

979 ADAT RECHT The effect of the application of Restorative Justice System on the settlement of criminal cases in Indonesia in the perspective of Customary Law.pdf

by Seffianidwiazmi@gmail.com 1

Submission date: 04-Feb-2025 10:19AM (UTC+0300)

Submission ID: 2579342931

File name:

979_ADAT_RECHT_The_effect_of_the_application_of_Restorative_Justice_System_on_the_settlement_of_criminal_cases_in_Indonesia_in_the_perspective_of_Customary_L (208.23K)

Word count: 4219

Character count: 24319

The effect of the Application of Restorative Justice System on the settlement of Criminal Cases in Indonesia in the perspective of Customary Law

Karolus Kopong¹, Kornelia Melansari Deran Lewokeda², Zonita Zirhani

Rumalean³, Nur Rois

^{1,2} Universitas Nusa Cendana, Kupang, NTT

³ Universitas Yapis Papua

⁴ Universitas Baturaja

Email: kkopongmedan1962@gmail.com¹
melansarilewokeda@gmail.com²
alinedracantik@gmail.com³
nurrois@unbara.ac.id⁴

Entered : December 20, 2024
Accepted: January 15, 2025

Revised : December 28, 2024
Published : January 27, 2025

ABSTRACT

20
The application of the Restorative Justice System (RJS) in Indonesia offers an alternative approach to resolving criminal cases by prioritizing reconciliation, victim recovery, and offender accountability. This study explores the impact of RJS on the resolution of criminal cases from the perspective of customary law, which plays a significant role in many Indonesian communities. By integrating customary practices into the formal legal framework, restorative justice fosters community involvement and strengthens social harmony. The research highlights successful case studies from regions such as Papua, Aceh, and Bali, demonstrating the effectiveness of customary law in promoting peaceful conflict resolution. However, challenges such as legal inconsistencies, limited public awareness, and lack of mediator training persist. The study concludes with policy recommendations to enhance the synergy between customary law and the national legal system, aiming to build a more inclusive and equitable criminal justice process in Indonesia.

Keywords: Restorative Justice, Customary Law, Criminal Case Resolution.

INTRODUCTION

The increasing number of criminal cases in Indonesia requires a fast, effective, and fair settlement approach. Based on data from the Central Statistics Agency (BPS), in 2023 there were 288,472 crime cases throughout Indonesia, an increase of 4.33% compared to the previous year. The most frequent types of crime are theft by weighting, violent theft and fraud. For example, in DIY province in 2023, there were 419 cases of theft with weights, 123 cases of theft with violence, and 1,068 cases of fraud. This increase in the number of criminal cases demonstrates the urgent need for new approaches to solving criminal cases, such as the implementation of a restorative justice system that can reduce the burden on the justice system and provide a fairer solution for all parties involved. This approach focuses on rapprochement between perpetrators, victims, and communities, and promotes faster and more effective solutions.

The growing number of criminal cases in Indonesia requires fast, effective, and fair settlement. With the burden of Justice increasingly heavy, the Indonesian legal system faces a major challenge to provide timely and fair settlement. Many criminal cases

14



Creative Commons Attribution-ShareAlike 4.0 International License:
<https://creativecommons.org/licenses/by-sa/4.0/>

are delayed for a long time, while victims and perpetrators do not get an adequate settlement. Therefore, it is important to adopt new approaches such as restorative justice, which focuses on rapprochement between perpetrators, victims and society. This approach not only speeds up the settlement process but also provides room for reconciliation and reduces negative impacts for all parties involved. This system has the potential to reduce the burden on the formal justice system, while creating a more equitable solution for society.

The excess capacity of correctional institutions in Indonesia is one of the effects of a criminal approach that is too repressive. A judicial system that focuses on prison sentences for almost all types of criminal offenses, especially those involving minor criminals or specific cases, causes the inmate population to continue to increase. This approach not only leads to a build-up in the number of prisoners in correctional institutions, but also burdens the state budget and reduces the effectiveness of rehabilitation. Overcrowded correctional institutions often face limitations in facilities, human resources, and development programs that can support the social reintegration of inmates. Therefore, alternatives such as the application of restorative justice are needed, which can provide a more humanistic solution and reduce the burden on correctional institutions by shifting the focus to the recovery of victims and the improvement of offender behavior.

