LEGALITY: JURNAL ILMIAH HUKUM

Journal homepage: http://www.ejournal.umm.ac.id/index.php/legality

Decolonising restorative justice in Indonesia: a comparative study across Customary Law traditions

Agus Widjajanto[1*], I Gde Pantja Astawa[2], Muhammad Rulyandi[3]

[1,2,3] Faculty of Law, Universitas Padjadjaran, Bandung, West Java, 40224, Indonesia

[*] Corresponding author: agus24004@mail.unpad.ac.id

Article

Keywords:
Adat Law; Legal Pluralism; Restorative Justice; Traditional Dispute Resolution.

Article History
Received: Apr 14, 2025;
Reviewed: Jun 13, 2025;
Accepted: Sep 10, 2025;
Published: Sep 10, 2025.

Abstract

This article interrogates the Western genealogy of restorative justice by mobilising Indonesia's living law as a co constitutive legal ontology. It investigates how Indonesian customary justice conceptualises harm, accountability, and repair, and how its normative logics can be translated into doctrine for pluralist penal reform. Methodologically, a normative (doctrinal) design with a decolonial, epistemic justice orientation is applied to constitutional and statutory texts, sub regulations, case law, and recorded customary norms/oral traditions. The research analysis proceeds through hermeneutic–interpretive reading, a structured comparative matrix (authority locus, procedure, remedy typology, and ritual closure), and an abductive synthesis generating mid-level propositions. The research finds that crime is framed as a relational breach rather than solely an offence against the state; authority is communally distributed; remedies integrate material, symbolic, and service components; and ritual reintegration supplies closure. Where timely notice, freely given consent, accredited facilitation, translation, and written records are present, these processes satisfy core penological aims while remaining compatible with due process baselines. Theoretically, adat is repositioned as an equal source of restorative reasons. Normatively, we propose rule level pathways: to amend Criminal Code Law No. 1/2023, Article 2 ("living law") to add (i) a complementarity/sufficiency clause recognising adat settlements meeting due process minima for eligible offences and (ii) a subsidiarity clause routing cases to state forums only where those minima fail or public safety thresholds require it; harmonise and strengthen restorative "gateways" in regulations of the Office of the Attorney General (2020) and the National Police (2021); craft a narrowly tailored adult diversion track; and institute accreditation, registry, independent review, and piloted roll outs with transparent metrics, presenting Indonesian customary law as a generative jurisprudence for penal reform.

INTRODUCTION

In contemporary criminal justice systems, particularly those influenced by continental European or Anglo-Saxon legal traditions, the dominant punitive paradigm continues to emphasise retributive justice. This approach conceptualises punishment primarily as a response to wrongdoing, focusing on deterrence and incapacitation, often at the expense of victim recovery, offender rehabilitation, and social reconciliation (Caruso, 2020). In Indonesia, this retributive orientation has contributed to systemic issues, such as prison overcrowding, where correctional facilities house nearly double their intended capacity, and persistently high recidivism rates (Kuswandi et al., 2020). The rigidity of the formal legal system has left a gap between the law's abstract principles and the experiences of communities, especially in cases involving minor or interpersonal offences. As a result, formal justice processes often neglect the broader social harm caused by crime and fail to restore the balance disrupted by criminal acts (Zargar, 2020).

However, the crisis within Indonesia's criminal justice system is not merely theoretical; it is empirical, structural, and socially visible. As of 2023, Indonesia's prisons operate at more than 200% over capacity, with over 70% of inmates incarcerated for non-violent offences, many of which involve minor theft or drug possession. Despite reform rhetoric, recidivism rates remain above 30%, indicating systemic failure in rehabilitation. Public trust in law enforcement institutions is also uneven: while the Attorney General's Office holds the highest trust rating (80.2%), the police and judiciary lag significantly behind, with 64.3% and 61.2% respectively, reflecting enduring scepticism toward formal legal mechanisms (Indikator, 2024). In regions such as East Nusa Tenggara, for instance, community members often resolve interpersonal disputes, such as petty theft, land disagreements, or domestic altercations, through *adat* (customary) forums; yet, these mechanisms are routinely disregarded or overridden by formal prosecution, leading to unnecessary incarceration and social fragmentation (Fadli et al., 2024; M. Kasim & Nurdin, 2020; Sukriono et al., 2025). One illustrative example is the 2022 case in Sumba, where a 19-year-old was sentenced to nine months in prison for stealing a pair of sandals/slippers, despite a prior *adat* resolution between the families. Cases like these highlight the disjuncture between the social reality of legal pluralism and the rigid proceduralism of Indonesia's penal institutions (Sunaryo, S., & Al-Fatih, S., 2022).

Globally, the restorative justice movement emerged in the late twentieth century as a response to the limitations of retributive justice, offering a more human centred and participatory approach. Rather than framing justice solely as punishment, restorative justice emphasises repairing harm, fostering dialogue between offender and victim, and reintegrating both into their community. While the international discourse around restorative justice has largely been shaped by Western academic and legal institutions, many of its foundational values, such as communal accountability,

reconciliation, and mutual respect, are deeply embedded in the customary legal traditions of non-Western societies (Kirkwood, 2022). In Indonesia, local mechanisms such as Dalihan Na Tolu in Batak Toba society, lonto léok in Manggarai, and the Javanese principle of "*dikei iwake*, *aja nganti butheg banyune"*, have long provided frameworks for resolving conflicts that are strikingly aligned with restorative principles (Rochaeti, Prasetyo, & Park, 2023; Simanjuntak, 2023). These indigenous practices challenge the presumed universality of Western justice models while offering critical insights into how restorative justice can be contextually adapted within plural legal systems.

