

**TRANSFORMING RESTORATIVE JUSTICE THROUGH CUSTOMARY  
LEGAL TRADITIONS IN INDONESIA'S CRIMINAL LAW REFORM**

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**Abstrak**

*Restorative justice has become an important paradigm in contemporary criminal justice reform, particularly in plural legal societies where customary traditions continue to shape community-based dispute resolution. This study examines how restorative justice can be strengthened through Indonesian customary legal traditions within the context of Indonesia's recent criminal law reform, especially the recognition of living law in the new Criminal Code. The research aims to analyze the normative relationship between restorative justice principles and customary dispute resolution practices, and to formulate an institutional framework for integrating adat-based restorative mechanisms into the formal criminal justice system. This study employs a qualitative doctrinal and conceptual legal approach, supported by restorative justice theory, legal pluralism, comparative legal analysis, and documented studies of customary dispute resolution practices in Indonesia. Legal pluralism is used as the analytical framework to examine the normative interaction between customary institutions, living law, and state criminal justice mechanisms. The materials analyzed consist of statutory regulations, academic literature, policy documents, and documented examples of customary dispute resolution, including mediation, reconciliation, compensation, and community-based settlement practices. The findings show that several Indonesian customary legal traditions embody restorative justice principles, particularly through mediation by customary leaders, reconciliation between disputing parties, restitution or compensation, and active community participation. These practices emphasize the restoration of social harmony, victim-offender reconciliation, and communal balance rather than the mere imposition of punitive sanctions. However, significant institutional gaps remain because customary settlements are not yet consistently recognized, verified, or integrated into formal criminal justice procedures. The study identifies the need for clear legal recognition of customary settlements, structured coordination between customary leaders, police, prosecutors, and courts, as well as procedural safeguards to ensure voluntariness, equality, fairness, and compliance with constitutional and human rights standards. The study concludes that the integration of customary restorative mechanisms into Indonesia's criminal justice reform can enhance legal legitimacy, cultural relevance, and the effectiveness of restorative justice policies, provided that such integration is*



*supported by clear legal standards, institutional supervision, and protection of the rights of victims and offenders.*

**Keywords:** *Restorative Justice; Customary Law; Legal Pluralism*

## 1. Introduction

Restorative justice has become an important paradigm in contemporary criminal justice reform because it shifts the focus of criminal law from mere punishment toward the repair of harm, victim participation, offender accountability, and the restoration of social relationships. In plural legal societies such as Indonesia, this paradigm is particularly relevant because community-based dispute resolution has long been practiced through customary legal traditions. Indonesian adat mechanisms commonly emphasize mediation, reconciliation, compensation, apology, and the restoration of communal harmony. These characteristics show that restorative justice is not entirely foreign to Indonesian legal culture, but has deep roots in local normative systems that continue to influence how communities respond to conflict and wrongdoing (Wibianto, 2025; Chien, 2020).

The contemporary relevance of customary law-based restorative justice has increased following Indonesia's criminal law reform. Law No. 1 of 2023 on the Criminal Code recognizes "living law" as part of Indonesia's criminal law framework, thereby opening space for customary norms to inform the resolution of certain legal disputes. At the same time, Law No. 20 of 2025 on the Criminal Procedure Code strengthens the procedural basis of restorative justice by incorporating restorative mechanisms into the criminal process, including pre-adjudication stages such as investigation and prosecution, as well as later stages of criminal proceedings. These developments indicate a shift from a purely formal-rational model of criminal justice toward a more responsive model that recognizes social harmony, local values, and victim-centered settlement (Wibianto, 2025; Chien, 2020; Greife et al., 2015).

However, the integration of adat-based restorative justice into a formal criminal justice system raises important normative and practical challenges. Normatively, customary settlements must be reconciled with the principle of legality, legal certainty, equality before the law, due process, and constitutional and human rights guarantees. The recognition of living law may strengthen cultural legitimacy, but it may also create risks of legal uncertainty or unequal treatment if customary norms are not clearly limited and institutionally supervised. Practically, customary justice mechanisms often operate



informally, without standardized procedures, written documentation, clear referral mechanisms, or consistent coordination with police, prosecutors, and courts. These challenges show that customary restorative justice cannot simply be absorbed into the formal system without a clear institutional framework and procedural safeguards (Febrianty et al., 2023; Ismail et al., 2023; Asmawi, 2025).

