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Judul Makalah : A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices

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[SLRev] Submission Acknowledgement

Dari: Nur Rochaeti (etikfh@live.undip.ac.id)
Kepada: Sriwijaya Law Review <sriwijayalawreview@fh.unsri.ac.id>
Tanggal: Senin, 23 Mei 2022 16.30 WIB

Dear Editor,

We would like to submit article entitled, "RESTORATIVE JUSTICE RECONSTRUCTION OF THE INTEGRATED CRIMINAL JUSTICE SYSTEM IN INDONESIAN LEGAL SYSTEM REFORM", for consideration for publication on Sriwijaya Law Review.

We hope this paper will be accepted for publication in your journal. We are looking forward to hearing from you as soon as possible.

Best regards,

Nur Rochaeti

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Dari: Sriwijaya Law Review <sriwijayalawreview@fh.unsri.ac.id>
Kepada: etikfh@live.undip.ac.id
Tanggal: Jumat, 10 Juni 2022 17.14 WIB

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Etik Nur Rochaeti:

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Nurhidayatuloh
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Tanggal: Senin, 11 Juli 2022 11.05 WIB

Dear
Dr. Etik Nur Rochaeti,

Your manuscript has been subjected to a double-blind review process by the selected reviewer who is an expert in the related fields. Two Reviewers recommend revision and one rejected it. However, I give you a chance to revise your manuscript before I make a final decision. Enclosed please find the reports from these reviewers.

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E-mail: sriwijalayalawreview@unsri.ac.id | sriwijalayalawreview@gmail.com

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Restorative Justice Reconstruction of The Integrated Criminal Justice System in Indonesian Legal System Reform

Nur Rochaeti^a, Umi Rozah^b, Mujiono Hafidh Prasetyo^c, and Jihyun Park^d

^a Faculty of Law, Universitas Diponegoro, Indonesia. E-mail: etikfh@live.undip.ac.id

^b Faculty of Law, Universitas Diponegoro, Indonesia. E-mail: umirozah@lecturer.undip.ac.id

^c Faculty of Law, Universitas Diponegoro, Indonesia. E-mail: mujionohafidhprasetyo@lecturer.undip.ac.id

^d Faculty of Law, Youngsan University, Republic of Korea. E-mail: shabd@ysu.ac.kr

Article	Abstract
<p>Keywords:</p> <p>Restorative Justice; Integrated Criminal Justice System; Indonesian Legal System Reform</p> <p>Artikel History Received: ; Reviewed: ; Accepted: ; Published:</p> <p>DOI:</p>	<p>The crime rate in Indonesia in week 22 or the last one in May 2020 has increased when compared to that in the previous week due to the public order and crime (known as kamtibmas) disturbances in week 22 of 2020 has increased by 442 cases or 16.16 percent. Data obtained from the correctional institutions in February 2021 showed that the number of prisoners and inmates from 29 Law and Human Rights Regional Offices was already over capacity, while that from the other 4 Law and Human Rights Regional Offices were still in normal condition. In the state life and legal development, the 1945 Constitution of the Republic of Indonesia in Article 18B has regulated that the customary institutions are recognized for their existence in the criminal justice system and then the judge when deciding the cases is obliged to explore, follow, and understand the legal values and justice senses living in the society. This research has several problems related to how the restorative justice reconstruction in the Integrated Criminal Justice System in the Indonesian legal system reform. The result research showed based on the juridical considerations, and reviewing the relationship of various laws and regulations, as well as legal products related to the restorative justice based on to prevent from crime. Public participation in Indonesia are related to the customary groups having the legal characteristics as well as cultures, moral values, religions to solve problems through discussion which mechanisms are in accordance with the applicable customary law processes.</p>

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INTRODUCTION

Criminal law is identical with the punishment concept characterized by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human rights in a harmonious balance from crimes/bad actions on one hand and from the

despotic authorities on the other hand.¹ Criminal law is considered as law of sanctions (bijzondere sanctierecht) since relying on sanctions functioning to ensure security, order, and justice.²

In the basic principles developed the Tokyo Rules have several objectives including: a. Standard Minimum Rules (known as SMR) establishing a set of basic principles to develop the non-custodial measures, and guarantees for persons subject to the alternative prison measures; b. SMR is intended to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility senses to the public; c. SMR must be implemented due to the political, economic, social, and cultural conditions as well as the criminal justice system objectives in each country; d. In implementing this SMR, each country should ensure the balance between the criminal perpetrators' individual rights, victims' rights, and public interests in the form of public security and criminal prevention; e. Member states should develop non-custodial measures in their legal systems in respect to the human rights, need for social justice, and need for rehabilitation for the criminal perpetrators.

It is necessary for both non-penal and non-custodial facilities to be intensified and made effective for several reasons: a. According to Rubin, punishment (whatever the truth, whether intended to punish or improve) has little or no effect on criminal problems; b. Schultz stated that the increasing and decreasing crimes in a country is not related to changes in their laws or trends in court decisions, but related to their operations or functions of major cultural changes in social life; c. Johaness Andenaes stated that the operation of criminal law should always be seen from the whole cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions; d. Donald R. Taft and Ralph W. England said that the effectiveness of criminal law cannot be accurately measured. Law is only a means of social control. Customs, religious beliefs, group support and disapproval, suppression and group interest as well as the influence of public opinions are more efficient vehicles in regulating human behaviors than legal sanctions.³

Furthermore, in "International Penal Reform Conference" held at the Royal Holloway College, University of London on April 13-17, 1999, stating that one key element of a new agenda was the need to enrich the formal criminal justice system with an informal system or mechanism for the dispute resolution in meeting the human rights standards. This conference also identified 9 development strategies in performing the criminal law (penal) reform by developing/building, 1. Restorative justice, 2. Alternative dispute resolution, 3. Informal justice, 4. Alternatives to Custody, 5. Alternative ways dealing with juveniles, 6. Dealing with Violent Crime, 7. Reducing the prison population, 8. The proper Management of prisons, 9. The Role of civil society in penal reform.

These various explanations are a reaction to how difficult it is to say that the criminal justice system with its criminal sanctions is an effective means to overcome crime (delinquency).

¹ Kanter E.Y and S.R Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya [Criminal Law Principles and Their Implementations in Indonesia]* (Jakarta: Stora Grafika, 2012).

² M. Hamdan, *Politik Hukum Pidana [Criminal Law Politics]* (Jakarta: PT. Raja Grafindo Persada, 1997).