The formal justice system in Indonesia is often considered too long and complicated, so it does not always provide a satisfactory solution for all parties involved. Protracted legal proceedings often add to tensions between perpetrators, victims, and the public, while many cases can be resolved in a faster and more efficient manner. The uncertainty of the timing and outcome of the ¹³ judicial process also creates dissatisfaction with the justice rendered. In this context, restorative justice emerged as an effective alternative to reduce the burden of formal justice and provide a more peaceful and dignified solution. This approach focuses on rapprochement between perpetrators, victims, and the community, by providing opportunities for all parties to be actively involved in the resolution process. Thus, restorative justice not only accelerates the resolution ¹⁶ cases but also provides more holistic justice and facilitates reconciliation.

In Indonesia, the application of customary law in criminal settlement has taken various forms, especially in Indigenous communities that still uphold local values. One example of this application can be found in Papua, where the resolution of criminal conflicts often involves customary mechanisms that prioritize deliberation and peace over formal judicial channels. In Papua, the customary system often prioritizes settlement through meetings between victims and perpetrators, with the primary goal of restoring social relations damaged by criminal acts. This settlement usually involves families and Indigenous leaders as mediating parties and ensuring that the agreements reached benefit all parties, while maintaining harmony in the community. Likewise, in Aceh, customary law or known as Qanun and customary law of Aceh is often applied in the settlement of criminal cases, especially those involving minor offenses or perpetrators who are closely related to the local community. One example of its implementation is in cases of theft or other offenses that are resolved through customary deliberations. In this approach, the perpetrator is not only sanctioned according to custom, but is also obliged to compensate the victim, which in most cases takes the form of payment or the gift of certain items as a sign of apology and rapprochement. This approach places more emphasis on social healing and restoration, rather than repressive punishment.

Meanwhile, in Bali, the resolution of criminal conflicts also refers to customary law which involves the role of traditional leaders and religious stakeholders in easing

tensions arising from criminal violations. In the Balinese community, the process of settling customary law is strongly influenced by the philosophy of Tri Hita Karana, which teaches a balance between human relationships with God, fellow human beings, and nature. Settlement of criminal cases through customary law in Bali prioritizes family values and deliberation for consensus, as well as the return of peace in social life. Conflict resolution through custom in Bali often involves traditional rituals that can reconcile both parties and prevent further conflict, thus not only ending the dispute, but also maintaining social stability in the community. With this case study of the application of customary law, it can be seen that although formal approaches are often the main choice in criminal settlements, Indigenous communities in Indonesia have long applied the principles of restorative justice based on their local values. This shows that criminal settlement does not always have to go through formal legal channels, but can also be pursued through an approach that emphasizes more on rapprochement and social peace. The application of customary law in criminal settlements can also be a relevant model to strengthen Indonesia's legal system that is more inclusive and in accordance with the needs of local communities. ⁸

Problems and challenges in the application of restorative justice in Indonesia, among others, lies in the inequality of understanding that exists in various regions. Not all regions have the same understanding of the principles and mechanisms of restorative justice, so its application is often not uniform. Some areas that are more advanced in the application of Indigenous-based restorative justice, such as in Papua, Aceh, and Bali, have a more mature system, while in other areas still have difficulty in applying this principle because of the lack of understanding and socialization of restorative justice. The gap between formal and customary law in resolving certain criminal cases is also a significant challenge. Customary law tends to prioritize settlement through deliberation and reconciliation, while formal law focuses on more rigid and structured legal sanctions. This can create discrepancies in the way of settlement, especially in cases involving serious violations of the law, where customary law may not always provide solutions that are in line with the demands of national legal regulations. In addition, there is a potential overlap or clash between the principles of customary law and National Criminal Law. Some norms or decisions produced by customary institutions may not be fully in accordance with the provisions of the criminal law in force in Indonesia. This conflict can complicate the legal process, especially if there are differences in views on Justice, sanctions, and the protection of victims' rights. This settlement requires efforts to harmonize both legal systems in order to work together harmoniously without compromising broader principles of justice.