Despite increasing global endorsement of restorative justice principles, the integration of such approaches into formal criminal justice systems remains partial, fragmented, and often superficial, particularly in jurisdictions influenced by legal centralism and rigid proceduralism (Banwell Moore, 2024). In Indonesia, while restorative justice has been formally introduced through Regulation of the Attorney General Number 15 of 2020, Regulation of the Indonesian National Police Number 8 of 2021, and Supreme Court Regulation Number 1 of 2024 as institutional regulations, these frameworks remain largely procedural and inconsistent, lacking a coherent normative foundation that reflects the country's socio-cultural realities. More critically, they fail to accommodate or institutionalise the deeply rooted customary justice systems that have long practised restorative mechanisms, often relegating them to the margins of legal discourse (Supriansa et al., 2024).

This article argues that Indonesian customary justice systems, such as Dalihan Na Tolu, lonto léok, and rukun desa (village community association), should not be viewed as peripheral cultural practices, but as coherent normative paradigms that offer both conceptual and procedural alternatives to state centred legal frameworks. Far from being informal supplements, these systems constitute independent epistemologies of justice rooted in relationality, communal responsibility, and cosmological balance. In doing so, they challenge the proceduralist and individualist assumptions that dominate the global discourse on restorative justice. This position contends that meaningful legal reform in Indonesia requires not only institutional recognition of customary law but also its elevation as a co-equal foundation for penal theory within a genuinely pluralist legal system.

This situation raises a critical problem: the absence of a robust legal and philosophical bridge between Indonesia's formal criminal justice apparatus and its pluralistic, community based legal traditions. While global restorative justice models prioritise victim offender mediation and community involvement, Indonesia possesses centuries old indigenous mechanisms that inherently reflect these values yet remain excluded from formal recognition (Faisal et al., 2024). Furthermore, no systematic comparative inquiry has been made to assess how Indonesia's customary practices align with or diverge from global restorative justice paradigms. The lack of such

analysis not only impedes the effective localisation of restorative justice but also risks perpetuating a top down legal model that marginalises local epistemologies of justice (Mansur et al., 2024).

Existing scholarship on restorative justice in Indonesia clusters around three orientations. First, socio legal and doctrinal accounts draw selectively on indigenous practices to support participation and reconciliation, but ultimately frame reform within state criminal justice architectures and managerial goals (e.g., "system development" views that translate community practices into formal, programmatic tools). These works help map techniques, including mediation, conferencing, and diversion, but remain institutionally bounded and proceduralist (Rochaeti, Prasetyo, & Park, 2023). Second, a technocratic stream advances the "revitalisation" or "integration" of traditional institutions into the positive criminal law, prioritising harmonisation with formal structures over theorising the epistemic status of *adat* itself as law. This integrative agenda is explicit in efforts to functionalise *adat* institutions as "living law" to realise restorative justice within the national system (Ismail et al., 2023; Rochaeti, Prasetyo, Rozah, et al., 2023). Third, more recent documents richly textured local paradigms e.g., Lampung notions of Piil Pesenggiri, Nemui Nyimah, and Nengah Nyappur as bases for communal repair yet typically stop at descriptive affirmation rather than constructing *adat* as a co-equal legal ontology in restorative theory (Rahmi Dwi et al., 2025).

This article intervenes by explicitly decolonising the restorative justice frame: it treats Indonesian customary law not as a cultural supplement to state legality but as a co constitutive epistemology of criminal justice, developed through a comparative analysis of Dalihan Na Tolu (Batak Toba), rukun (Javanese), and lonto léok (Manggarai). In so doing, it addresses a persistent gap: the absence of a robust legal philosophical bridge between plural indigenous ontologies and global restorative paradigms, despite constitutional recognition of customary communities and decades of programmatic "integration." Empirically, we demonstrate that these systems possess structured procedures, enforceable remedies, and ritual reintegration that rival, and sometimes exceed, contemporary restorative models, challenging the assumption that non state justice is informal or underdeveloped. The article's contribution, therefore, is twofold: (i) a theoretical repositioning of *adat* as an independent, relational jurisprudence capable of reshaping global restorative criminal justice; and (ii) a comparative method that extracts normative principles across diverse Indonesian traditions to propose a pluralist, co-equal foundation for penal reform.

Despite the constitutional recognition of customary law communities in Indonesia (Article 18B(2) of the 1945 Constitution), academic inquiry has yet to fully explore the normative potential of *adat* based restorative practices in relation to broader global restorative justice frameworks. Few studies have profoundly examined how indigenous Indonesian mechanisms, such as Dalihan Na Tolu, lonto léok, or

rukun desa, align with or even enrich international restorative justice theory (Rochaeti, Prasetyo, & Park, 2023; Rochaeti, Prasetyo, Rozah, et al., 2023). This gap is particularly significant in light of ongoing efforts to harmonise Indonesia's penal policy through the new Criminal Code (KUHP 2023), which implicitly opens space for non punitive and community based models of justice. Without a rigorous comparative analysis that situates Indonesian customary law within global discourse, the development of restorative justice in Indonesia risks becoming either a formalistic adoption of foreign models or a missed opportunity to globalise indigenous legal wisdom.

This study aims to critically examine the intersections between restorative justice and customary law within Indonesia's pluralistic legal framework, employing a comparative lens that engages both global discourse and indigenous practices. Specifically, it seeks to analyse how restorative justice principles, commonly articulated in Western normative frameworks, are conceptually and operationally embodied in the dispute resolution mechanisms of selected Indonesian customary systems. By doing so, the research endeavours to uncover the epistemological foundations of indigenous justice models, assess their compatibility with modern restorative justice paradigms, and evaluate their potential integration into the formal criminal justice system under Indonesia's evolving legal landscape, particularly in light of the 2023 Criminal Code reforms. Ultimately, this study aspires to offer a theoretically grounded and culturally responsive model of restorative criminal justice that not only contributes to the global body of knowledge but also affirms the legitimacy of non Western legal epistemologies in shaping future oriented penal reform.

