarakat adat, mendukung mekanisme penyelesaian perkara yang berorientasi pada pemulihan alih-alih sekadar menjatuhkan sanksi kepada pelaku. Konsekuensinya, hukum adat tidak hanya berfungsi sebagai norma yang mengatur perilaku masyarakat, tetapi juga sebagai instrumen penyelesaian konflik yang memiliki dimensi preventif, represif, dan restoratif.

Katakunci: Hukum adat; keadilan restoratif; konflik; masyarakat adat.

1 Introduction

Resolving crime cases in society often presents major challenges for the legal system, especially cases that occur in indigenous communities which have values and traditions that are different from the positive laws of the state. Customary law is a legal system whose existence consists of various living social rules, namely religious rules, moral rules, politeness rules and also legal rules which serve as guidelines or legal rules which function to regulate people's behavior so that it does not harm other people and themselves.

Customary law plays a very important role in the order of life within Indonesian society because it maintains social order in certain communities or groups. This system upholds relationships between individuals in groups, thereby creating a safe atmosphere and avoiding various conflicts. (Dewi, 2025). Customary law, as a law that is born, lives, and develops in society based on Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, is recognized as a legal system that applies in addition to the state legal system.(RI, n.d.)

Customary justice cannot be separated from the Indonesian legal system. The functioning of customary law and its institutions depends on constitutional recognition.(Syam et al., 2023) The recognition of customary law is expressed in Article 5 paragraph (1) and Article 50 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power. This provision requires judges to explore, follow, and understand the legal values and sense of justice that exist in society. In subsequent developments, the New Criminal Code, namely in Article 2, states that the recognition of the principle of legality, in the sense of written criminal law, does not reduce the validity of existing laws in society that determine that a person deserves to be punished even though the act is not regulated in statutory regulations.(Yoserwan, 2023)

The evolution of customary criminal law is closely connected to changes in the social dynamics of the community. Customary norms may undergo adaptation in response to shifting social, cultural, and economic circumstances. Accordingly, the development of customary criminal law represents an ongoing interaction between established traditions and contemporary societal demands, giving rise to a distinctive legal framework that remains responsive and adaptable to changing conditions.(Handayani & Prabowo, 2024) One of the main ways to integrate customary law principles is through the use of restorative elements that characterize it. Customary law emphasizes dialogue, deliberation, apology, symbolic compensation, and the restoration of relations between the perpetrator and the victim.(Dm, 2024)

On the other hand, the application of customary law in restorative justice also faces various challenges. One of the main challenges is the conflict between customary law and national law. In this process, restorative justice involves dialogue and negotiation. In restorative justice, criminal behavior is still seen as a violation of the law, but it is also primarily understood as a

violation of societal norms, in which the relationship among the perpetrator, the victim, and society is damaged. In the philosophy of restorative justice, the perpetrator must show remorse and guilt towards the victim so that the victim can see that regret and better understand the context of the perpetrator's crime.

In some cases, settlements through customary law are considered inconsistent with positive legal principles, thereby creating tension between the two legal systems. In addition, the lack of formal recognition of customary law in the national legal system often becomes an obstacle in integrating local values into a restorative justice approach.

This research was conducted to examine more deeply the role of customary law in supporting the restorative justice process in resolving crime cases in indigenous communities. This research also seeks to identify the challenges faced, as well as offer solutions and recommendations to optimize the application of customary law in the restorative justice system. Based on this description, this research aims to determine the arrangements for restorative justice in resolving crime cases in indigenous communities and to analyze the role of customary law in implementing restorative justice in indigenous communities.

2 Method

This research uses a type of normative legal research that focuses on studying law as norms or rules that regulate social life. Normative legal research was chosen because the main aim of this study is to analyze legal research methodology as a conceptual framework for understanding contemporary legal issues, not to test empirical hypotheses in the field. The research approach used includes a conceptual approach and a statutory approach. The conceptual approach is used to examine concepts, doctrines, and theories related to legal research methodology, including the development of normative, empirical, and interdisciplinary approaches in legal studies.(Marzuki, 2017) Meanwhile, the legislative approach is used to examine relevant positive legal norms as concrete examples in explaining the application of legal research methodology to contemporary legal issues.(Yulis, 2025)

3 Results and Discussion

Legal Basis for Restorative Justice Regulations in Indigenous Communities

Customary law is a legal system that is alive and contains contextual restorative justice values. In the context of efforts to reform national law, customary law can be a source of legal reform. Therefore, customary law can no longer be placed as a symbolic complement and subordinate. However, customary law is placed as a pillar of legal restoration which is a means of substantive justice. Reforms in national law must be integrated with local values and community needs. In this way, public confidence in the legal system, which has been declining for some time, will return again (Yuda & Hoesein, 2025).

