

## **Restorative Justice of Customary Law in Indonesia**

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### **Abstract**

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet and resolve the problems. In many instances, restorative justice is derived from the rites of various ancient, cultural, and spiritual contexts. This study seeks to provide an overview of this concept and the restorative processes undertaken in traditional life in Indonesia. The study was conducted through a literature review of the results of some research on traditional customary law practices. The results of this study describe how a form of restorative justice has been carried out in traditional communities in Indonesia.

**Keywords:** Restorative Justice, Customary Law, Traditional System



## Introduction

Restorative justice has been defined as a process through which parties with a stake in a specific offense collectively resolve how to deal with the aftermath of the offense and its implications for the future (Tony Marshall, 1999, 5). Restorative justice gives victims the chance to meet or communicate with their offender to explain the real impact of the crime - it empowers victims by giving them a voice. This concept is based on the fundamental principle that criminal behavior not only violates the law but also injures victims and the community (UNODC Handbook 2006).

There are three hallmarks of restorative justice (Dandurand et al., 2006, 17-24). The oldest practice is victim-offender mediation, which provides an interested victim the opportunity to meet their offender and engage in a discussion of the crime with the assistance of a trained mediator. The second practice is family conferencing, which brings together the victim, offender, family, friends, and key supporters of both parties to decide on how to address the aftermath of the crime. Some literature suggests that Family Group Conferencing (FGC) originated from the traditional juvenile justice of indigenous Maori in New Zealand. Institutionalized into law in 1989, FGC is now the standard way to process juvenile cases in New Zealand (Umbreit, 2000:3). Australia subsequently adopted the idea and has implemented a number of FGC models in various communities. Finally, there is circle sentencing, which makes discussions among those in the circle the best way to resolve the conflict. Generally, these practices take into account the need to protect harmony in the community.

The UNODC Handbook on Restorative Justice Programmes mentions some traditional dispute resolution mechanisms as the roots of restorative justice, especially with regard to indigenous and customary justice forums (Dandurand et al., 2006, 29-31). Traditionally, people in Indonesia have been familiar with this concept for thousands of years. Traditional customary law in Indonesia has been identified by Cristian Snouck Hurgronje in his book "De Atjehers" (Acehnese people) in 1894. Customary law, called "Adat," denotes a social control system that governs the tribe and includes criminal sanctions. Instead, some scholars believe that compromise and reconciliation are characteristic of Indonesian legal culture (Rahardjo 2008, 50). It is found that mediatory actions are more important than the resolution of disputes by judicial authorities. This means that the Indonesian customary law system contains restorative justice values.

Looking at this phenomenon, it is interesting to conduct a study of how the actual forms of restorative justice are carried out in traditional societies in Indonesia. Therefore, this study was conducted to illustrate this practice and

serves as a contribution of information for the development of restorative justice methods for the international community.

### **Method**

This study was conducted with a literature research method in the form of a review of various literature and the results of previous research. Some of the customary law systems found in this study are then analyzed by comparing the method of dispute resolution carried out with the concept of restorative justice introduced by various modern literature.

As describing all hundreds of customary laws is not feasible, the purposive sampling technique is used to determine the objects of research. In order to be considered representative of the character of Indonesian people, this study establishes that customary law from specific regions will be examined. The Baduy traditional tribe represents the western region, Balinese culture represents the central region, and Bugis-Makassar legal culture represents the eastern region.

### **Result and Discussion**

As of September 2021, restorative justice is not widely practiced as a traditional custom among all Indonesians. Nonetheless, it's crucial to recognize that Indonesia is a diverse nation comprising various ethnic groups, each with its distinct cultural traditions and customary norms. It is possible that certain local communities or indigenous groups have integrated restorative justice principles into their traditional practices for resolving disputes and conflicts.

Restorative justice, in a broader sense, is a theory of justice that focuses on repairing the harm caused by criminal behavior or conflicts. It emphasizes healing and restoring relationships between offenders, victims, and the community. Instead of merely punishing offenders, restorative justice seeks to involve all stakeholders in a cooperative process to find solutions and address the underlying causes of the harm.