³ Barda Nawawi Arief, *Masalah Perlindungan Hukum Bagi Anak*, Makalah, Bandung: Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, 1996. pp. 48 – 50

In reality, the stigma that must be experienced by the former inmates/prisoners is not something easily forgotten.

Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by the criminal actions. Recovering these losses and relationships can be achieved through the cooperative processes involving all stakeholders (interested parties).⁴

Restorative justice resolves criminal cases by repairing the resulted damages or losses. The amicable case settlement processes involve victims and perpetrators in a discussion to make the best agreement for both parties. The restorative justice aims to: a. simplify the processes which must be followed b. protect the rights of victims and perpetrators; c. minimize the negative impacts on the criminal justice processes which have been so far followed; d. involve public participations in law enforcement.⁵

The civil society movement is not basically meant to compete against the state, or to fertilize power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration", contains rights and obligations including : a. right to find, obtain, and provide information related to the state administration; b. right to obtain equal and fair services from the state administration; c. right to responsibly convey suggestions and opinions on policies issued by the state administrators; d. right to obtain legal protection in terms of using their rights, and if requested to be present in the process of investigation, investigation, and at the court hearings as a reporting witness, witness or expert witness, based on the provisions of the applicable laws and regulations; e. Those rights are used in accordance with the provisions of the applicable laws and regulations and by complying with the religious norms and other social norms. This is intended to avoid defamation and irresponsible reports; f. public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.⁶

Public participation in criminal justice is expected to realize a favorable condition to all interested parties to create a better future. In facts, the Kanayatn Dayak and Sanggau Dayak tribes in Pontianak, West Kalimantan have a strong bond of values, morals, cultures, and local

⁴ Muladi, *Kapita Selekta Hukum Pidana [Capita Selecta of Criminal Law]* (Semarang: Universitas Diponegoro Press, 1995).

⁵ Pemikiran penulis based on *Restorative Justice Concept* by D. Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Lawa Review, 1998, pp. 53 – 111.

⁶ Putusan Peradilan Perdamaian Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006]

Untuk keadilan nan badasarkan "Adat basandi Syarak, Syarak basandi Kitabullah [For Justice Based on "Adat basandi Syarak, Syarak basandi Kitabullah]"

Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air in this case "Nagari Customary Court Section", based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on 29 August 2006 and *bapidoman pado* KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-2005, *sarato* Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice

wisdoms in solving the problems occurring in the society. (Nur Rochaeti, Rahmi Dwi Sutanti, 2018).

According to Van Ness, in the customary justice process, it significantly forms a restorative justice, at least in 3 forms. First the existence of two characteristics of restorative justice programs which are the adaptations of customary practices: conference system (found in traditional Maori practices in New Zealand) and circular system (practiced by the first nation in America). Second, the basic philosophy in the customary process that judiciary tries to improve the injuring crime structures in the society and provide information related to the restorative justice. Third, several customary justice forms have been included in the formal efforts in the crime-handling processes (Van Ness Van Ness, Daniel W, Jhnstone, Gerry, 2007), (Hayes and Hayes 2008). (Gunningham and Grabosky 1998; Haines 1998; Braithwaite 2002b) (Daly 1996; 2002; Braithwaite 2002a).

In general, justice systems are seen to create justice by giving right and just punishment to the offender. This understanding is from the concept of retributive justice, correcting the offense with a punishment equal to the offense. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused, instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law', but as causing damage to individuals and community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore the people directly involved are encouraged to join the problem solving process, especially the community's victim-focused effort, which supports victims and helps offenders to take responsibility, which is very necessary in preventing recurrence.

The Juvenile Act of Republic of Korea was enacted on July 24, 1958, and was revised extensively on June 22, 2008. The main points of the amendment are: First, the age under the Juvenile Act was reduced from under 20 to under 19, and the age of delinquents and juvenile liable to commit a crime was reduced from under 12 to under 10. So, the age under the Juvenile Act was changed from the age between 12 and 20 years old to the age between 10 and 19 years old. Second, a new system was introduced: Mandatory adoption of Court Appointed Assistant to a protected juvenile entrusted to the Juvenile Classification Review Board, introduction of a victim's statement, introduction of reconciliation recommendation system, introduction of pre-decision investigation and consultation-conditional suspension of prosecution by prosecutors, regulations on the prevention policies of juvenile delinquency are established that the Minister of Justice should establish and operate examination, research, education, public relations and policies to help the juvenile delinquent develop soundly, and establish and take operational measures cooperative systems with central administrative agencies, public institutions and social organizations related to guidance and education to juvenile delinquent.

In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed to challenge its constitutionality because it was unlawful presumption of principle, the unjustified infringement of physical freedom and violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable reason to

treat discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge the fact that such a protective disposition deprives the physical liberty of the body, but to rationalize the discrimination against the protected juvenile by its aim is to rehabilitate the juvenile with anti-socialism and to promote healthy development. inhumane treatments cannot be tolerated because of laws that are more unfair than adults.

RESEARCH METHODS

This research used an approach method based on a socio-legal study which reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact (Bruggink, 1996). Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft/sollenwissenschaft*.

ANALYSIS AND DISCUSSION

Crime can result in the decreasing self-restraint, stigmatization of delinquent children, weakening conventional bonds, and family relations in the society, breaking the conventional relationships between peer-groups, and encouraging the delinquent perpetrators to only think about themselves more than to the victim. Meanwhile, the supervisory on perpetrators is considered as a juvenile justice program oriented only to the perpetrators containing a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.⁷

According to Gordon Bazemore, the main points of thoughts in the Restorative juvenile justice paradigm include: a. purposes of imposing sanctions: there is an assumption that achieving the purpose of imposing sanctions, the victim is then included to have the right to be actively involved in the judicial process. The indicators of achieving the purposes of imposing sanctions are by looking at whether or not the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness to his actions, the number of repair agreements made, as well as the quality of working services and the overall occurring processes. The forms of sanctions include restitution, mediation for perpetrator and victim, victim services, public restoration, direct services to victims or restorative fines. The imposed sanctions actively involve the perpetrators, victims, public, and law enforcers. Offenders work actively to restore the victims' losses, and deal with the victims/victim representatives. A victim should be active in all process stages and assist determining the sanctions imposed on a offender.