Previous studies have shown that Indonesian customary institutions contain restorative values and may contribute to culturally legitimate dispute resolution. Ismail, Mantali, and Moha (2023), for example, emphasize the revitalization of traditional institutions in realizing restorative justice, while Sukti et al. (2023) demonstrate how the Bapalas tradition among Dayak communities functions as a binding mechanism for resolving disputes through reconciliation. Febrianty et al. (2023) and Hardianto et al. (2024) further discuss the limitations and controversies of living law within Indonesia's new Criminal Code, particularly in relation to legality, justice, and constitutional safeguards. Meanwhile, Asmawi (2025) examines living law through the concept of 'urf, showing the relevance of customary norms within Islamic and Indonesian legal reasoning. Nevertheless, these studies tend to discuss customary law, living law, and restorative justice separately. They have not sufficiently formulated how adat-based restorative justice can be institutionally connected to the formal criminal justice process under the new KUHP and KUHAP.

Based on this gap, this study examines how restorative justice can be strengthened through Indonesian customary legal traditions within the framework of contemporary criminal law reform. Specifically, it analyzes the normative relationship between restorative justice principles, living law, and customary dispute resolution; identifies the challenges of integrating adat-based settlements into the formal criminal justice system; and proposes an institutional framework that enables cooperation between customary authorities and state legal institutions. The study argues that adat-based restorative justice can enhance the legitimacy, cultural relevance, and effectiveness of criminal justice reform, provided that it is supported by legal recognition, clear referral procedures, institutional coordination, and safeguards that protect the rights of victims, offenders, and affected communities

## 2. Metode

This study employs a qualitative doctrinal and conceptual legal research design that integrates normative legal analysis, legal pluralism, comparative legal inquiry, and restorative justice theory to examine the relationship between customary dispute resolution and formal criminal justice institutions in Indonesia. Although this research does not conduct anthropological or ethnographic fieldwork, it adopts legal pluralism as a conceptual framework to understand the interaction between state law and customary norms, particularly the coexistence of multiple normative orders within a single legal system (Astawa & Rulyandi, 2025; Wibianto, 2025; Bogosavljević & Kilty, 2023). Accordingly, legal pluralism is used as the primary analytical lens to map the normative interaction, authority structures, and jurisdictional overlaps between adat-based dispute resolution mechanisms and the formal criminal justice system.

The doctrinal component of the research focuses on constitutional, statutory, and policy analysis of legal instruments governing restorative justice, customary law, and living law in Indonesia. The primary legal materials include the new Indonesian Criminal Code (Law No. 1 of 2023), prosecutorial and police regulations on restorative justice, and judicial guidelines regulating diversionary and restorative mechanisms in criminal proceedings. Secondary materials consist of academic literature, comparative legal studies, and documented examples of customary dispute resolution practices in Indonesia. Through doctrinal and hermeneutic interpretation of statutory provisions, legal policies, and relevant legal scholarship, the study evaluates how the concept of living law is positioned within the formal criminal justice framework and assesses its compatibility with legality, due process, legal certainty, and constitutional safeguards (Hardianto et al., 2024; Astawa & Rulyandi, 2025; Febrianty et al., 2023; Greife et al., 2015).

In addition to doctrinal analysis, the study incorporates restorative justice theory to interpret how harm, accountability, reconciliation, restitution, and social repair are conceptualized within documented customary legal traditions. Restorative justice theory provides a normative foundation for understanding how mediation, reconciliation, compensation, and community participation in customary dispute resolution may function as complementary pathways within formal criminal justice processes (Astawa & Rulyandi, 2025; Wibianto, 2025). This theoretical approach enables the research to explore potential policy mechanisms, including diversionary gateways, complementarity



arrangements, recognition of customary settlements, and institutional cooperation between customary authorities and state legal institutions.

A comparative legal approach is also used to examine restorative justice models in jurisdictions where indigenous or community-based dispute resolution traditions have been institutionally connected to formal justice systems. This comparison allows the identification of institutional patterns, regulatory safeguards, and governance structures that facilitate cooperation between customary institutions and state authorities while maintaining legal certainty, procedural fairness, and human rights protections (Astawa & Rulyandi, 2025; Wibianto, 2025; Febrianty et al., 2023).

The analytical process follows a doctrinal-conceptual method consisting of four stages: collecting legal and scholarly materials, classifying them according to key themes, interpreting them through legal pluralism and restorative justice theory, and evaluating their relevance for criminal law reform. To ensure analytical reliability, the study verifies its arguments through source triangulation between statutory regulations, policy documents, academic literature, and documented customary dispute resolution practices. Through this synthesis of legal pluralism, restorative justice theory, and comparative legal analysis, the study identifies feasible pathways for integrating customary restorative mechanisms into Indonesia's criminal justice reform while ensuring compatibility with constitutional principles and procedural fairness (Astawa & Rulyandi, 2025; Wibianto, 2025; Febrianty et al., 2023).