In some parts of Indonesia, there might be practices similar to the principles of restorative justice that have been part of the local customs for generations. These practices could involve mediation, reconciliation, and community involvement in conflict resolution. These processes aim to restore harmony, promote healing, and reintegrate offenders back into the community after they take responsibility for their actions.

It is essential to understand that the concept and practices of restorative justice may vary significantly across different regions and cultures in Indonesia. To gain a comprehensive understanding of restorative justice as a tradition of

people in Indonesia, more specific and localized research would be needed, focusing on the diverse customs and practices within various communities across the archipelago.

In Province of Bali, like in many other parts of Indonesia, traditional community-based approaches to conflict resolution are often valued. These approaches may involve mediation, negotiation, and reconciliation to restore harmony and maintain social cohesion within the community. In some cases, village elders or community leaders play a significant role in facilitating discussions between the parties involved in a dispute. It's important to note that the legal system in Bali, like the rest of Indonesia, operates within the framework of national laws and regulations. However, customary practices and traditional norms may still play a role in resolving conflicts and maintaining social order in certain local communities.

In this study, it was found that the practice of restorative justice was carried out in the traditions of the Balinese people. Based on research by Iswara (2012: 195-199), it can be stated that Victim-offender mediation and Family Group Conferencing are the ways of resolving conflicts in Balinese society, referred to as "wicara." There are at least four stages in the "wicara" process conducted by Pakraman (village assemblies). The first stage involves direct negotiations between perpetrators and victims, which usually also involve the families of both parties. The second stage is through third-party mediation, such as "Majelis Alit" of Pakraman. If failed, the case will be submitted to the "Majelis Madya of Pakraman," which is the third stage. The final stage is "Majelis Utama of Pakraman." Some principles attributed to the process include goodwill on both sides, alternative settlements are negotiated together, and if an agreement is reached, it ends with a joint traditional ceremony. In Balinese society, there is a wise principle as follows: "Settle a dispute thoroughly without harboring any envy, hostility, or vengeance."

Victim-Offender Mediation (VOM) is defined as a process that provides interested victims the opportunity to meet their offenders with the purpose of holding offenders directly accountable, with the assistance of trained mediators. In this forum, victims can express how the crime affected them and be directly involved in developing a restitution plan. Offenders are directly responsible for their behavior and must learn the full impact of what they did for better connection in the future. VOM is also found to be a restorative process important in addressing the needs of all participants, contributing to public safety and the prevention of future crime.

Unlike VOM, in the modern legal system, Family Group Conferencing (FGC) uses public officials (police officers, probation officers, school officials) rather than trained volunteers as facilitators. Although their roles include mediation, they are more broadly defined, combining mediation with other

methods of interaction and allowing for more directed facilitation. The FGC process also involves a much wider circle of participants than VOM (Umbreit, 2000: 5).

In Baduy community is known for adhering to strict traditional rules and practices that govern their way of life. They are deeply rooted in their traditional beliefs and are known for their strong commitment to preserving their customs and rejecting modern influences from the outside world. In terms of conflict resolution, the Baduy people typically rely on their traditional methods, which may include restorative justice principles. Like many other indigenous communities in Indonesia, they often emphasize reconciliation, mediation, and community involvement in addressing conflicts and restoring harmony. Elders and community leaders play essential roles in facilitating discussions and negotiations to resolve disputes within the community.

Based on a study by Faturokhman (2010), the most favored method by the Baduy tribe community is conference. A system of deliberations is led by "Pu'un" and "Jaroto" to achieve an agreement between the parties in the form of a win-win solution. The process usually begins at the family stage. If the family stage is unsuccessful, then the case is taken to the tribe chairman, who will invite the tribal leaders to conduct the conference. Restoring to its original state before the crime occurred is the demand so that the perpetrator and his family are free from feelings of guilt. Forgiving each other ("silih ngahampura") is the most popular proposition.