Unlike jurisdictions such as Australia and New Zealand, family conferencing is not used in Singapore as a replacement for formal criminal proceedings to divert the juvenile offender from the criminal justice system. It caters to selected juvenile offenders who have either been found guilty or pleaded guilty to the charges brought against them. The objectives of family conferencing have been described as (Subordinate Courts of Singapore 1998a): 1. To ensure that the

⁷ *Ibid*

juvenile understands the seriousness of the offending behaviour; 2. To minimize the likelihood of juvenile re-offending; 3. To provide the juvenile with the opportunity to accept responsibility for the offending behaviour; 4. To address the issue of family and community accountability; and 5. To provide the victim(s), where possible, with an opportunity to contribute to the cautioning process.⁸

Public is involved as a mediator, helping victims and supporting the fulfillment of perpetrators' obligations. Law enforcers facilitate the mediation. b. perpetrators' rehabilitation: The main focus of restorative justice is for the benefit and positive development, therefore, children and families are the main sources. Children are considered competent and positively have both preventive and proactive abilities. For the perpetrators' rehabilitative purposes, it is necessary to change the social institutions' attitudes and adults' behaviors. Perpetrators' rehabilitation is performed with the perpetrators through learning by doing, counseling and therapy to motivate the related parties' active involvement. c. Public protection aspect: assumptions in the restorative justice related to the achievement of public protection by the efforts of judicial system collaborated with the public to develop prevention. Confinement is limited only as the last effort. Public is actively responsible for supporting the implementation of restoration. The achievement indicators on the restoration of public protection are shown if the number of recidivists has decreased and the perpetrators are under the public supervision, people feel safe and confident to the role of juvenile justice system, schools are involved, families and public institutions can prevent from crime; social bonding and reintegration have increased.⁹

Howard Zehr as a pioneer of restorative justice in the United States introduced the "restorative lens", in which crime is seen as a violation to individuals and relationships between individuals, while justice is interpreted as a joint search for solutions through healing and reconciliation. In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms which cause losses to individuals who are highly affected by crime; from the sentencing and imposing misery, moving on loss repair. A key element in the restorative justice paradigm is loss restoration.¹⁰

Howard Zehr further reminded that restorative justice is more precisely defined in contrast to the "adversial system" in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) "fight each other" in front of "referee", where the judge leads the trial. Crimes in restorative justice are understood as losses imposed on victims and their communities; while in adversial system, it is understood as a violation to the state. Restorative justice is actively performed by the public where victims are assisted in explaining how losses should be remedied and perpetrators are encouraged to be responsible, while the adversial system is organized and controlled by professionals where victims are generally prevented from explaining their losses.¹¹

Some scholars believe the real purpose of criminal justice system is to promote peace in public, as peace promoter, not punishment. This vision is known as restorative justice.¹² The

⁸ Wing-Cheong Chan, *Asian Journal of Criminology*, March 2013, Volume 8, Issue 1, pp 1–23

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Ibid.* pp. 55

¹² *Ibid*

guidelines in restorative justice have three important principles: a. Groups "owning" the conflicts (including crime), b. The existence of materials and symbolic remedies for the crime victims, and; c. Social reintegration for the perpetrators.¹³

The conventional criminal justice system focuses on three questions: (1) what laws have been broken?; (2) Who did it?; and (3) What do they deserve? Furthermore, in the perspective of restorative justice, the questions are completely different: (1) Who has been hurt; (2) What are their needs; (3) Whose obligations are these?¹⁴

Various cultures, diversity of behavioral habits in the society in Indonesia are the wealth of values guiding people to play their role, participate in the restorative justice process of juvenile criminal justice system. Indonesian people, as a cultural system in the state life system as a supra system, in which interacts in a single unity system of Indonesian national life, interacts and colors each other as a legal system colored by a cultural system forming a legal culture in the Indonesian legal system.

According to Menski, all values in the community are obtained from various sources that must be acknowledged and understood as values that can be the source of law in the community.¹⁵

According to Menski, Legal Pluralism can fill the scenario and conflict arising from strict application of each different source of law. In his language, Menski states:

Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law-making source rules roots absolutely. The Centre of this triangle would appear to indicate 'perfect' justice as the result of equilibrium between the various competing forces.¹⁶

Plurality or Bhineka is the typical characteristic of Indonesia with its many islands, tribes, languages, and cultures. Indonesia desires to establish a stable and modern nation with a strong national bond. Therefore, avoiding pluralism is equal to avoiding different realities of the existing perspective and beliefs in Indonesian community. Legal pluralism means there are different legal systems or cultures in a single political community. Pluralism arises in many forms. Pluralism is horizontal, in which sub-cultures or sub-systems have equal legitimacy status, or vertical, arranged hierarchically where there is a "higher" and "lower" legal system or culture."¹⁷

In Indonesia the characteristics of customary law in every region basically support the application of restorative justice. With regard to violation of custom or customary act, and its solving mechanism, customary law has its own view. The existence of customary justice in some regions is still taken into consideration, and restorative justice is not a new concept.

¹³ Ibid

¹⁴ Ibid

¹⁵ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Second Condition, New York; Cambridge University Press, 2006, page 72.

¹⁶ Werner Menski, Ibid, pp. 186 – 187

Legal Pluralism fills the central space in in this triangle since all of it signifies all conflict scenarios and situations where none of the top three in law makes the root source of rule are absolute. At the center of this triangle, it will emerge to show that justice is 'perfect' as the result of balance between various contending powers.

¹⁷ Lawrence Friedman, *Opcit*, p. 257

Community involvement in law enforcement process is expected to be the form of control and empathy in the sense of sensitivity to the problems faced, to social changes and public necessities and the form of community's real responsibility in the field of law. Theoretically, community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with certain independent reality and objectivity vis a vis members of the concerned group.¹⁸ Besides, social problem solving by community in many things can also serve to fill and complete the act of handling by government (state) institution. According to field finding, administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, formation of men and women, formation of paradise and hell, etc. Outer Baduy consists of a Jaro, that is Jaro Saija and a village secretary originated from out of Baduy tribe having a civil servant status. In the outer Baduy community there is monthly meeting, thus Jaro Saija is also invited like other Village Head. Inner Baduy is led by Puun, comprised of 3 Puun since there are 3 areas.