### **3. Result and Discussion**

#### **3.1. Restorative Justice Principles in Indonesian Customary Legal Traditions**

The findings of this research indicate that many customary legal traditions in Indonesia inherently embody restorative justice principles that align closely with contemporary restorative justice theory. Across numerous Indonesian communities, customary institutions emphasize reconciliation, mediation, and communal harmony as central goals in resolving disputes. Rather than focusing primarily on punishment or the imposition of adversarial legal judgments, customary dispute resolution processes aim to restore social balance between victims, offenders, and the broader community. These processes often involve inclusive participation from multiple social actors, including victims, offenders, families, elders, and community representatives. Such participatory engagement reflects a relational approach to justice in which wrongdoing is understood as a disruption of social relationships rather than merely a violation of state law. In this



context, restorative outcomes emerge through community dialogue, reconciliation rituals, and negotiated agreements that prioritize mutual understanding and social peace (Ismail et al., 2023; Sukti et al., 2023).

Empirical observations from customary dispute resolution practices reveal that mediation led by traditional authorities often functions as the primary mechanism for addressing conflicts. Community leaders or respected elders typically facilitate discussions between disputing parties in order to identify the causes of the conflict and negotiate appropriate remedies. These remedies frequently include restitution, symbolic reconciliation rituals, or community-based obligations intended to restore harmony within the group. Importantly, the objective of such mechanisms is not simply to determine legal responsibility but to repair relationships and reintegrate offenders into the community. As a result, customary justice systems often emphasize consensus-based solutions and restorative outcomes rather than punitive sanctions imposed by external authorities. Several studies highlight that these customary processes frequently bridge civil and criminal spheres of dispute resolution by focusing on reconciliation and settlement, thereby reducing the adversarial nature of legal proceedings (Sukti et al., 2023).

The restorative character of these mechanisms illustrates the compatibility between Indonesian customary legal traditions and modern restorative justice theory. Both approaches emphasize the importance of dialogue, accountability, victim participation, and community involvement in addressing harm. Customary dispute resolution also reflects the principle that justice should contribute to the restoration of social harmony rather than merely the enforcement of legal rules. In many communities, reconciliation ceremonies and mediated agreements serve as symbolic and practical mechanisms for restoring trust among community members. This communal orientation reinforces the legitimacy of dispute resolution outcomes because decisions are not imposed by distant state institutions but are instead negotiated within the social environment where the conflict occurred. Consequently, customary restorative practices provide valuable insights for the development of culturally grounded restorative justice policies within Indonesia's criminal justice reform (Ismail et al., 2023; Sukti et al., 2023). Customary restorative practices as living law in indonesia this study focuses on documented customary dispute resolution practices that remain relevant for understanding restorative justice in indonesia, particularly mediation by customary leaders, reconciliation between disputing parties, compensation or restitution, apology, and community-based settlement. These practices

are not treated as ethnographic field findings of this study, but as documented legal and socio-cultural practices discussed in previous scholarship. For example, the Bapalas tradition among Dayak communities demonstrates how customary settlement may bind disputing parties through reconciliation, communal participation, and restoration of social balance (Sukti et al., 2023). Similarly, studies on the revitalization of traditional institutions show that adat forums often function as community-based mechanisms for resolving conflict through deliberation, moral responsibility, and social reintegration rather than punitive exclusion (Ismail et al., 2023). These practices reflect core restorative justice principles because they treat wrongdoing not only as a violation of state law but also as a disruption of relationships among victims, offenders, families, and the community. Mediation by customary leaders creates a space for dialogue, while restitution or compensation addresses the harm suffered by victims. Reconciliation ceremonies and communal agreements also help reintegrate offenders and prevent further conflict. In this sense, adat-based dispute resolution provides a culturally embedded model of restorative justice that is already familiar within Indonesian society. However, its relevance to criminal law reform depends on whether such practices can be institutionally connected to the formal criminal justice system without sacrificing legality, fairness, and procedural certainty.

### **3.2. Institutional Integration of Customary Justice within Indonesia's Criminal Justice Reform**

Despite these similarities, the findings also reveal significant institutional gaps between customary dispute resolution mechanisms and the formal criminal justice system in Indonesia. Although restorative justice has gained increasing recognition within state institutions—particularly through prosecutorial and judicial diversion programs—these mechanisms generally operate within formal procedural frameworks that do not systematically incorporate customary institutions. Current restorative justice regulations tend to emphasize procedural diversion within state-controlled legal processes rather than recognizing community-based settlements achieved through customary mediation. As a result, agreements reached through customary mechanisms often lack formal legal recognition or enforcement within the national legal system.