In addition to formal judicial proceedings, criminal cases may also be resolved through non-litigation mechanisms. In cases involving offenses that are subject to complaint and where the parties do not dispute the underlying matter, resolution may be pursued before the case proceeds to trial, with the objective of reaching an alternative settlement outside the formal court system. Such an approach may prevent the dispute from escalating into prolonged litigation. Non-litigation resolution of criminal cases may involve the participation of a third party who facilitates the parties in reaching an equitable and mutually acceptable solution. Within customary communities, this mechanism may take the form of customary dispute resolution, particularly through deliberation and reconciliation aimed at restoring peace and social harmony.(Diras et al., 2024)

There are several classifications of actions that constitute acts that violate customary law, namely:(Soerjono Soekanto, 2020) a. Crimes that damage the basis of the structure of society, can be: (1) Crimes that are incestuous, namely that they enter into a marriage, even though there is a prohibition on marriage between them. The prohibition on marriage can be based on close blood ties and social structure (social stratification). (2) Crimes against life, property and society in general, namely in the form of: crimes against traditional heads; burning; betrayal. Based on the form of action that violates customary law, customary sanctions can take the form of: Compensation for material losses in various forms, such as being forced to marry a defiled girl; Payment of customary money to the

affected person in the form of sacred objects as compensation for spiritual losses; Salvation (sacrifices) to cleanse society of all supernatural impurities; Cover of shame, apology; Various forms of corporal punishment, up to the death penalty; Exile from society and placing people outside the legal order.

The resolution of criminal cases through customary law differs significantly from that of the state justice system. Customary law emphasizes a familial and restorative approach aimed at restoring social harmony and repairing relationships disrupted by criminal acts.(Panjaitan & Rahayu, 2024) Restorative justice has good goals to be achieved for victims of criminal acts, not solely relying on the goodness and interests of the perpetrators of criminal acts. As stated by Andrew Ashworth, the fundamental consideration in restoration is that justice for victims is the main goal in both the criminal justice and punishment systems. All parties involved, including the perpetrators, their families, victims and the community, are jointly involved in deliberations to provide appropriate responses in resolving the conflict.

In the Indonesian customary law system there is a dispute mediation forum that originates from the uniqueness of the community itself. If a dispute occurs, the people submit it to this forum to be resolved. This forum can also be called village justice.(Mufty, 2025) So far, the implementation of Restorative Justice in Indonesia has been based on discretion and diversion, which is an effort to divert the formal criminal justice process from being resolved through deliberation. Basically, resolving problems and disputes through deliberation is not something foreign to Indonesian society.

Even before the Dutch came to Indonesia, customary law, which is native Indonesian law, used deliberation to resolve all kinds of disputes, both civil and criminal, with the aim of restoring balance or restoring the situation. Where basically this system is in accordance with the objectives of the criminal justice system itself which were formulated by Madjono as follows: Preventing people from becoming victims of crime; Resolving crime cases that occur so that people are satisfied that justice has been upheld and the guilty have been punished; Ensure that those who have committed crimes do not repeat their crimes again.

In the perspective of reforming material criminal law, Law Number 1 of 2023 concerning the Criminal Law regulates the purpose of punishment . Article 51 states that the purpose of punishment is to "restore balance and bring a sense of security and peace in society." Furthermore, Article 54 regulates considerations in punishment, namely in letters i and j, stating that in punishment you must consider the impact of the criminal act on the victim or the victim's family and whether or not there is forgiveness from the victim and/or the victim's family.

The provisions regulated in Law Number 1 of 2023 indicate that the institution of forgiveness from the victim/or victim's family is a legal reason for reconciliation between the victim and the perpetrator of a crime. The peace between the perpetrator and the victim in the law enforcement process at every level of criminal case examination (investigation, prosecution and court trial) is the legal basis for the completion of the criminal case process through the principles of restorative justice.