This research presents a novel analytical framework that juxtaposes global restorative justice paradigms with indigenous Indonesian legal practices, thereby challenging the dominant narrative that restorative justice is an exclusively Western construct. It reframes customary law not as a peripheral or informal mechanism, but as a substantive epistemic system with its own normative integrity, capable of informing modern penal reform. By conducting a comparative inquiry into practices such as Dalihan Na Tolu, lonto léok, and Javanese rukun, the study brings to light juridical traditions that have long operated on principles of social restoration, collective responsibility, and moral reconciliation, which resonate deeply with restorative justice yet remain under theorised in international legal literature. The justification for this research lies in its potential to bridge the epistemological divide between Western centric legal reform models and local wisdom embedded in legal pluralism, offering a path toward decolonising restorative justice discourse while contributing to a more culturally situated and socially sustainable criminal justice system in Indonesia and beyond.

METHODS

This study employs a doctrinal (normative) legal research design (Al Fatih, 2023) applicable to the Indonesian tradition, supplemented by comparative jurisprudence and explicitly framed within a decolonial, epistemic justice orientation. The corpus comprises constitutional and statutory provisions, sub regulatory instruments, and case law, recorded customary norms and oral traditions from three reference systems: Dalihan Na Tolu (Batak Toba), rukun (Javanese), and lonto léok (Manggarai). These sources are purposively sampled for conceptual density and regional diversity, then subjected to close textual analysis to identify the normative architecture of responsibility, reconciliation, and communal authority embedded in each system. This design reflects established classifications of Indonesian legal research methods while positioning *adat* as a co-equal legal ontology rather than a merely cultural supplement.

The study proceeds in three analytical steps. First, a hermeneutic–interpretive reading reconstructs key concepts (harm, accountability, reintegration) within each corpus, attending to their relational and cosmological predicates. Second, a structured comparative technique maps convergences and divergences across the three traditions via a matrix of attributes (authority locus, procedure, remedy typology, ritual closure), enabling mid-level theoretical generalisations suitable for doctrinal argument and policy design. Third, an abductive synthesis integrates these findings into a decolonising framework for restorative criminal justice, evaluating coherence, consistency, and normative "fit" with pluralist constitutional commitments (Wibisana, 2019). Throughout, we maintain methodological transparency and argumentative rigour consistent with leading standards in Indonesian legal scholarship, which include clarifying claims, demonstrating novelty, and articulating contributions. Therefore, the method functions not only as a procedure but as an epistemic stance that re centres indigenous jurisprudence in penal reform.

RESULTS AND DISCUSSION

Theoretical Foundations of Restorative Justice in Criminal Law

While restorative justice is often portrayed as a late twentieth century Western innovation (Zehr, 2019), Indonesian scholarship reveals that its core ethos repairing harm, restoring relationships, and reintegrating individuals has long been embedded in customary (*adat*) legal orders (Saefudin, Y., et. al, 2025). Studies mapping customary forums across Indonesia show how community-based processes and moral authority structures have historically oriented responses to wrongdoing toward reconciliation rather than retribution, thereby prefiguring contemporary restorative logics. In this literature, crime is reconceptualised not merely as an offence against the state but as an injury to persons and community that must be healed through participatory dialogue, accountability, and reparation, a formulation explicitly articulated in

Indonesian analyses of restorative practice and legal pluralism (Rochaeti, Prasetyo, Rozah, et al., 2023).

Building on this foundation, recent Indonesian work argues for the functional revitalisation of *adat* institutions within the national penal system, without compromising their normative distinctiveness, thereby enabling customary mechanisms to operate as living law, capable of delivering restorative outcomes within a plural legal architecture (Ismail et al., 2023). Ethnographically grounded accounts (e.g., Lampung) further document structured procedures peppung deliberations, negotiated sanctions calibrated to material and immaterial loss, and kinship making rites such as Angkon Muakhi/Mewari that culminate in social reintegration rather than punitive isolation, thereby illustrating an ontological shift from state centric adjudication to community driven restoration (Rahmi Dwi et al., 2025).

Despite the appeal of restorative justice in global legal reform agendas, many implementations remain constrained by the institutional frameworks of formal law. Embedded within highly bureaucratic and adversarial systems, restorative justice practices are often domesticated into predefined protocols, such as victim offender dialogues, diversion schemes, or sentencing circles, without altering the core punitive foundations of the system itself (Maglione, 2022). In many cases, what is labelled "Restorative" merely supplements the dominant penal logic rather than transforming it. The risk, therefore, lies in superficial adaptation that fails to recognise the deeper normative rupture restorative justice seeks to introduce (Banwell Moore, 2024).

Philosophically, restorative justice stands in tension with liberal legalist ideals that emphasise individual culpability and proportional retribution. Instead, it resonates more closely with communitarian, relational, and indigenous worldviews in which justice is understood as the restoration of balance and harmony within the social fabric (Kirkwood, 2022). This worldview challenges the Western juridical assumption that justice is an abstract ideal realised through codified rules and state sanctions. Instead, it views justice as an ongoing dialogical process rooted in lived experiences, mutual obligations, and culturally embedded norms of conflict resolution (Bava & McNamee, 2019). In this sense, restorative justice may be better understood not as a new model, but as a rearticulation of ancient, localised systems of justice that the modern legal state has long marginalised or suppressed.

This theoretical reframing gains particular importance in legally pluralistic societies like Indonesia, where the formal criminal justice system operates alongside customary legal traditions. While restorative justice is often introduced as a foreign or progressive legal import, many of its core principles, including dialogue, apology, restitution, and community participation, are already practised in customary dispute resolution mechanisms (Ismail et al., 2023). The lack of engagement between formal restorative justice programs and indigenous legal systems reflects an epistemic hierarchy that privileges codified legal knowledge over local jurisprudence (Levers,

2023). Bridging this gap requires more than legal reform; it demands a reevaluation of what constitutes legitimate knowledge and authority in the realm of justice.