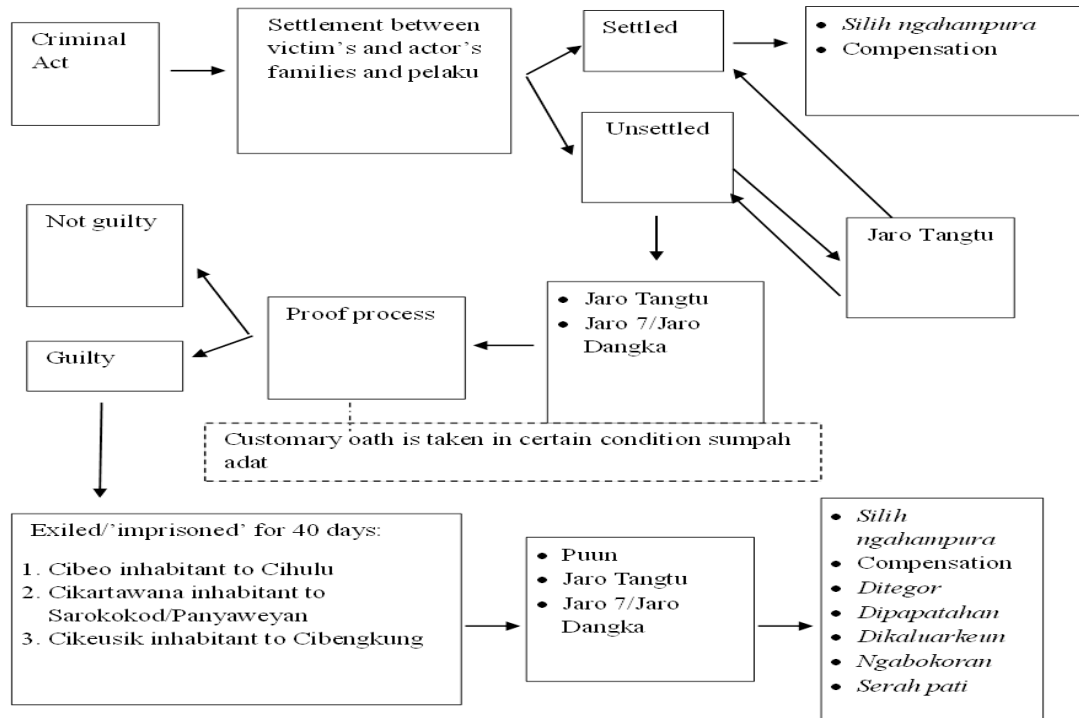
There are some violations that have occurred in Baduy Tribe: murder, theft, and adultery. In case of violation in Baduy community, they who violate will usually confess their action, followed with customary ceremony called ngabokoran by making available kris, mori cloth, ringgit money, incense, betel, uncaria, tumpeng, 40 later followed with tangkesan by paranormal.

The problem-solving mechanism includes: early stage with confessing to akhlak (morality), followed with silih hampura (forgive each other) for the act witnessed by Jaro, if deemed necessary taking oath, in case of murder the sanction: besides the foregoing, also 40 change clothes, tumpeng 40, imprisonment in Dangka for 40 days. Serious crimes: adultery, murder, santet (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. Jaro (village head) is appointed through descent choice and determined by paranormal. Children in Baduy Tribe are circumcised in odd age: 5 years old, 7 years old, while for marital age: 15-16 years old aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting. Sanction shall be social work in case of violation. Basically, the most serious customary violation is principally honesty and righteousness in implementing customary law.

Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary rule they need to enforce. Inner Baduy Community has stricter customary rule than Outer Baduy Community. However, in case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go to seclusion. Seclusion here is not defined as meditation, but in the sense of strengthening/conserving Baduy practice, confirming sun-da wiwitan religion. Outer Baduy Community, meanwhile, is assigned to be pan-amping, to guard Inner Baduy Community that is in seclusion, thus they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has stricter rule in implementing customary law and conserving Baduy custom.

¹⁸ Theodore M. Steeman, "Religious and National Integration" (Harvard University, 1973).

Outer Baduy has looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong, pondok teu meunang disambung* (long it should not be cut, short it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance, nature conservation, thus Baduy has the obligation to conserve the nature and not to be against the laws of nature. Criminal act settlement procedure in the customary criminal law of Baduy :¹⁹



Explanation : 1. Silih ngahampura = forgive each other, 2. Dikaluarkeun = kicked out from Inner Baduy to Outer Baduy, or kicked out from Outer Baduy to outside Baduy (for Outer Baduy member), 3. Ditegor = warned, 4. Dipapatahan = advised, 5. Jaro Tangtu is a jaro (village head) in Inner Baduy, 6. Jaro 7/Jaro Dangka is part of customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of 7 people and is in Outer Baduy, 7. Puun is the highest customary figure in each of Inner Baduy, sacred in spirituality, 8. Ngabokoran is spiritual clening ceremony for not really serious criminal act committed in Cihulu, Sarokokod/Panyaweyan, Cibengkung (depending on where the actor is originated from). Anything needed for bokor is provided by actor, consisting of: sereh/betel, uncaria, apu, incense, boeh/shroud, kris. Sereh is then didahar/eaten by customary figures: puun, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is jaro tangtu and puun, puun then continues the process with the ancestors, 9. Serah pati is a spiritual cleaning ceremony similar to bokor but for serious criminal act (causing death), 10. The customary criminal law of Badui is not codified into a book, the customary criminal law of Baduy is not written. According to Jaro Saija²⁰, to conserve the knowledge the customary criminal law of Baduy once every two

¹⁹ Sistem Peradilan Pidana Baduy itu Restorative Justice [Baduy Criminal Justice System is Restorative Justice]. (FGD, Paper of Ferry Fathurokhman).

²⁰ Interview, Jaro Saija, Baduy, Thursday, 8 September 2021

months all people gather in the court of their each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy along with the sanctions are announced. Besides the forum, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life, thus every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits criminal act must be cleaned physically and spiritually. Such cleaning is the form of criminal actor's accountability. Physical cleaning is actor's accountability to victim in the form of sanction received. The sanctions are in the form of ditegor/warned, dipapatahan/advised, silih ngahampura, compensation, through kicked out from Inner Baduy to Outer Baduy.