The following are some of the legal bases for restorative justice in Indonesia which come from various national regulations and customary laws that are still recognized. Some of the main regulations include: The 1945 Constitution Article 18B paragraph (2) recognizes and respects the unity of customary law communities and their traditional rights; Law No. 39 of 1999 concerning Human Rights, guaranteeing the rights of indigenous peoples to carry out their legal traditions; The new Criminal Law (KUHP) (UU No.1 of 2023) accommodates a restorative justice approach in resolving minor criminal cases; Supreme Court Regulation (perma) No.2 of 2012 regulates the resolution of minor cases using restorative justice mechanisms; RI Prosecutor's Regulation No. 15 of 2020 regulates the termination of prosecution based on restorative justice in certain cases; National Police Chief Regulation No. 8 of 2018 regulates the application of restorative justice in handling criminal cases in the police. The following is a Restorative Justice process that can be carried out in several general mechanisms that can be applied, including: Victim offender; Conferencing; Circles; Victim assistance; Ex-offender assistance; Restitution; and Community service.

The Role of Customary Law in the Implementation of Restorative Justice within Indigenous Communities

The "restorative justice" approach is a model that functions as a framework for strategies to handle criminal cases. This approach is designed to overcome dissatisfaction with the current criminal justice system, which is characterized by a complex, lengthy, and inefficient standard criminal case resolution process that does not provide the justice or satisfaction desired by the parties involved . Resolving criminal acts through the implementation of customary law can be achieved through penal mediation, namely a "restorative justice" approach that emphasizes the direct involvement of perpetrators, victims, and the community. This approach interprets criminal acts as essentially attacks on society, individuals, and social relations. Thus, justice is interpreted as a process of identifying solutions to problems that arise in a criminal case, involving victims, the community , and perpetrators as crucial in efforts to repair, reconcile, and sustain these improvement efforts.(Mufty, 2025).

In the context of customary law in Indonesia, restorative justice is not only an integral part of dispute resolution practices based on local cultural values, but also has a basis in applicable laws and regulations. (Arief & Ambarsari, 2018). This concept focuses on restoring relations between the parties involved in the conflict, namely perpetrators, victims and society, through a dialogical mechanism that emphasizes mutual agreement and social harmony.(Sumaya, 2025). The implementation of the value of restorative justice in resolving customary disputes in Indonesia is a form of legal practice that has long developed in community life.(Mamahit et al., 2026)

The value of restorative justice is clearly visible in the deliberation process, because conflict resolution does not only focus on the perpetrator's fault, but also pays attention to the condition of the victim and the social impacts caused by the incident. In many cases, perpetrators are encouraged to admit their mistakes openly and apologize to the victim and society. The apology is often an important part of the process of restoring social relations. Apart from that, the perpetrator is also usually required to provide compensation to the victim in the form of certain materials or actions that are deemed capable of recovering the losses experienced by the victim. This compensation can take the form of payment of customary fines, replacement of damaged goods, or other forms of compensation mutually agreed upon.

Restorative justice not only offers an alternative approach to resolving legal conflicts but also has substantive goals rooted in restoring relationships and social justice. Some of the main goals of restorative justice include: recovering victims' losses; social reintegration of perpetrators; preventing recurring conflicts and recidivism; empowering communities; reducing dependence on the formal criminal system; building responsive and contextual justice. (Hutabarat & Pangaribuan, 2025)

Providing alternatives through a sociocultural approach that involves victims, perpetrators and the community for the sake of peace is the pinnacle of the idea of restorative justice. This approach is based on the awareness that one of the goals of punishment is social order and peace, which justifies terminating the case when this goal can be achieved peacefully. It is very important to use a sociocultural approach rather than a normative approach. The theoretical development of Indonesian criminal law discourse and reform shows a significant preference for using mediation as an alternative criminal law problem solving instrument. (Afifah, 2024)

Overall, customary law exhibits unique characteristics that emphasize reconciliation rather than retaliation, so it is in line with the spirit of restorative justice. Research data in various regions shows that people prefer to resolve disputes through traditional mechanisms because they are considered faster, cheaper and in accordance with local cultural values. This also confirms that customary law can be an important partner for the national legal system in providing alternative, more humane dispute resolution.(Halawa, 2025) Restorative justice involves the community as an important part of the conflict resolution process. Through dialogue and mediation, the community can provide a perspective on the conflict and contribute to finding a solution that is in line with local norms and values. Community involvement in restoring harmony and balance also creates social support that is beneficial for victims and perpetrators in their recovery process. In contrast to traditional punishment methods, restorative justice offers a more holistic approach and focuses on repairing relationships and healing. Traditional punishment methods tend to emphasize sanctions and penalties, often ignoring aspects of restoration and reconciliation. In addition, the implementation

of restorative justice respects cultural and social values in solving problems, in line with the customary legal philosophy that has long existed in Indonesian society.(Maulida, 2025).