In Buginese and Makassar traditions, there is "Tudang Sipulung" as one of the customs of the Bugis-Makassar tribe in South Sulawesi Province. Tudang Sipulung is a traditional conflict resolution practice among the Bugis people of South Sulawesi, Indonesia. It is a customary method used to resolve disputes and conflicts within the community. Tudang Sipulung involves the parties involved in a conflict gathering together to discuss the issue openly and find a resolution through consensus. It is a form of mediation or deliberation, where community members come together to listen to the perspectives of all parties and work towards finding an agreement that is acceptable to everyone involved.

During Tudang Sipulung, elders and community leaders often play significant roles as mediators or facilitators in guiding the discussions and ensuring that the process is fair and respectful. The goal is to reach a resolution that restores harmony and maintains the cohesion of the community.

This traditional conflict resolution practice has been passed down through generations among the Bugis people and continues to be an important part of their cultural heritage. Tudang Sipulung reflects the Buginese values of mutual respect, reconciliation, and the collective responsibility of the community in resolving conflicts.

Tudang Sipulung is an activity of jointly discussing and negotiating to solve a problem and reach an agreement through a deliberative culture. In "Lontara' La Toa" (Ancestor) mentions around the 14th century, "To Manurung," the first king in Bugis-Makassar, held a "sipulung" place with the traditional leaders to make an agreement on the basics of organizing the entire political activities of the Bugis-Makassar government and state. The agreement agreed on the limits of the rights, authority, responsibilities, and obligations of the king and the people. Determination of the status, functions, and roles of each. This clearly shows the political culture system adopted by choosing and establishing the people as the holder of the highest sovereignty (Mattulada, 1974).

The term "tudang" in Bugis means "to sit," while "sipulung" means "to gather." Thus, etymologically, "Tudang Sipulung" is sitting together, then interpreted as deliberation. An interpreter of "Lontara," Baharuddin (Wiskawandi, 2019: 22), explains in the Bugis language that:

"Naiyyariya senge tudang sipulung, iyyana rittu mallari ade' ena pogau tori olo ta'. Tudang maddeppu-deppungeng, tudang mallewo-lewoang nasibawai akkat tama elo sipatang ngarengnenniya maelo mala ada assimaturuseng."

It means: "What is meant by the 'tudang sipulung' is a tradition often practiced by the ancients (our elders). Sitting together, gathering with the aim of deliberating to reach consensus." Various literatures also show that the essence of "Tudang Sipulung" is to seek agreement in solving problems that arise in the community. Therefore, this method has the same purpose as the principles built in the perspective of restorative justice.

## Conclusion

The conclusion about restorative justice in traditional Indonesia is that while it might not be a widespread and uniform practice across all regions and ethnic groups, there are significant traces of restorative principles embedded in various customary systems and local traditions. Many indigenous communities in Indonesia have long-standing methods of conflict resolution that emphasize reconciliation, mediation, and community involvement, reflecting restorative justice values. These traditional practices prioritize healing, repairing harm, and restoring relationships between offenders, victims, and the community. They demonstrate a deep-rooted understanding of the interconnectedness of individuals within the community and the importance of maintaining social harmony.

While modern legal systems are in place in Indonesia, the continued presence of restorative justice principles in various traditional customs showcases the enduring cultural significance of these values. As Indonesia is a diverse nation with numerous ethnic groups and distinct cultural traditions, the forms and applications of restorative justice may vary significantly from one community to another. Overall, the existence of restorative justice in traditional Indonesia highlights the cultural richness and the enduring relevance of community-based conflict resolution methods. Understanding and preserving these practices can contribute to a more holistic and culturally sensitive approach to justice and conflict resolution in the country. As Indonesia continues to evolve, recognizing and learning from these traditional restorative practices can provide valuable insights and potential enhancements to modern justice systems.. \*\*\*

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