Conceptual Parallels Between Restorative Justice And Indonesian Customary Law

While the discourse on restorative justice frequently emphasises themes such as reconciliation, relational repair, and social cohesion, Indonesian customary law offers a more nuanced and culturally embedded articulation of these values. Rather than simply echoing the language of equilibrium or harmony, *adat* systems conceptualise justice as the active maintenance of moral order, cosmological balance, and intergenerational responsibility (Ismail et al., 2023). These are not abstract ideals but socially enacted principles manifested through rituals, kinship obligations, and collective decision-making processes. What distinguishes customary justice from many state led restorative schemes is its emphasis on spiritual legitimacy, relational accountability, and the moral centrality of the community, which is not merely as a forum for resolution, but as a source of normative authority (Goldblum, 2023). Each customary mechanism examined in this study Dalihan Na Tolu, rukun, and lonto léok demonstrates a distinctive cultural logic that, while converging with restorative ideals, articulates justice through locally specific vocabularies, roles, and cosmologies.

This fundamental distinction is evident in the operational logic of Indonesian customary mechanisms such as Dalihan Na Tolu in Batak Toba society, the principle of rukun in Javanese communities, and the lonto léok deliberations among the Manggarai people (Rochaeti, Prasetyo, & Park, 2023). These practices are not focused on establishing individual guilt or administering formal sanctions but are instead oriented toward restoring equilibrium among affected parties through dialogue, apology, restitution, and symbolic gestures of reconciliation. Importantly, these processes are embedded within the community's moral and spiritual frameworks, reflecting deeply held beliefs about the collective nature of identity, responsibility, and healing (warman et al., 2018).

The procedural nature of these customary mechanisms also challenges the dichotomy often drawn between informal and formal justice. Rather than lacking structure or legal significance, these practices are highly systematised and governed by normative codes that are orally transmitted and socially enforced. They are conducted under the guidance of community elders or customary leaders, whose legitimacy derives not from state appointment but from moral authority and communal trust (Kusmayanti & Fakhriah, 2019). This endogenous structure provides a functional equivalent to formal legal institutions, raising essential questions about the criteria by which legal legitimacy is defined and recognised.

Moreover, the restorative elements in *adat* law are not limited to interpersonal disputes but extend to broader communal and intergroup conflicts, highlighting their

scalability and relevance for restorative justice on a structural level. For example, the practice of collective responsibility in Batak Toba society, where entire kinship networks are involved in dispute resolution, mirrors the contemporary emphasis on community involvement in restorative programs (Rochaeti, Prasetyo, & Park, 2023). Similarly, the focus on kerukunan (harmony) in Javanese thought reflects a cultural commitment to social balance that underpins the legitimacy of restorative interventions. These parallels suggest that Indonesian customary law offers not only normative alignment with restorative justice but also valuable models for its institutionalisation (Saputri, 2024).

Recognising these conceptual parallels is critical for both theoretical and practical reasons. Theoretically, it undermines the epistemological monopoly of Western legal traditions in defining restorative justice. Practically, it legitimises the incorporation of local justice traditions into national legal frameworks in a manner that respects their internal logic and community ownership. Rather than treating *adat* mechanisms as peripheral or exceptional, this approach affirms their relevance as living systems of law that can inform the development of a culturally grounded and socially resonant model of restorative criminal justice in Indonesia. Such a reconceptualisation not only decolonises the restorative justice discourse but also strengthens the foundation for sustainable legal pluralism.

Case Based Insights: Customary Restorative Mechanisms in Practice

The implementation of restorative justice within Indonesian customary law is far from abstract or symbolic; it is practised through structured and culturally grounded mechanisms that offer practical, community-based alternatives to state administered criminal justice. These mechanisms are not uniform but vary across regions and ethnic groups, reflecting the legal pluralism that characterises Indonesia's socio legal landscape. Three illustrative cases Dalihan Na Tolu in Batak Toba communities, rukun in Javanese villages, and lonto léok in Manggarai society demonstrate the rich diversity and operational sophistication of Indonesia's indigenous justice practices. Each case reveals a unique constellation of philosophical principles, institutional structures, and procedural norms that closely align with and, in some respects, exceed the standards set by contemporary restorative justice frameworks.

In the Batak Toba tradition, Dalihan Na Tolu functions as both a socio-cultural ethos and a dispute resolution structure grounded in kinship based roles: *hula hula* (wife givers), *dongan tubu* (patrilineal relatives), and *boru* (wife takers). These triadic relationships form the basis for a moral economy of respect, responsibility, and reciprocity. When a criminal offence, such as theft, assault, or even manslaughter, occurs, the resolution process involves all three kinship pillars through a structured deliberation led by respected elders (Harahap & Hamka, 2023; Panjaitan et al., 2024). The goal is not to punish, but rather to facilitate social healing through acts of

restitution, public apology, and ritual cleansing. These outcomes are designed to restore not only the relationship between victim and offender but also the integrity of the kinship network and the moral equilibrium of the community.

The procedural elements of Dalihan Na Tolu underscore its restorative character. Negotiations typically occur in open forums, where all relevant parties, including the victim, the offender, and their extended families, are encouraged to speak, reflect, and negotiate a path toward reconciliation. The involvement of the broader community ensures transparency, social accountability, and a shared investment in the outcome. Sanctions are not imposed by force but arise from communal consensus, often requiring the offender to perform acts of restitution, such as livestock compensation or labour contributions, as well as symbolic gestures of contrition. Importantly, failure to comply results not in formal legal punishment but in social exclusion, a potent deterrent in communities where social belonging is paramount (Rochaeti, Prasetyo, & Park, 2023).