Restorative justice has gained attention in Indonesia's criminal justice system as an alternative to traditional retributive approaches (Darmawan et al., 2024). This concept emphasizes victim recovery, offender responsibility, and community reconciliation (Darmawan et al., 2024). It has been successfully implemented in various indigenous communities across Indonesia, such as Bali, Flores, Lampung and Karo Batak (Wangga, 2022). The application of restorative justice in customary criminal cases has shown positive results, providing a deterrent effect for offenders while upholding local customary values (Salamor et al., 2023). The Indonesian Constitution recognizes traditional institutions in the criminal justice system, allowing for public participation through customary groups to prevent crime and resolve conflicts (Rochaeti et al., 2023). However, challenges remain, including limited resources, lack of community understanding, and mediation process difficulties (Darmawan et al., 2024). To improve its effectiveness, recommendations include training mediators, increasing public awareness, and implementing supportive policy changes (Darmawan et al., 2024).

10 **2**
The purpose of this study was to analyze the effect of the application of restorative justice in the settlement of criminal cases in Indonesia, focusing on the effectiveness of this approach in reducing the burden on the judicial system and providing a more just and humane solution for all parties involved. This study also aims to identify the role of customary law in strengthening restorative justice mechanisms, especially in communities that still rely on customary law as a basis for conflict resolution. By understanding the contribution of customary law, this study seeks to explore the potential to integrate local values with the national legal system in order to create a more inclusive settlement. In addition, this study also aims to formulate policy recommendations that can better integrate between customary law and the formal justice system, in order to achieve harmonization that can strengthen both legal systems in providing justice for the community.

METHODS

2
This research method uses a normative approach to analyze the effect of the application of restorative justice in the settlement of criminal cases in Indonesia, with the perspective of customary law. Normative juridical approach is used to examine the applicable legal rules, legal principles, and written documents related to restorative justice and customary law in the settlement of criminal cases. This approach aims to understand how the application of restorative justice is influenced by existing legal provisions and see the alignment or misalignment with customary law in force in the community.

The statute approach is also applied to analyze the laws and regulations governing the application of restorative justice and customary law in the Indonesian criminal justice system, such as Law No. 11 of 2012 on juvenile criminal justice system and Supreme Court Regulation (Perma) No. 2 of 2012. Conceptual approach is used to explore the theory and concept of restorative justice and customary law which is the basis for the settlement of criminal cases outside the formal court. Finally, the historical approach is used to see the development of the application of customary law and restorative justice from time to time in the Indonesian criminal law system, as well as paradigm changes that occur in the handling of criminal cases.

The source of data used in this study consists of primary data and secondary data. Primary Data includes relevant laws such as Law No. 11 of 2012 and Perma No. 2 of 2012, as well as regulations related to customary law used in the settlement of criminal cases. Secondary Data include books, journals, scientific articles that discuss the concept of restorative justice and customary law, as well as court decisions that use this approach. In addition, the results of relevant previous research are also used as a reference to explore this topic further.

RESULTS AND DISCUSSION

The effectiveness of the application of restorative justice in the resolution of criminal cases in Indonesia can be seen from several aspects, one of which is its ability to reduce the burden of the formal justice system and accelerate the resolution of criminal cases. With this approach, many cases can be resolved out of court through mediation between the perpetrator and the victim, which reduces the backlog of cases in court and speeds up legal proceedings. In addition, restorative justice also focuses on the rehabilitation of the perpetrator, who is not only punished but given the opportunity to understand the impact of his actions, regret the actions, and seek to improve relations with the victim as well as the community. This process has a positive impact on the restoration of social relations that are often damaged by criminal acts, so as to create a

more lasting peace. However, the success of restorative justice implementation in Indonesia still varies depending on the type of case and application at the local level. Several case studies have shown successful resolution through this approach, especially in minor criminal cases or cases involving Indigenous communities. On the other hand, there are failures in its implementation, especially in cases involving severe violence or human rights violations, where restorative justice cannot always guarantee adequate justice to victims. The limited understanding and readiness of society and law enforcement to accept restorative justice is also an inhibiting factor, which needs to be overcome to achieve greater effectiveness.