In Austria, New Zealand and Norway, restorative justice is not an alternative to the system, it is the system. It is the norm and the court system is only there as a fall-back if restorative justice cannot be carried out. And the new provisions in Northern Ireland also make restorative practices the heart of the youth justice system there. In these situations care needs to be taken that victims are not pressured into the processes against their will; but it is perfectly possible to introduce safeguards for this.²¹

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, this is marked by the existence of social units based on the differences in ethnicity, religion, customs and regions. The Indonesian society, according to Furnivall, is known as the plural society.²² Meanwhile, vertically, the structure of Indonesian society is characterized by vertical differences in the form of upper and lower layer level as well as the agrarian and industrial layer level. This can also lead to the inequality in making changes in development, because some people still perform the agricultural activities while on the other hand some other people have to step forward to the industrial world and even to the information world level. Fred W. Riggs calls it as the prismatic society.²³

The customary law characteristics In Indonesia show that each region basically supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still taken into account, while the restorative justice is actually not a new concept. Marc Levin stated that the approach previously considered obsolete, ancient, and traditional is now recognized as a progressive approach.²⁴

²¹ Restorative Justice, How It Works, Marian Liebmann, Jessica Kingsley Publishers London and Philadelphia. First published in 2007 by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Mark ISBN 978 1 84310 074 45.

²² Nasikun, Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia [An Approach to learn the Indonesian Social System], Yogyakarta: Faculty of Social and Political Sciences, UGM, 1974, pp. 31. The community plurality also shows the existing cultural diversification. These cultural differences will further result in contradictions. On one hand, the local principles are expected to be maintained, yet on the other hand are required to be adjusted with the global life principles.

²³ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat [Law and Public Studies]*, ed. Alumni (Bandung, 1985).

²⁴ Eva Achjani Zulfa, *Keadilan Restoratif Indonesia*, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana), Ringkasan Disertasi, Universitas Indonesia, Fakultas Hukum Program Studi Ilmu Hukum Kekhususan Sistem Peradilan Pidana, 2009, pp. 67

Restorative justice is based on Pancasila as a vehicle to overcome the children delinquency in the future and based on the substantive and structural aspects. Substantially, it is the idea to codify and/or unify the legal formation of restorative justice system in Indonesia based on legal politics which has a unified legal system between the substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders, community leaders without involving the law enforcement officers to avoid the psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the restorative justice processes. The victim position is to provide an agreement or convey his opinions to reach a consensus, so that no party will experience losses or under pressures in expressing their opinions. The Offender's is given an opportunity to express his opinion and ability to respond to the victim's request. Substantially, in the restorative justice, there are legal certainty, justice, and benefits for both parties as an effort to overcome the children delinquency in achieving the public welfare. Criminal law reform is related to various aspects of policy including social policy, criminal policy, and law enforcement policy influenced by various aspects, such as sociopolitical, sociophilosophical, and sociocultural underlying and providing the norm contents and criminal law substances in the future.

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case. In its relationship with the public participation in the crime prevention efforts, the village structure institutions in this case should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, as well as public by involving the religious leaders, community leaders and teachers.

Legal culture is performing an education in the society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will actually run, work, and apply in the society. A nation's attitudes and behaviors will be related to the values adopted by humans running a certain legal system. These values for the Indonesian people are Pancasila. In its implementation, certain quality of human resources is needed to run on the empirical level.

Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines someone's attitudes, ideas, and values towards laws in the society. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others can be factors influencing someone's legal culture. Legal culture is a key to understand the differences between one legal system and others. In the restorative justice system, the role of community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes.

When a sentence is finalized, treatment degree is decided through a scientific classification review and inmates are transferred to an appropriate correctional institution according to an individual treatment plan. While in prison, inmates get ready to return to society through various correctional programs until being released through parole or the completion of a prison term.

Classification review consists of classification research that looks into inmate's personal information and classification examination that conducts personality, intelligence, and aptitude tests. Inmates are classified at different treatment levels for facilities, custody, and work. In addition, regular and irregular reviews are carried out during their prison terms to adjust the treatment levels according to the degree of inmates' improvement.

In order to prevent recidivism and promote efficient accommodation of inmates, An 'Accommodation System Classifying Inmates by Security Level', an advanced correction model, was introduced and being operated. Furthermore, it developed a Correctional Recidivism Prediction Index (CO-REPI) which categorized inmates into five levels to analyze the possibility of subsequent convictions in an early stage depending on results of 23 evaluation tests.

Learning continues even during the accommodation period. Inmates can build knowledge through academic education and develop social consciousness and law-abiding spirit through intensive personality education. In addition, programs customized to inmates' characteristics, such as education for rehabilitation of the disabled, are provided to support successful reintegration.

Intensive personality education is being provided for inmates by categorizing their needs as basic education or re-education based on the progress of their sentences. Introduction of various programs from constitutional value and the humanities to communication and group counseling induce changes in inmates. A school qualification examination class is operated for inmates in need of mandatory education and opportunities to acquire a degree, including Korea National Open University courses and commissioned education courses of community colleges were provided in order to motivate them to achieve a better future. Programs customized to disabled inmates are performed to support self-sufficiency in society. The operation of Comprehensive Rehabilitation Center for the Disabled in Yeosu Correctional Institution and the Braille Training Program in the Cheongju Correctional Institution are representative of these schemes.

We are finding the power to change inmates by harnessing their interest in various fields. Inmates are supported to find emotional stability through artistic and religious activities, and to connect with society by watching various reformation broadcasting programs. Opportunities for inmates to appreciate art were expanded through the provision of various culture and art programs. In cooperation with Korea Arts & Culture Education Service, experience-based culture and art performances for art, play, and music currently take place in 52 correctional institutions. Such programs develop inmates' sensibility to change. Religious rallies and ceremonies have been launched and counseling with religious figures is provided so that inmates find mental stability through continuous religious practices. Reformation Broadcasting, which consists of general, education, and radio channels, airs programs such as education, liberal arts, dramas, sports, entertainment, and movies in accordance with the characteristics of inmates. Such broadcasting helps inmates cultivate cultural knowledge and emotion, and plays the role of a link between inmates and society.

CONCLUSION

The result research showed based on the juridical considerations, and reviewing the relationship of various laws and regulations, as well as legal products related to the restorative justice based on a vehicle to prevent from crime. Public participation in Indonesia are related to the customary groups having the legal characteristics as well as cultures, moral values, religions to solve problems through discussion which mechanisms are in accordance with the applicable customary law processes.

In the future, the criminal law reform, based on its logical substances to codify and/or unify the restorative justice based on the existence of general rules and guidelines on the restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice which is formed based on the principles of national legal system formation, as well as the existence of organizational structure implementing the restorative justice system, a supervisory system for the offenders, appointed institutions and individuals, and understanding the imposition of sanctions which is not a retaliation possibly resulting in stigma, yet providing justice.