In contrast, Javanese customary law emphasises rukun (harmony) as the cardinal virtue of social life, and conflict resolution mechanisms are correspondingly designed to prevent escalation, preserve dignity, and avoid open confrontation. Criminal offences are typically addressed through informal consensus building processes involving family elders, village heads, and religious leaders. Rather than focusing on fault or culpability, the Javanese model prioritises face saving mechanisms and indirect negotiation, often conducted through trusted intermediaries (Silambi et al., 2022). This model reflects a cultural logic in which justice is not the application of categorical rules but the reestablishment of emotional and relational equilibrium.

Javanese restorative practice also incorporates symbolic and spiritual elements that reinforce its legitimacy. The use of traditional sayings, such as "*ngluruk tanpa bala, menang tanpa ngasorake*" (to prevail without humiliation), underscores the normative ideal of conflict resolution that uplifts rather than degrades. Even when material restitution is required, it is often framed as a gift or offering rather than a sanction, allowing both parties to preserve dignity and move forward without lingering resentment (Hariyanto et al., 2024). This reflects a broader ontological view in which wrongdoing is seen less as a moral failure and more as a disturbance of social energy that must be rebalanced rather than punished.

In Manggarai society of Eastern Indonesia, the lonto léok serves as a formalised forum for communal justice, held in the Mbaru Gendang (traditional longhouse) and presided over by a coalition of customary leaders: the Tu'a Golo (village head), tu'a teno (land authority), and tu'a panga (clan representatives). This tripartite structure ensures that different social and territorial interests are represented in the deliberation process. Unlike the informal tone of Javanese mediation, lonto léok is ritualised and procedural, with strict turn taking, witness testimonies, and collective decision making (López et al., 2025; "Recontextualizing the Patriarchal Dominance of Manggarai

Heritage Customary Law System by Democratic and Gendered Orientation," 2020). The process begins with a presentation of facts, followed by negotiated assessments of harm and suitable remedies.

The remedies in lonto léok are strikingly aligned with restorative justice principles. They include *tala* (customary fines), which may consist of livestock, textiles, or ceremonial goods, as well as mandatory public apologies and reconciliation meals. What distinguishes lonto léok is the mandatory communal reintegration ceremony that follows a successful resolution, signalling that the offence has been morally and socially cleansed (Balzano Japa, 2023). This ritual element not only marks the end of the conflict but also serves as a public reaffirmation of communal solidarity, emphasising that justice is achieved only when social ties are restored.

These case-based insights reveal that Indonesian customary mechanisms are not only restorative in intention but sophisticated in form, challenging the assumption that non state justice is inherently informal or underdeveloped. Each system contains procedural safeguards, ethical frameworks, and enforcement mechanisms rooted in deeply held cultural values. Rather than operating in legal vacuums, they function as comprehensive legal systems with internal coherence, local legitimacy, and demonstrable effectiveness in achieving social reconciliation. Their emphasis on reintegration, mutual accountability, and community led enforcement offers vital lessons for formal restorative justice programs, which often suffer from institutional fragmentation and lack of cultural resonance.

While the case studies presented here affirm the normative comprehensiveness and operational coherence of customary restorative mechanisms, it is essential to approach these systems with critical nuance. Kathleen Daly and Heather Strang have warned against the instrumental use of restorative justice by states as a managerial tool to reduce caseloads or legitimise punitive institutions without substantive transformation. Similarly, feminist legal scholars like Sally Engle Merry have long cautioned against the romanticisation of customary law, particularly in contexts where patriarchal authority structures remain unchallenged. In the case of lonto léok, for instance, the ritual authority is often concentrated in male elders, raising concerns about the exclusion of women and the reproduction of gendered silences in dispute resolution. These critiques underscore that while customary mechanisms offer culturally resonant models of justice, their integration into formal systems must be accompanied by a critical appraisal of internal power dynamics, normative pluralism, and human rights implications. Recognising these tensions is not a dismissal of *adat* law, but a necessary step toward developing a restorative justice model that is both culturally grounded and ethically accountable.

Comparative Perspective: Customary Vs Global Restorative Models

The integration of restorative justice into modern criminal systems has taken diverse forms across jurisdictions, shaped by legal traditions, cultural histories, and state capacities. In countries like Canada and New Zealand, restorative justice has gained significant traction not only as a rehabilitative tool but as an avenue for recognising indigenous legal traditions. Programs such as the Sentencing Circles in Canada (Wood et al., 2023), rooted in First Nations practices, and Family Group Conferencing in New Zealand, based on Māori concepts of collective responsibility, represent state endorsed efforts to bridge formal legal mechanisms with indigenous frameworks (Winterdyk, 2021). These models institutionalise community participation and cultural specificity within criminal justice processes while maintaining procedural oversight by the state.

While these programs reflect genuine attempts at decolonising justice, they often remain confined to pilot schemes, diversionary routes, or juvenile justice systems. In many cases, their integration into mainstream judicial proceedings is conditional and limited, frequently framed as exceptions rather than normative models. The risk in such arrangements is that indigenous restorative models are accommodated only to the extent that they do not disrupt the core logic of the formal legal system, particularly its adversarial and state centric character (Levers, 2023). This selective incorporation mirrors a broader global pattern in which restorative justice is celebrated rhetorically but marginalised structurally, often sanitised to fit bureaucratic standards rather than reshaped by indigenous epistemologies.