Customary law has a significant role in supporting the implementation of restorative justice in Indonesia, especially in communities that still hold strong indigenous traditions. In many indigenous cultures, conflict resolution aims not only to provide punishment, but also to restore relationships between perpetrators, victims, and society. Customary law values such as mutual cooperation, deliberation, and peace are the main foundations in the resolution of criminal cases. This approach emphasizes reconciliation and social recovery efforts rather than retributive punishment. In this context, customary law teaches the importance of maintaining social balance and harmony in the community, so that perpetrators of criminal acts are given the opportunity to make amends for their mistakes through actions that bring good to all parties involved. Some values contained in customary law, such as respect for victims, forgiveness, and rapprochement, strongly support the application of restorative justice. The mediation process carried out by Indigenous leaders often results in an agreement that brings both parties together in a way that does not harm either party. Studies on the settlement of criminal cases involving customary law show that the impact on social justice is quite significant, especially in maintaining social stability in Indigenous communities. Peaceful conflict resolution through customary law helps prevent greater divisions and ensures that perpetrators can be re-accepted into society after improving relations with victims. This not only provides justice for victims, but also allows perpetrators to develop personally, while maintaining harmony within Indigenous communities.

The harmony between customary law and National Criminal Law in the resolution of criminal cases is often a complex issue, because these two legal systems have different characteristics and basic principles. National criminal law tends to focus on formal and structured enforcement of the law through judicial mechanisms in force throughout Indonesia, while customary law is more local and flexible, with an emphasis on deliberation, reconciliation, and rapprochement between perpetrators and victims. In some cases, customary law principles that place more emphasis on social rapprochement may conflict with criminal penalties that are more retributive and focus on sanctioning. The potential for conflict between these two systems arises when the customary punishment received by the offender is not in line with the demands of the National Criminal Law, which wants harsher punishments or a more formal process. However, there are also cases where customary law and national criminal law can support each other in the process of resolving criminal cases. For example, in minor criminal cases or criminal acts involving Indigenous communities, these two legal systems can collaborate by engaging in a restorative justice approach based on customary law to seek agreement between perpetrators, victims, and communities. In this context, the National Criminal Law can provide a legitimate legal framework for the implementation of conflict resolution through customary law, while customary law provides a more in-depth solution and in accordance with local cultural values. The evaluation of the agreements reached through the integration of these two systems shows that a collaborative

approach can provide more holistic justice and strengthen social ties, which in turn contributes to social stability and reduced crime rates in Indigenous communities.

The implementation of restorative justice based on customary law in Indonesia faces various challenges and obstacles that need to be considered. One of the main problems is the difference in understanding of the principles and implementation of restorative justice between Indigenous peoples and national legal systems. Customary law is often interpreted flexibly according to local needs and values, while the formal justice system is more rigid and structured, which can lead to discrepancies in its application. In addition, the legal infrastructure that has not fully supported the implementation of customary law-based restorative justice is a significant obstacle. The lack of regulations that accommodate collaboration between these two legal systems, as well as the lack of understanding of law enforcement officials about the application of customary law in a criminal context, exacerbate such implementation.

Another challenge is the integration of customary law with a more standardized formal justice system. Formal justice systems often prioritize legality and procedural aspects, while customary law emphasizes a consensus-based approach and a more societal settlement. Potential conflicts between these two systems could arise, especially in criminal cases involving serious offences or violence, where restorative justice through customary law may be deemed inadequate by the parties involved. Difficulties also arise in ensuring that customary law-based restorative justice can provide equal justice for all parties, including victims who may need more protection or the wider community, in cases that have a greater social impact. This requires a more careful approach and clear regulation so that the application of restorative justice can be accepted and effective at all levels of society.