Restorative justice also recognizes the need to understand the individual context and history behind criminal acts, linking recovery to the concrete realities of the lives of perpetrators and victims. Although customary law tends to be unwritten and rooted in tradition, some indigenous communities have certain norms that are considered customary law. While positive law generally refers to written statutory regulations, customary law can be considered positive law in the context of certain indigenous communities.(Meidianto et al., 2025)

The integration of customary law into the national system must not entail an assimilation that erases the unique identity of each community. Instead, it should be understood as a legal hybridization that combines state legal certainty with local community wisdom. Ultimately, the successful implementation of Government Regulation (PP) 55/2025 will depend on the sincere commitment of all stakeholders to position the law as a servant of the people, thereby fostering peace and social balance in Indonesia.(*Eksistensi Hukum Adat dalam Bingkai Asas Legalitas Pasca-KUHP Baru dan PP 55/2025*, n.d.). Integration between customary law and the national legal system is an important topic in this research. Several studies show that although customary law and state law have different principles and procedures, they can complement each other. Customary law provides a more community-based approach to problem solving, while state law provides a more formal and structured legal framework.

Apart from challenges from the community, resistance from law enforcement officials is also an obstacle in implementing customary law as part of a restorative justice system. Many law enforcement officials, such as judges, prosecutors or police, still tend to prioritize retributive approaches over restorative ones. This is due to their minimal understanding of the concept of restorative justice and the potential contribution of customary law to the modern justice system. Apart from that, there are also concerns that the integration of customary law could weaken the supremacy of positive law. This resistance often arises because law enforcement officers are not yet accustomed to a restorative approach, which emphasizes dialogue and reconciliation. Apart from that, there is also the view that customary law is only suitable for rural communities, and is not relevant in urban contexts or serious cases. This makes law enforcement officials reluctant to accept the concept of restorative justice based on customary law.

One of the main ways to integrate customary law principles is through the use of restorative elements that are characteristic of it. Customary law emphasizes dialogue, deliberation, apology, symbolic compensation, and restoration of relations between the perpetrator and the victim. These principles are very much in line with the concept of restorative justice, which aims to repair the damage caused by criminal acts through the active participation of all parties involved. Therefore, restorative elements from customary law can be adapted into the formal justice system as an alternative dispute resolution in the form of a win-win solution. For example, in cases of petty theft or family disputes, the mediation process used in customary law can be applied as an official mechanism in the modern justice system. This kind of mediation will not only speed up the resolution of cases, but also create a sense of justice for victims and perpetrators without having to go through a long and bureaucratic legal process.

This integration cannot be carried out directly without considering the unique characteristics of both legal systems. Customary law is flexible, personal and contextual, while modern positive law is more formal, standard and universal. To overcome this difference, one solution that can be considered is to build a hybrid model (combination) between customary law and formal law. In this model, the formal justice system can use customary decisions as a consideration factor in deciding certain cases. For example, in cases of customary land disputes, the court can consider customary decisions that have been agreed upon by the local community. This model will not only strengthen the legitimacy of the formal justice system, but also help preserve local cultural values that are often ignored in modern legal practice.

The conflict between customary law and national law is a complex challenge that requires a holistic approach and is sensitive to the local context. Efforts to resolve this conflict must consider the need to maintain cultural identity and local wisdom. While continuing to ensure justice and protection of human rights for all citizens. The application of restorative justice as a dispute resolution model is very much in line with the traditions, customs and culture of Indonesian

society which have long been developed and practiced in Indonesia through representations of the life of Indigenous Law Communities in Indonesia which to this day still shows its existence in the reality of Indonesian society's life through the noble values of "deliberation to reach consensus."

Dispute resolution within customary law communities is grounded in the worldview held by the community itself. A worldview is the objective perspective shared by members of a society regarding the nature of the world and life. The worldview of indigenous communities—shaped by their values, mindsets, and norms—has given rise to the defining characteristics of customary law communities. Imam Sudiyat identifies these characteristics as being religious, communal, and democratic, while also emphasizing spiritual-moral values and a simple way of life.