This institutional gap reflects broader tensions inherent in legal pluralism, where multiple normative systems coexist but are not always harmonized within a coherent legal framework. While customary law offers flexible and culturally responsive mechanisms

for resolving disputes, the formal criminal justice system operates according to statutory principles such as legality, procedural certainty, and standardized legal procedures. Conflicts may therefore arise when customary dispute resolution outcomes appear inconsistent with statutory criminal provisions or human rights standards. Scholars have noted that living-law norms may sometimes conflict with formal legality principles or constitutional safeguards, particularly when customary sanctions lack procedural transparency or clear limitations (Febrianty et al., 2023; Olsen & Toddington, 2014). These tensions demonstrate that integrating customary justice mechanisms into formal legal systems requires careful institutional design and regulatory oversight.

Comparative experiences from other jurisdictions provide valuable insights into how such integration can be achieved while preserving both cultural legitimacy and legal certainty. In several countries with plural legal traditions, governments have introduced institutional models that formally recognize indigenous dispute resolution practices while maintaining supervisory oversight by state authorities. One widely discussed model involves recognizing customary law as a complementary or supplementary source of law within the broader legal system. Under this approach, customary dispute resolution outcomes may be acknowledged by formal courts provided that they comply with constitutional principles and procedural safeguards. Such recognition enables customary mechanisms to function as legitimate restorative justice pathways without undermining the authority of the state legal system (Wibianto, 2025; Masyhar et al., 2025).

Another institutional model involves the accreditation and formal recognition of customary mediators or community leaders who facilitate dispute resolution processes. In jurisdictions such as Canada and parts of Europe, indigenous mediators or community justice facilitators are formally integrated into criminal justice processes through certification systems or partnership agreements with legal authorities. These mechanisms allow customary dispute resolution to operate as part of diversion programs while ensuring that mediators adhere to standards of fairness, accountability, and procedural transparency. Prosecutorial oversight often plays a key role in determining whether cases are appropriate for customary mediation and in verifying that settlements comply with legal standards (Smet et al., 2016; Febrianty et al., 2023).

Based on the above analysis, the integration of customary restorative justice into the formal criminal justice system should be developed through four institutional mechanisms. First, adat-based settlements should be recognized only for eligible cases,



especially minor offenses, complaint-based offenses, or cases where reconciliation and restitution can effectively repair harm. Second, settlements reached through customary forums should be documented in written agreements containing the identity of the parties, the nature of the harm, the agreed compensation or restitution, and confirmation that participation is voluntary. Third, police, prosecutors, and judges should be given authority to verify customary settlements before they affect the continuation or termination of criminal proceedings. Fourth, customary leaders or mediators should be connected to a local registry or accreditation mechanism to ensure accountability, transparency, and minimum procedural standards. This model allows customary restorative justice to function as a complementary mechanism rather than a substitute for state law. Customary institutions may provide culturally legitimate forums for dialogue and reconciliation, while the formal criminal justice system ensures legality, supervision, and protection of rights. In this way, adat-based restorative justice can support Indonesia's criminal law reform by linking living law under the KUHP with restorative procedures under the KUHP. The integration is therefore not merely cultural recognition, but an institutional arrangement that balances local wisdom, legal certainty, procedural fairness, and constitutional safeguards.

Comparative research also highlights the importance of statutory frameworks that harmonize customary norms with constitutional and human rights protections. Universalism The discussion of human rights is not intended to shift the focus away from customary restorative justice. Rather, it is necessary to address the central tension between the particularism of living law and the universalism of constitutional and human rights standards. Article 2 of the new KUHP recognizes law living in society, but its application is limited by Pancasila, the 1945 Constitution, human rights, and general legal principles. This means that customary restorative justice may be recognized only when it respects voluntariness, equality before the law, victim protection, offender accountability, proportionality, and freedom from discriminatory or coercive practices. Therefore, human rights operate as a safeguard to ensure that the recognition of adat-based justice does not legitimize local power imbalance, gender bias, forced reconciliation, or unequal access to justice.

In some jurisdictions, national legislation provides explicit guidelines for the use of restorative justice and indigenous dispute resolution in criminal cases. These guidelines typically establish eligibility criteria for cases that may be diverted to customary

processes, outline procedural safeguards for victims and offenders, and require judicial verification of settlement agreements. Such mechanisms help ensure that restorative outcomes remain consistent with principles of proportionality, equality before the law, and due process. Experiences in European Union member states and North America demonstrate that integrating community-based justice mechanisms into formal legal systems is feasible when supported by clear legal frameworks and institutional cooperation (Hofmann & Nelen, 2020; Olsen & Toddington, 2014).