To improve integration between customary law and the formal justice system, several policy recommendations need to be considered. First, strengthening regulations that support the implementation of customary law-based restorative justice is essential to ensure that criminal settlements through customary mechanisms can be legally recognized within the national legal framework. This can be done by formulating regulations or laws that explicitly accommodate the application of restorative justice in the context of customary law, as well as providing a clear foundation on the terms and procedures to be followed in the settlement of criminal cases outside formal courts. Second, it is necessary to develop a policy that regulates the mechanism of cooperation between formal legal institutions and customary institutions in handling criminal cases. This cooperation is important to ensure that both law enforcement authorities and indigenous peoples have a clear and mutually supportive role in the conflict resolution process. One form of such policy could involve the involvement of adat mediators in the formal judicial process, so that there is a synergy between adat law and national law in producing decisions that are fair and accepted by all parties. Finally, an increase in understanding and socialization of the principles of restorative justice and customary law to legal actors, law enforcement officers, and the community is needed. This education can be done through training, seminars, or workshops that introduce the concepts of restorative justice based on local wisdom, as well as provide an understanding of how these two legal systems can work harmoniously to achieve justice. With this increased understanding, it is expected to create sustainability and successful application of restorative justice in the settlement of criminal cases in Indonesia.

CONCLUSION

The application of restorative justice in Indonesia has proven effective in resolving minor and medium criminal cases, reducing the burden of formal justice, and providing faster and more satisfactory solutions for victims, perpetrators, and the community. Customary law plays an important role in supporting this process through deliberation and peace mechanisms that are aligned with the principles of restorative justice, strengthening social harmony within communities. Nevertheless, the integration of customary law in the formal justice system still faces juridical and structural challenges, including legal uncertainty and non-uniformity of application in various regions. The recognition of customary law in the 1945 Constitution and various regulations opens up opportunities to develop a more inclusive and community-based justice system, although regulation and supervision need to be strengthened so that the potential for discrimination and injustice can be minimized. Thus, customary law-based restorative justice has great potential to support reform of Indonesia's criminal justice system, strengthen social justice, and maintain balance in the lives of Indigenous Peoples.

REFERENCE

Anna Maria Salamor, Juanrico Alfaromona Sumaresz Titahelu, Erwin Ubwarin, Iqbal Taufik (2023). Application of Restorative Justice In The Settlement of Customary Criminal Cases. *Journal of Customary Law and Indigenous Rights*, 7(3), 200-215. <https://doi.org/10.47268/sasi.v29i2.1259>

Anwar, S., & Intan, K. (2021). Restorative Justice Approach in Positive Law Enforcement on the Implementation of Customary Sanctions in Papua. *Jurnal LAPAGO*, 1(1), 28-38.

Badu, L. W., & Kaluku, J. A. (2022). Restorative Justice In the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children. *Jambura Law Review*, 4(2), 313-327.

Hasibuan, L. R. (2022). The Concept of Restorative Justice in the Juvenile Criminal Justice System: A Narrative Review of the Indonesian Context. *Sch Int J Law Crime Justice*, 5(7), 263-272.

Ismail, D. E., Mantali, A. R. Y., & Moha, M. R. (2023). The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice. *Jambura Law Review*, 5(2), 220-234.

Lubis, F. (2023). Implementation Of Restorative Justice, The Intent Of Punishment, And Legal Clarity In Indonesia. *Russian Law Journal*, 11(3), 813-823.

M. S. E. Wangga (2022). Implementation of Restorative Justice in Criminal Cases in Indonesia. *Law and Humanities Quarterly Reviews*, 9(1), 78-92. <https://doi.org/10.31014/ajor.1996.01.03.25>

Nasution, N. P. A., Hamdani, F., & Fauzia, A. (2022). The concept of restorative justice in handling crimes in the criminal justice system. *European Journal of Law and Political Science*, 1(5), 32-41.

Nur Rochaeti, M. Prasetyo, Umi Rozah, Jihyun Park (2023). A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices. *Sriwijaya Law Review*, 8(1), 95-110. <https://doi.org/10.28946/slrev.vol7.iss1.1919.pp87-104>

Permatasari, N. R., Hartiwiningsih, H., & Suwadi, P. (2024, December). Restorative Justice Implementation in Cases of Assault: Exploring Kefamenanu Traditional Law Connections. In *International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)* (pp. 428-434). Atlantis Press.