Indonesia's case offers both parallels and critical departures. Like Canada and New Zealand, it possesses rich indigenous traditions of justice that predate the modern state. However, unlike those countries, Indonesia is a legally pluralistic society in which *adat* law is constitutionally recognised and continues to regulate social life in many rural and semi urban communities (Van Vollenhoven Institute for Law, Governance and Society at Leiden University, Netherlands, and Adat (Customary) Law Department, Faculty of Law, Universitas Gadjah Mada, Indonesia et al., 2024). The restorative practices embedded within *adat* systems, such as Dalihan Na Tolu, rukun, and lonto léok, are not state created adaptations but organically developed justice traditions that remain operational, legitimate, and normatively coherent (Rochaeti, Prasetyo, & Park, 2023). This distinction is significant: while other jurisdictions import restorative principles into formal systems, Indonesia already possesses functioning models that could inform, rather than merely supplement, penal reform.

Moreover, Indonesian customary justice mechanisms are not merely restorative in their output, but are grounded in holistic worldviews that integrate spirituality, social roles, and communal cosmologies into legal reasoning. This contrasts with many Western restorative models that, although dialogical in process, often remain secular, individualist, and psychologically oriented (Rochaeti, Prasetyo, Rozah, et al., 2023). For

instance, while Canadian Sentencing Circles emphasise emotional healing and narrative expression, lonto léok embeds justice in ritual and symbolic acts that reaffirm cosmic balance and ancestral obligations (Balzano Japa, 2023). Such cosmological grounding challenges the notion that restorative justice is best practised within secular frameworks and offers a radically different conception of justice one that is spiritual, intergenerational, and cosmocentric.

At the same time, Indonesia's approach also presents challenges absent in other contexts. The absence of clear state protocols for integrating *adat* justice into formal procedures risks creating zones of normative ambiguity (Utama, 2021). While New Zealand's restorative mechanisms benefit from centralised legal frameworks and policy infrastructure, Indonesia suffers from regulatory fragmentation, as evidenced by the inconsistent implementation of restorative justice through various institutional regulations. Without a clear policy roadmap, the valorisation of customary mechanisms may remain symbolic, with limited impact on systemic transformation. Thus, while Indonesia has the epistemic and normative resources for a uniquely pluralist model of restorative justice, its legal architecture remains underdeveloped in accommodating this plurality.

The epistemic tension between retributive, state based restorative, and customary legal systems is not merely theoretical; it has material and political consequences. When the state adopts only the procedural form of restorative justice without embracing its relational or communal substance, it risks producing a façade of transformation that leaves the punitive foundations of the system intact. This is evident in Indonesia's fragmented regulations (Al-Fatih, S., & Shahzad, S. K., 2025), which selectively borrow restorative terms while continuing to marginalise indigenous models of justice. The deeper risk lies in the co optation of customary law for administrative convenience or political legitimacy, without reciprocal transformation of the legal paradigm. Such instrumentalisation reduces *adat* to a tool of state control, stripping it of its cosmological, ethical, and dialogical dimensions. Moreover, this asymmetry reinforces legal centralism and an epistemic hierarchy, wherein state law remains the sole arbiter of legitimacy, and customary mechanisms are tolerated only to the extent that they serve bureaucratic ends. Without genuine inter normative engagement, the promise of legal pluralism collapses into a one-way appropriation, emptying restorative justice of its transformative potential.

Regulatory Fragmentation and Institutional Barriers in Indonesia

Notwithstanding the growing normative appeal of restorative justice in Indonesia, its implementation remains hampered by significant regulatory fragmentation. The current legal framework is characterised by a patchwork of sectoral regulations, such as Prosecutorial Regulation No. 15/2020 (Perja 15/2020), Police Regulation No. 8/2021 (Perpol 8/2021), and Supreme Court Regulation No. 1/2024

(Perma 1/2024), each with its own definitions, scopes, and procedural requirements. While these instruments signify institutional acknowledgement of restorative justice, their lack of coordination and coherence has created interpretive confusion and legal uncertainty. Rather than forming a unified system, they operate in silos, leading to inconsistencies in application across jurisdictions and law enforcement bodies.

One of the most pressing concerns is the disparity in procedural thresholds and eligibility criteria among institutions. For instance, Perpol 8/2021 allows for restorative justice in cases involving community consensus and no residual societal unrest, while Perja 15/2020 focuses on prosecutorial discretion, limited primarily to offences with penalties under five years. Perma 1/2024, meanwhile, addresses post prosecution stages, but does not offer guidance on harmonising prior interventions. This institutional dissonance not only limits the scope of cases eligible for restorative resolution but also reinforces bureaucratic territorialism, wherein each agency acts according to its own logic without a shared conceptual or operational framework.

Philosophically, this fragmentation reflects a more profound ambivalence within the legal system regarding the role of restorative justice. While the retributive paradigm remains dominant, as enshrined in procedural codes and judicial training, restorative justice is often perceived as an auxiliary or informal option, rather than a normative alternative (Chankova, 2021). This marginal status is reinforced by the absence of constitutional or legislative anchoring that situates restorative justice within Indonesia's penal philosophy. In the absence of such foundational articulation, restorative justice is at risk of being co-opted as a discretionary tool to manage caseloads or resolve high profile cases, rather than a transformative paradigm of justice.

Moreover, the state's approach tends to treat restorative justice as a technical innovation rather than a value-based reform. Policy discourse frequently frames it in managerial terms, such as reducing prison overcrowding or expediting case settlement, while neglecting its ethical, relational, and cultural dimensions (Maglione, 2022). This instrumental view diminishes the transformative potential of restorative justice, reducing it to a procedural shortcut rather than a vehicle for reimagining justice itself. Consequently, restorative justice remains peripheral, applied inconsistently and often devoid of community ownership or moral resonance.

This institutional inertia is exacerbated by inadequate infrastructure and professional training. Law enforcement officials, prosecutors, and judges often lack the theoretical grounding and procedural clarity to implement restorative mechanisms meaningfully. In many cases, their interventions are influenced more by administrative convenience than by a commitment to restorative values (Ismail et al., 2023). Furthermore, the absence of cross sectoral coordination mechanisms, including integrated case management systems or inter agency guidelines, further weakens the operational capacity to deliver coherent and principled restorative outcomes.