Restorative justice is performed by combining criminal justice mechanisms with public participation within a discussion mediation to obtain an agreement between the victim, offender's, victim's family, offender's family, and parties related to the case. A comprehensive and complete understanding should be culturally formed in the public legal education by involving public active participation in understanding various legal products on restorative justice as the nation's personality reflections based on the Indonesian-based restorative justice characters.

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No		Comments	Suggestion
1	Title	The title is too broad, it needs to be narrowed. It is better to focus on what is written in the script	The Title suggest: A Restorative Justice System Development: A Close View from the Indigenous Peoples' Practices in Indonesia
2	Abstract	Too broad	The author discusses much of the practice of restorative justice in indigenous peoples in Indonesia; preferably, it should be emphasized in the abstract
3	Introduction	Some could be revised, as not related to the main topics. Ie. the views from Korea.	To be deleted (see paper attachment)
4	Problems		How the best practices practiced by indigenous peoples in the use of restorative justice, whose values can then be applied in everyday cases
5	Method (If Any)		Emphized more on how the writer got the data etc.
6	Analysis		It better to narrow it down to the real condition of the recent restorative justice practice in Indonesia (including those from indigenous people).
7	Conclusion	Too broad/wide	It is better for the author to put more emphasis on the best practices practiced by indigenous peoples in the use of restorative justice, whose values can then be applied in everyday cases, not only among native peoples, but also applied by the police, prosecutors and judges.
8	Reference		Adding some journals will enrich the content of the paper
9	Others		Consistency of using footnotes, not mixed with body notes

CONCLUSION:

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✓	Accepted with revision by author(s)
<input type="checkbox"/>	Rejected



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Restorative Justice Reconstruction of The Integrated Criminal Justice System in Indonesian Legal System Reform

Article	Abstract
<p>Keywords: Restorative Justice; Integrated Criminal Justice System; Indonesian Legal System Reform</p> <p>Artikel History Received: ; Reviewed: ; Accepted: ; Published:</p> <p>DOI:</p>	<p>The crime rate in Indonesia in week 22 or the last one in May 2020 has increased when compared to that in the previous week due to the public order and crime (known as kamtibmas) disturbances in week 22 of 2020 has increased by 442 cases or 16.16 percent. Data obtained from the correctional institutions in February 2021 showed that the number of prisoners and inmates from 29 Law and Human Rights Regional Offices was already over capacity, while that from the other 4 Law and Human Rights Regional Offices were still in normal condition. In the state life and legal development, the 1945 Constitution of the Republic of Indonesia in Article 18B has regulated that the customary institutions are recognized for their existence in the criminal justice system and then the judge when deciding the cases is obliged to explore, follow, and understand the legal values and justice senses living in the society. This research has several problems related to how the restorative justice reconstruction in the Integrated Criminal Justice System in the Indonesian legal system reform. The result research showed based on the juridical considerations, and reviewing the relationship of various laws and regulations, as well as legal products related to the restorative justice based on to prevent from crime. Public participation in Indonesia are related to the customary groups having the legal characteristics as well as cultures, moral values, religions to solve problems through discussion which mechanisms are in accordance with the applicable customary law processes.</p>

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INTRODUCTION

Criminal law is identical with the punishment concept characterized by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human rights in a harmonious balance from crimes/bad actions on one hand and from the despotic authorities on the other hand.¹ Criminal law is considered as law of sanctions (bijzondere sanctierecht) since relying on sanctions functioning to ensure security, order, and justice.²

¹ Kanter E.Y and S.R Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya [Criminal Law Principles and Their Implementations in Indonesia]* (Jakarta: Stora Grafika, 2012).

² M. Hamdan, *Politik Hukum Pidana [Criminal Law Politics]* (Jakarta: PT. Raja Grafindo Persada, 1997).

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Rewrite for clarity:

The crime rate in Indonesia in week 22, or the last one in May 2020, has increased compared to that in the previous week due to the public order and crime (known as kamtibmas) disturbances in week 22 of 2020 by 442 cases or 16.16 percent.

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Commented [A4]: In the state life and legal development, the 1945 Constitution of the Republic of Indonesia in Article 18B has regulated that customary institutions are recognized for their existence in the criminal justice system. Then the judge, when deciding the cases, is obliged to explore, follow, and understand the legal values and justice senses living in the society.

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In the basic principles developed the Tokyo Rules have several objectives including: a. Standard Minimum Rules (known as SMR) establishing a set of basic principles to develop the non-custodial measures, and guarantees for persons subject to the alternative prison measures; b. SMR is intended to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility senses to the public; c. SMR must be implemented due to the political, economic, social, and cultural conditions as well as the criminal justice system objectives in each country; d. In implementing this SMR, each country should ensure the balance between the criminal perpetrators' individual rights, victims' rights, and public interests in the form of public security and criminal prevention; e. Member states should develop non-custodial measures in their legal systems in respect to the human rights, need for social justice, and need for rehabilitation for the criminal perpetrators.

It is necessary for both non-penal and non-custodial facilities to be intensified and made effective for several reasons: a. According to Rubin, punishment (whatever the truth, whether intended to punish or improve) has little or no effect on criminal problems; b. Schultz stated that the increasing and decreasing crimes in a country is not related to changes in their laws or trends in court decisions, but related to their operations or functions of major cultural changes in social life; c. Johannes Andenaes stated that the operation of criminal law should always be seen from the whole cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions; d. Donald R. Taft and Ralph W. England said that the effectiveness of criminal law cannot be accurately measured. Law is only a means of social control. Customs, religious beliefs, group support and disapproval, suppression and group interest as well as the influence of public opinions are more efficient vehicles in regulating human behaviors than legal sanctions.³

Furthermore, in "International Penal Reform Conference" held at the Royal Holloway College, University of London on April 13-17, 1999, stating that one key element of a new agenda was the need to enrich the formal criminal justice system with an informal system or mechanism for the dispute resolution in meeting the human rights standards. This conference also identified 9 development strategies in performing the criminal law (penal) reform by developing/building, 1. Restorative justice, 2. Alternative dispute resolution, 3. Informal justice, 4. Alternatives to Custody, 5. Alternative ways dealing with juveniles, 6. Dealing with Violent Crime, 7. Reducing the prison population, 8. The proper Management of prisons, 9. The Role of civil society in penal reform.