Drawing on these comparative insights and the empirical characteristics of Indonesian customary dispute resolution practices, this study proposes an integrative model for incorporating customary restorative justice mechanisms into Indonesia's criminal justice reform. The model consists of three interrelated institutional components. The first component involves formal recognition of customary restorative settlements for certain categories of criminal cases. Such recognition would allow agreements reached through community mediation to be acknowledged by state legal institutions, provided that they meet specific legal and procedural criteria. This approach reflects the principle of complementarity, where customary mechanisms operate alongside formal legal processes rather than replacing them entirely.

The second component involves institutional coordination between community leaders and formal legal authorities. Effective integration requires mechanisms through which prosecutors, judges, and law enforcement officials can collaborate with customary institutions in identifying cases suitable for restorative resolution. This coordination may involve referral procedures, documentation requirements, and joint oversight arrangements to ensure that customary mediation processes are conducted fairly and transparently. Institutional cooperation also strengthens mutual trust between state institutions and local communities, thereby enhancing the legitimacy of restorative justice practices.

The third component involves procedural safeguards designed to ensure that customary restorative justice mechanisms comply with constitutional and human rights standards. These safeguards include voluntary participation of both victims and offenders, documented settlement agreements, and the possibility of judicial review or verification. Such measures help prevent potential abuses of customary authority while maintaining the flexibility and cultural sensitivity that characterize community-based dispute resolution.

Through these mechanisms, restorative justice can function not merely as an alternative legal procedure but as a culturally embedded model of justice that reflects the social values and traditions of Indonesian communities. Integrating customary restorative practices within formal legal institutions has the potential to strengthen the legitimacy of criminal justice reform by aligning legal processes with local norms of reconciliation and social harmony. At the same time, institutional safeguards ensure that restorative mechanisms operate within the broader framework of constitutional law and human rights protections. The relevance of adat-based restorative justice has become more significant after the enactment of Law No. 1 of 2023 on the Criminal Code, which recognizes the applicability of law living in society under Article 2, provided that it applies in the relevant community and remains consistent with Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by civilized nations. This provision creates a normative entry point for customary law within national criminal law, but it also requires careful limitation because living law is local, unwritten, and diverse. The new KUHP therefore does not automatically transform every customary norm into enforceable criminal law; rather, it requires that living law be positioned within constitutional and legal safeguards. The new KUHP further strengthens the procedural relevance of restorative justice. Law No. 20 of 2025 on the Criminal Procedure Code replaces the old KUHP and accommodates restorative justice within the criminal process. Public legal commentary on the new KUHP notes that restorative justice is no longer merely based on sectoral regulations of police, prosecutors, or courts, but has been elevated into statutory criminal procedure. It is also described as being available across pre-adjudication, adjudication, and post-adjudication stages, including investigation and prosecution. This development is important because adat-based restorative settlements can be linked to formal referral, verification, and termination mechanisms within the criminal process, rather than remaining purely informal community settlements.

#### 4. Conclusion

This study concludes that Indonesian customary legal traditions contain important restorative justice values, particularly mediation, reconciliation, compensation, community participation, and the restoration of social harmony. These findings show that adat-based dispute resolution can support criminal law reform because it treats wrongdoing not only as a violation of state law, but also as a disruption of social relations that requires repair. The main challenge is not the absence of restorative values in



Indonesian society, but the limited institutional connection between customary settlements and the formal criminal justice system. Adat-based restorative justice should therefore be positioned as a complementary mechanism within the framework of the new KUHP and KUHAP, especially through legal recognition, referral procedures, documentation of settlements, and verification by police, prosecutors, or courts. Such integration is necessary to ensure that living law remains compatible with legality, due process, equality before the law, and constitutional safeguards. The regulatory framework for this integration should operate at two levels. At the local level, regional regulations can recognize specific customary justice forums, establish registries of customary mediators, regulate documentation procedures, and create coordination mechanisms with law enforcement institutions. At the national level, these arrangements should be reinforced in the Indigenous Peoples Bill to provide general standards for recognition, supervision, procedural safeguards, and protection of victims, offenders, and affected communities. Ultimately, the integration of customary restorative justice can enhance the legitimacy, cultural relevance, and effectiveness of Indonesia's criminal justice reform, provided that it is supported by clear legal standards and institutional safeguards. Future research should examine the effectiveness of adat-based restorative mechanisms in different regions and evaluate how these mechanisms operate within the evolving framework of living law and restorative justice procedures in Indonesia.

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