Despite these obstacles, recent developments offer cautious optimism. The 2023 Criminal Code (KUHP), although controversial in many respects, introduces the recognition of "living laws", potentially initiating access to the formal integration of *adat* based restorative mechanisms. However, this opportunity will remain dormant unless supported by legislative clarity, policy harmonisation, and institutional commitment. Bridging the current regulatory fragmentation requires both administrative reforms and a fundamental reorientation of Indonesia's penal philosophy one that embraces legal pluralism and centres on community-based justice. It treats restorative justice not as peripheral policy, but as a core principle of the legal system.

Toward A Contextualised and Pluralist Model of Restorative Criminal Justice

A sustainable model of restorative justice in Indonesia must be grounded in the recognition of legal pluralism not as a complication in its management, but as a foundational feature of its legal identity. The Indonesian legal landscape is inherently pluralistic, comprising statutory law, Islamic law, and *adat* law, each with its own normative logic and institutional expression. Yet, the discourse of restorative justice in Indonesia continues to be mainly developed within the framework of state centric legal reform, marginalising community-based justice traditions. This approach undermines the richness of indigenous legal epistemologies that have long practised restorative principles in culturally embedded ways (Supriansa et al., 2024).

To move beyond this epistemic marginalisation, restorative justice must be reconceptualised not as a foreign import to be localised, but as a dialogical space where state law and customary law co produce justice. This approach involves recognising *adat* (traditional customs) not merely as a source of local wisdom but as a parallel legal system with legitimate authority and structured norms. This reframing requires the legal system to adopt what Boaventura de Sousa Santos terms an "epistemology of the South" a theoretical orientation that values subaltern knowledge systems and treats them as equal contributors to legal development (Barreto, 2014). In Indonesia's context, this would mean viewing Dalihan Na Tolu, rukun, and lonto léok not as informal supplements, but as substantive foundations for restorative criminal justice.

Operationalising this vision demands a model that integrates *adat* justice into the national system without flattening its normative distinctiveness. One promising pathway is the development of hybrid legal forums institutional spaces where customary leaders, legal professionals, and community representatives collaborate on case resolution. These forums must be supported by enabling legislation that sets the parameters for authority, due process, and oversight, while also protecting the cultural autonomy of indigenous mechanisms. Such a model would allow restorative justice to emerge not from abstract legal theory, but from lived, negotiated practices embedded in Indonesia's social realities.

At the same time, pluralism must not be romanticised. Not all customary practices are inherently just or egalitarian. Some may reproduce patriarchal hierarchies, exclude women or minorities from decision making, or fail to meet universal standards of human rights. A contextualised restorative model must therefore be normatively pluralist but ethically bounded open to diverse legal traditions but anchored in a commitment to procedural fairness, accountability, and the protection of vulnerable groups (Levers, 2023). This necessitates a reflexive legal design that continuously evaluates customary practices through both internal cultural values and external normative standards.

Importantly, this pluralist vision aligns with the principles recently codified in Indonesia's 2023 Criminal Code, particularly its recognition of "living laws" as valid sources of legal authority. However, realising this recognition in practice will require more than doctrinal citation; it demands institutional redesign, inter normative dialogue, and long-term investment in capacity building. Legal actors from judges to prosecutors to local leaders must be trained not just in the mechanics of restorative justice, but in its philosophical foundations, cultural variations, and ethical complexities. Without this shift in legal consciousness, pluralism risks becoming a token gesture rather than a transformative framework.

A contextualised and pluralist model of restorative criminal justice in Indonesia offers a unique opportunity to develop a justice system that is not only effective but also culturally resonant, socially inclusive, and normatively coherent. By moving beyond the binary of formal versus informal justice and instead fostering an integrated approach rooted in local traditions and global principles, Indonesia can position itself as a global leader in pluralist justice reform. Such a model would not only respond to the limitations of retributive penal systems but also articulate a new jurisprudence of justice one that is as attentive to cultural legitimacy as it is to legal effectiveness.

Normative Implications and Policy Recommendations

First, the decolonial argument of this article entails a precise normative repositioning: Indonesian customary justice is not an ethnographic appendix to state law but a co constitutive legal ontology for restorative criminal justice. Dalihan Na Tolu, rukun, and lonto léok demonstrate a jurisprudence that centres reconciliation, accountability, and communal participation as the primary modalities of legal repair. Recognising this status requires a shift from rhetorical "respect for local wisdom" to enforceable rules of complementarity between *adat* and state procedure. Normatively, the state's penal order should treat *adat* forums as sources of reasons with equal standing, subject to universal rights baselines. This reframing aligns restorative outcomes with constitutional pluralism while preventing both assimilation (which dissolves *adat* into bureaucracy) and isolation (which leaves *adat* without effect in national penal policy).

Second, to translate this ontology into doctrine, we recommend amending Law No. 1/2023 (KUHP) Article 2 ("living law") with two explicit clauses: (i) Complementarity and Sufficiency *adat* based restorative settlements that satisfy minimum due process standards are legally sufficient to fulfil penological aims for eligible offences; and (ii) Subsidiarity and Routing cases are routed to state forums only where those standards fail or specified public safety thresholds require it. The due process minima should include, at a minimum: timely notice; freely given, recorded consent of victim and accused; access to counsel or legal aid; gender sensitive and trauma informed facilitation by accredited elders/mediators; language translation; written minutes and terms; independent verification of voluntariness; and time bound completion. Eligibility should be confined to clearly enumerated categories (e.g., non-lethal offences, defined value thresholds, absence of coercive control), with statutory exclusions for crimes involving sexual violence, lethal harm, organised crime, and repeated serious offences. This amendment cures Article 2's current indeterminacy, anchors *adat* complementarity in black letter law, and aligns the Code with restorative pathways already practised across Indonesia.