These various explanations are a reaction to how difficult it is to say that the criminal justice system with its criminal sanctions is an effective means to overcome crime (delinquency). In reality, the stigma that must be experienced by the former inmates/prisoners is not something easily forgotten.

Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by the criminal actions. Recovering these losses and

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³ Barda Nawawi Arief, *Masalah Perlindungan Hukum Bagi Anak*, Makalah, Bandung: Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, 1996. pp. 48 – 50

relationships can be achieved through the cooperative processes involving all stakeholders (interested parties).⁴

Restorative justice resolves criminal cases by repairing the resulted damages or losses. The amicable case settlement processes involve victims and perpetrators in a discussion to make the best agreement for both parties. The restorative justice aims to: a. simplify the processes which must be followed b. protect the rights of victims and perpetrators; c. minimize the negative impacts on the criminal justice processes which have been so far followed; d. involve public participations in law enforcement.⁵

The civil society movement is not basically meant to compete against the state, or to fertilize power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration", contains rights and obligations including : a. right to find, obtain, and provide information related to the state administration; b. right to obtain equal and fair services from the state administration; c. right to responsibly convey suggestions and opinions on policies issued by the state administrators; d. right to obtain legal protection in terms of using their rights, and if requested to be present in the process of investigation, investigation, and at the court hearings as a reporting witness, witness or expert witness, based on the provisions of the applicable laws and regulations; e. Those rights are used in accordance with the provisions of the applicable laws and regulations and by complying with the religious norms and other social norms. This is intended to avoid defamation and irresponsible reports; f. public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.⁶

Public participation in criminal justice is expected to realize a favorable condition to all interested parties to create a better future. In facts, the Kanayatn Dayak and Sanggau Dayak tribes in Pontianak, West Kalimantan have a strong bond of values, morals, cultures, and local wisdoms in solving the problems occurring in the society. (Nur Rochaeti, Rahmi Dwi Sutanti, 2018).

According to Van Ness, in the customary justice process, it significantly forms a restorative justice, at least in 3 forms. First the existence of two characteristics of restorative justice programs which are the adaptations of customary practices: conference system (found in tradi-

Commented [A12]: Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by criminal actions. Recovering these losses and relationships can be achieved through cooperative processes involving all stakeholders (interested parties)

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Commented [A16]: Public participation in criminal justice is expected to realize a favorable condition for all interested parties to create a better future. The Kanayatn Dayak and Sanggau Dayak tribes in Pontianak, West Kalimantan, have a strong bond of values, morals, cultures, and local pearls of wisdom in solving the problems occurring in the society. (Nur Rochaeti, Rahmi Dwi Sutanti, 2018).

⁴ Muladi, *Kapita Selekta Hukum Pidana [Capita Selecta of Criminal Law]* (Semarang: Universitas Diponegoro Press, 1995).

⁵ Pemikiran penulis based on *Restorative Justice* Concept by D. Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Lawa Review, 1998, pp. 53 – 111.

⁶ *Putusan Peradilan Perdamaian Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006]*

Untuk keadilan nan basasarkan "Adat basandi Syarak, Syarak basandi Kitabullah [For Justice Based on "Adat basandi Syarak, Syarak basandi Kitabullah]"

Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air in this case "Nagari Customary Court Section", based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on 29 August 2006 and *bapidoman pado* KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-2005, *sarato* Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice

tional Maori practices in New Zealand) and circular system (practiced by the first nation in America). Second, the basic philosophy in the customary process that judiciary tries to improve the injuring crime structures in the society and provide information related to the restorative justice. Third, several customary justice forms have been included in the formal efforts in the crime-handling processes (Van Ness Van Ness, Daniel W, Johnston, Gerry, 2007), (Hayes and Hayes 2008). (Gunningham and Grabosky 1998; Haines 1998; Braithwaite 2002b) (Daly 1996; 2002; Braithwaite 2002a).

In general, justice systems are seen to create justice by giving right and just punishment to the offender. This understanding is from the concept of retributive justice, correcting the offense with a punishment equal to the offense. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused, instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law', but as causing damage to individuals and community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore the people directly involved are encouraged to join the problem solving process, especially the community's victim-focused effort, which supports victims and helps offenders to take responsibility, which is very necessary in preventing recurrence.

The Juvenile Act of Republic of Korea was enacted on July 24, 1958, and was revised extensively on June 22, 2008. The main points of the amendment are: First, the age under the Juvenile Act was reduced from under 20 to under 19, and the age of delinquents and juvenile liable to commit a crime was reduced from under 12 to under 10. So, the age under the Juvenile Act was changed from the age between 12 and 20 years old to the age between 10 and 19 years old. Second, a new system was introduced: Mandatory adoption of Court Appointed Assistant to a protected juvenile entrusted to the Juvenile Classification Review Board, introduction of a victim's statement, introduction of reconciliation recommendation system, introduction of pre-decision investigation and consultation-conditional suspension of prosecution by prosecutors, regulations on the prevention policies of juvenile delinquency are established that the Minister of Justice should establish and operate examination, research, education, public relations and policies to help the juvenile delinquent develop soundly, and establish and take operational measures cooperative systems with central administrative agencies, public institutions and social organizations related to guidance and education to juvenile delinquent.

In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed to challenge its constitutionality because it was unlawful presumption of principle, the unjustified infringement of physical freedom and violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable reason to treat discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge the fact that such a protective

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disposition deprives the physical liberty of the body, but to rationalize the discrimination against the protected juvenile by its aim is to rehabilitate the juvenile with anti-socialism and to promote healthy development. inhumane treatments cannot be tolerated because of laws that are more unfair than adults.

RESEARCH METHODS

This research used an approach method based on a socio-legal study which reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact (Bruggink, 1996). Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft*/*sollenwissenschaft*.

ANALYSIS AND DISCUSSION

Crime can result in the decreasing self-restraint, stigmatization of delinquent children, weakening conventional bonds, and family relations in the society, breaking the conventional relationships between peer-groups, and encouraging the delinquent perpetrators to only think about themselves more than to the victim. Meanwhile, the supervisory on perpetrators is considered as a juvenile justice program oriented only to the perpetrators containing a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.⁷

According to Gordon Bazemore, the main points of thoughts in the Restorative juvenile justice paradigm include: a. purposes of imposing sanctions: there is an assumption that achieving the purpose of imposing sanctions, the victim is then included to have the right to be actively involved in the judicial process. The indicators of achieving the purposes of imposing sanctions are by looking at whether or not the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness to his actions, the number of repair agreements made, as well as the quality of working services and the overall occurring processes. The forms of sanctions include restitution, mediation for perpetrator and victim, victim services, public restoration, direct services to victims or restorative fines. The imposed sanctions actively involve the perpetrators, victims, public, and law enforcers. Offenders work actively to restore the victims' losses, and deal with the victims/victim representatives. A victim should be active in all process stages and assist determining the sanctions imposed on a offender.