In indigenous communities, there is something called traditional toto, where the role of traditional leaders in restorative justice is very crucial, because they are able to manage the emotions and dynamics that arise in the mediation process, as well as ensuring that the agreement reached can be accepted by all parties involved. Traditional leaders play a central role in the process of resolving crime cases in indigenous communities. they act as mediators, facilitators and people responsible for maintaining social harmony. The main goal of restorative justice is to achieve justice that is as fair as possible, especially for all parties involved in it and not just prioritizing punishment, restorative justice also places a higher value on direct involvement of the parties. Traditional leaders have an important function in preserving existing customary law. It is also not uncommon for traditional leaders to act as judges who impose customary sanctions on customary violators.

Several features inherent in customary law that can be used as sources of identification of customary law can be mentioned, namely:

a. **Traditional:** Traditional law means that it is hereditary, from the time of the ancestors; it is still valid and maintained up to the current generation.
b. **Religious:** Customary law is generally religious (magical-religious), meaning that the behavior and rules contained in customary law are related to supernatural beliefs and are based on the teachings of the Almighty God, both traditional beliefs and beliefs from outside.
c. **Togetherness (Communal):** The meaning of having a communal character in customary law means that common interests take precedence, where personal interests are encompassed by common interests. One for all and all for one, legal relations between members of indigenous communities are based on a sense of togetherness, kinship, mutual help and mutual cooperation.
d. **Concrete and Visual:** Concrete in nature means that this customary law is clear, real, tangible. Meanwhile, being visual means that customary law can be seen, is open, not hidden. So that the legal relationship that applies in customary law is clear and clear, not vague, clearly witnessed, seen, known, and heard by other people, and it appears that the handover has occurred.
e. **Open and Simple:** Being open means that customary law can accept elements that come from outside as long as they do not conflict with the spirit of customary law itself. Meanwhile, having a simple style means that customary law is simple, not complicated, does not require much administration, in fact most of it is not written, is easy to understand and is implemented based on mutual trust.
f. **Can Change and Adapt:** This feature means that customary law can change and can adapt to changing circumstances of time and place. This pattern can be seen in the development of customary law which has been influenced by Hinduism, Islam, Dutch and Japanese colonial influences as well as the influence of the era of independence since 17 August 1945.
g. **Not Codified:** Most customary laws are not codified or written, which is why customary law is easy to change and can adapt to developments in society, as explained above. However, in customary law there are also customary laws written in regional script, which must be in written form.
h. **Deliberation and Consensus:** Customary law essentially prioritizes deliberation and consensus, both within the family, kinship relations, and neighbourhoods, starting a job or ending a job.

The importance of underlining the harmonization between customary law and national justice, especially when customary law is used as an alternative in resolving disputes. This emphasizes that restorative justice in law tends to be more flexible and inclusive. Therefore, it is important to strengthen the legal framework that recognizes and facilitates the influence of

customary law in resolving disputes using a restorative justice approach.

Restorative justice exists as an alternative case resolution that emphasizes repairing losses incurred as a result of criminal acts committed, for example through restitution and compensation. This can be done by finding a point of agreement that benefits both parties, namely the victim and the perpetrator. It is hoped that this process will continue to protect the rights of victims and perpetrators, minimize the negative impact on the criminal justice process that has occurred, and increase community participation in law enforcement.

One of the methods used in restorative justice is mediation. Mediation is one method of the dialogue process known as a communication medium which is the main capital for organizing mediation institutions. Mediation is a form of effort to resolve disputes outside the judiciary (non-litigation) by using the help of other people or third parties who are impartial or neutral and do not act as decision makers, who are called mediators. The goal is to reach an agreement to resolve the dispute they are facing without anyone feeling disadvantaged or defeated.

In mediation, prioritizing the quality of the process over determining each individual's fault. If necessary, educate all parties in the dispute to respect each other until a win-win solution is found. In mediation, efforts are also made to avoid formal discussions, so that the parties involved feel mutually respected in a sense of kinship. Everyone needs to feel responsible for every agreed outcome.

4 Conclusion

Based on the research findings, it can be concluded that the framework for restorative justice in resolving cases within indigenous communities possesses a strong legal foundation—both constitutionally under Article 18B, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia and statutorily under Law Number 1 of 2023 concerning the Criminal Code—thereby firmly establishing it as an integral part of the national criminal law policy rather than merely an out-of-court settlement mechanism. In this context, customary law (living law) plays a strategic role by prioritizing rehabilitation over retribution, drawing on local values, norms, and social practices to resolve conflicts contextually through consensus deliberations, customary mediation, the restoration of social relations, the imposition of customary sanctions, and the reintegration of both perpetrators and victims into community life.

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