Third, operational coherence requires harmonising and tightening sub regulations that function as restorative solutions. Concretely, the Regulation of the Attorney General No. 15/2020 should be revised, particularly Article 4 (criteria) and Article 6 (conditions), to (a) codify a clear consent structure, (b) mandate registration of community agreements in a digital registry with executory force, and (c) require prosecutorial review for rights compliance before case closure. The Regulation of the Indonesian National Police No. 8/2021 should be updated, particularly Article 3 (requirements), to add explicit safeguards against coercion, require gender balanced participation, mandate trauma informed facilitation, and impose standardised documentation templates. Finally, adapt the diversion logic in the Juvenile Justice Law (esp. Articles 7–9) for narrowly tailored adult diversion within criminal procedure, expressly referencing KUHP Article 2 as authority. Together, these targeted changes move our findings from narrative to rule: they instantiate *adat* as an equal source of restorative reasons and provide a replicable template for pluralist penal reform.

Fourth, institution building is essential to mitigate risks of elite capture, coercion, or uneven quality. We propose a national Accreditation Board for Restorative Facilitators (co convened by the Attorney General's Office, the National Police, the Ministry of Law and Human Rights, and recognised *Adat* councils) to accredit elders/mediators through transparent criteria and periodic re certification. A mandatory training curriculum should cover due process safeguards, domestic violence risk assessment, child protection, disability access, victimology, cultural and linguistic competence, and record keeping. Each district should maintain a Customary Justice Registry (court annexed) to log facilitators, agreements, and completion reports; agreements gain executory status upon registration, with narrowly defined grounds for

judicial refusal (e.g., manifest rights violation). An independent monitoring mechanism, modelled after an ombuds, should receive complaints, audit samples of agreements, and recommend sanctions (including de accreditation) when violations occur.

Fifth, guardrails and remedies ensure that complementarity advances justice rather than privatised impunity. Statute and sub regulations should codify (a) categorical exclusions and rebuttable presumptions against *adat* settlement in high risk contexts (sexual violence, intimate partner violence with lethality indicators, repeating serious harm); (b) a rights to review pathway enabling victims or the accused to seek rapid judicial review of voluntariness, equality of arms, or discriminatory conditions; (c) standardised reparation schedules (material, symbolic, and community service components) with proportionality tests; and (d) breach consequences failure to comply triggers restoration of state prosecution, with partial credit for completed obligations. Data transparency should be mandated through anonymised, open statistical reporting (case types, demographics, outcomes, reoffending proxies), enabling scholarly and public oversight while protecting privacy. These guardrails embed equality, non-discrimination, and dignity as non derogable baselines, consistent with constitutional commitments and Indonesia's international human rights obligations.

Sixth, implementation should proceed via piloted roll outs and knowledge loops that consolidate Indonesia's theoretical and practical leadership in comparative restorative justice. We recommend (i) pilot jurisdictions across distinct legal cultures (e.g., North Sumatra, Java, East Nusa Tenggara) with matched controls; (ii) predefined success metrics (victim satisfaction; time to resolution; compliance rates; cost per case; re contacting with the criminal justice system; community cohesion indicators); (iii) an iterative regulatory sandbox under Supreme Court and ministerial oversight to refine forms, thresholds, and review standards; and (iv) an independent multiyear evaluation consortium (universities and civil society partners) to publish peer reviewed findings. Theoretically, our contribution is to reposition *adat* as a co constitutive legal ontology capable of reshaping national policy and comparative theory; practically, these reforms offer a rule level blueprint to amend KUHP Article 2, harmonise Perja/Perpol gateways, and build accreditation, registry, and review infrastructure, as to demonstrate Indonesia's customary justice as a living jurisprudence for restorative criminal justice rather than an imported ideal.

CONCLUSION

Indonesia's customary justice demonstrates that restorative criminal justice is not an imported ideal but a living jurisprudence: Dalihan Na Tolu, rukun, and lonto léok place reconciliation, accountability, and communal participation at the centre of legal repair. Theoretically, our contribution is to reposition *adat* as a co constitutive legal ontology capable of reshaping national policy and comparative theory, not merely

supplementing state law. To translate this into doctrine, we recommend amending Law No. 1/2023 (KUHP) Article 2 (Living law) by adding explicit paragraphs on complementarity and rights baselines: (i) recognition that *adat* based restorative settlements that meet minimum due process standards (notice, freely given consent of victim and accused, facilitation by accredited elders/mediators, translation, written records) are legally sufficient to satisfy penological aims for eligible offences; and (ii) a subsidiarity clause that routes cases to state forums only where those standards fail or public safety thresholds require it. This amendment would cure the current indeterminacy of Article 2's living law clause and align the Code with established restorative pathways in practice. Operationally, the state should harmonise and tighten sub regulations already used as restorative gateways. In a concrete scope, (1) Regulation of the Attorney General Number 15 of 2020, especially Article 4 (criteria) and Article 6 (conditions) should be revised to codify a clear consent structure and mandatory registration of community agreements with executory force; (2) Regulation of the Indonesian National Police Number 8 of 2021 Article 3 (requirements) should be updated to add safeguards against coercion, gender balanced participation, and trauma informed facilitation; and (3) it is also necessary to adapt the diversion model in the Juvenile Justice Law, particularly Articles 7–9 for adult cases by creating a parallel, narrowly tailored diversion track in criminal procedure that references KUHP Article 2 as authority. Together, these targeted changes move the findings from narrative to rule: they anchor *adat* as an equal source of restorative reasons within Indonesia's penal order and supply a replicable template for pluralist penal reform.

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