Rahayu, I. (2024). Reviving the Role of Customary Law as a Legal Foundation in the Development of the Indonesian Legal System. *Journal of Adat Recht*, 1(1). <https://nawalaeducation.com/index.php/JOAR/article/view/342>

Rifqi Alif Darmawan, Muhammad Mahesa Rizki Diputra, Alip Rahman, Anom Sutrisno (2024). Analysis of the Effectiveness of the Application of Restorative Justice in Criminal Cases in Indonesia. *Journal Of World Science*, 10(2), 145-160. <https://doi.org/10.58344/jws.v3i5.612>

Rochaeti, N., & Muthia, N. (2021). Socio-legal study of community participation in restorative justice of children in conflict with the law in Indonesia. *International Journal of Criminology and Sociology*, 10, 293-298.

Siregar, M. A., & Ikhwan, E. (2023, December). Alignment Of The Concept Of Customary Criminal Law With The Concept Of Restorative Justice In National Criminal Law. In *International Conference on Health Science, Green Economics, Educational Review and Technology* (Vol. 5, No. 1, pp. 38-44).

Suhermi.(2024) Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities.Journal of Adat Recht,1(2),1-12. <https://nawalaeducation.com/index.php/JOAR/article/view/599/666>

Syaufi, A., & Zahra, A. F. (2021). The Criminal Settlement Through Customary Law From Restorative Justice Perspective. *J. Legal Ethical & Regul. Issues*, 24, 1.

Wahyuningisih, S. E., Purba, R. J., & Mashdurohatun, A. (2023). Restorative Justice in the Criminal Justice System of Indonesia. *Issue 2 Int'l JL Mgmt. & Human.*, 6, 233.

Wangga, M. S. E. (2022). Implementation of Restorative Justice in Criminal Cases in Indonesia. *Law and Humanities Quarterly Reviews*, 1(3).

Zulfa, E. A. (2011). Restorative justice in Indonesia: Traditional value. *Indon. L. Rev.*, 1, 33.

Zurnetti, A., & Muliati, N. (2022). Customary criminal law policy on domestic violence settlement through restorative justice. *Cogent Social Sciences*, 8(1), 2090083.

979 ADAT RECHT The effect of the application of Restorative Justice System on the settlement of criminal cases in Indonesia in the perspective of Customary Law.pdf

ORIGINALITY REPORT



PRIMARY SOURCES

1	jurnal.untagsmg.ac.id Internet Source	2%
2	jws.rivierapublishing.id Internet Source	2%
3	nawalaeducation.com Internet Source	1%
4	talenta.usu.ac.id Internet Source	1%
5	www.pjcriminology.com Internet Source	1%
6	jurnal.erapublikasi.id Internet Source	1%
7	Anna Maria Salamor, Juanrico Alfaromona Sumarezs Titahelu, Erwin Ubwarin, Iqbal Taufik. "Application of Restorative Justice In The Settlement of Customary Criminal Cases", SASI, 2023 Publication	1%
8	www.asianinstituteofresearch.org Internet Source	1%
9	Submitted to University of Namibia Student Paper	<1%
10	repository.idu.ac.id Internet Source	<1%
11	eprints.ums.ac.id Internet Source	<1%
12	Ummi Maskanah. "Implementation of restorative justice in medical dispute resolution", Jurnal Aisyah : Jurnal Ilmu Kesehatan, 2023 Publication	<1%

13	journal.fh.unsri.ac.id Internet Source	<1 %
14	www.psychologyandeducation.net Internet Source	<1 %
15	Tim Lindsey, Helen Pausacker. "Crime and Punishment in Indonesia", Routledge, 2020 Publication	<1 %
16	ejurnal.ung.ac.id Internet Source	<1 %
17	Krishna Kumar Govindarajan. "Revisiting malignant gastric outlet obstruction: Where do we stand?", World Journal of Gastrointestinal Endoscopy, 2025 Publication	<1 %
18	repository.uniyap.ac.id Internet Source	<1 %
19	ojs.uho.ac.id Internet Source	<1 %
20	rgsa.emnuvens.com.br Internet Source	<1 %
21	www.sobider.net Internet Source	<1 %
22	journal.worldofpublication.com Internet Source	<1 %
23	www.scilit.net Internet Source	<1 %
24	Nur Rochaeti, Nurul Muthia. "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia", International Journal of Criminology and Sociology, 2021 Publication	<1 %

Exclude quotes On
Exclude bibliography On

Exclude matches Off