Unlike jurisdictions such as Australia and New Zealand, family conferencing is not used in Singapore as a replacement for formal criminal proceedings to divert the juvenile offender from the criminal justice system. It caters to selected juvenile offenders who have either been found guilty or pleaded guilty to the charges brought against them. The objectives of family conferencing have been described as (Subordinate Courts of Singapore 1998a): 1. To ensure that the juvenile understands the seriousness of the offending behaviour; 2. To minimize the likelihood of juvenile re-offending; 3. To provide the juvenile with the opportunity to accept responsibility for the offending behaviour; 4. To address the issue of family and community accountability;

⁷ Ibid

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Commented [A23]: This study uses a socio-legal research approach. The descriptive data were obtained from interviews with leaders of the Baduy indigenous people, field studies, and literature studies. Data were analyzed qualitatively.

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Suggestion:
Emphized more on how the writer got the data etc.

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and 5. To provide the victim(s), where possible, with an opportunity to contribute to the cautioning process.⁸

Public is involved as a mediator, helping victims and supporting the fulfillment of perpetrators' obligations. Law enforcers facilitate the mediation. b. perpetrators' rehabilitation: The main focus of restorative justice is for the benefit and positive development, therefore, children and families are the main sources. Children are considered competent and positively have both preventive and proactive abilities. For the perpetrators' rehabilitative purposes, it is necessary to change the social institutions' attitudes and adults' behaviors. Perpetrators' rehabilitation is performed with the perpetrators through learning by doing, counseling and therapy to motivate the related parties' active involvement. c. Public protection aspect: assumptions in the restorative justice related to the achievement of public protection by the efforts of judicial system collaborated with the public to develop prevention. Confinement is limited only as the last effort. Public is actively responsible for supporting the implementation of restoration. The achievement indicators on the restoration of public protection are shown if the number of recidivists has decreased and the perpetrators are under the public supervision, people feel safe and confident to the role of juvenile justice system, schools are involved, families and public institutions can prevent from crime; social bonding and reintegration have increased.⁹

Howard Zehr as a pioneer of restorative justice in the United States introduced the "restorative lens", in which crime is seen as a violation to individuals and relationships between individuals, while justice is interpreted as a joint search for solutions through healing and reconciliation. In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms which cause losses to individuals who are highly affected by crime; from the sentencing and imposing misery, moving on loss repair. A key element in the restorative justice paradigm is loss restoration.¹⁰

Howard Zehr further reminded that restorative justice is more precisely defined in contrast to the "adversarial system" in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) "fight each other" in front of "referee", where the judge leads the trial. Crimes in restorative justice are understood as losses imposed on victims and their communities; while in adversarial system, it is understood as a violation to the state. Restorative justice is actively performed by the public where victims are assisted in explaining how losses should be remedied and perpetrators are encouraged to be responsible, while the adversarial system is organized and controlled by professionals where victims are generally prevented from explaining their losses.¹¹

Some scholars believe the real purpose of criminal justice system is to promote peace in public, as peace promoter, not punishment. This vision is known as restorative justice.¹² The guidelines in restorative justice have three important principles: a. Groups "owning" the con-

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⁸ Wing-Cheong Chan, Asian Journal of Criminology, March 2013, Volume 8, Issue 1, pp 1–23

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid, pp. 55

¹² Ibid

flicts (including crime), b. The existence of materials and symbolic remedies for the crime victims, and; c. Social reintegration for the perpetrators.¹³

The conventional criminal justice system focuses on three questions: (1) what laws have been broken?; (2) Who did it?; and (3) What do they deserve? Furthermore, in the perspective of restorative justice, the questions are completely different: (1) Who has been hurt; (2) What are their needs; (3) Whose obligations are these?¹⁴

Various cultures, diversity of behavioral habits in the society in Indonesia are the wealth of values guiding people to play their role, participate in the restorative justice process of juvenile criminal justice system. Indonesian people, as a cultural system in the state life system as a supra system, in which interacts in a single unity system of Indonesian national life, interacts and colors each other as a legal system colored by a cultural system forming a legal culture in the Indonesian legal system.

According to Menski, all values in the community are obtained from various sources that must be acknowledged and understood as values that can be the source of law in the community.¹⁵

According to Menski, Legal Pluralism can fill the scenario and conflict arising from strict application of each different source of law. In his language, Menski states:

Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law-making source rules roots absolutely. The Centre of this triangle would appear to indicate 'perfect' justice as the result of equilibrium between the various competing forces.¹⁶

Plurality or Bhineka is the typical characteristic of Indonesia with its many islands, tribes, languages, and cultures. Indonesia desires to establish a stable and modern nation with a strong national bond. Therefore, avoiding pluralism is equal to avoiding different realities of the existing perspective and beliefs in Indonesian community. Legal pluralism means there are different legal systems or cultures in a single political community. Pluralism arises in many forms. Pluralism is horizontal, in which sub-cultures or sub-systems have equal legitimacy status, or vertical, arranged hierarchically where there is a "higher" and "lower" legal system or culture.¹⁷

In Indonesia the characteristics of customary law in every region basically support the application of restorative justice. With regard to violation of custom or customary act, and its solving mechanism, customary law has its own view. The existence of customary justice in some regions is still taken into consideration, and restorative justice is not a new concept.

Community involvement in law enforcement process is expected to be the form of control and empathy in the sense of sensitivity to the problems faced, to social changes and public necessities and the form of community's real responsibility in the field of law. Theoretically,

¹³ Ibid

¹⁴ Ibid

¹⁵ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Second Condition, New York; Cambridge University Press, 2006, page 72.

¹⁶ Werner Menski, Ibid, pp. 186 – 187

Legal Pluralism fills the central space in this triangle since all of it signifies all conflict scenarios and situations where none of the top three in law makes the root source of rule are absolute. At the center of this triangle, it will emerge to show that justice is 'perfect' as the result of balance between various contending powers.

¹⁷ Lawrence Friedman, *Op cit*, p. 257

Commented [A32]: Some scholars believe the criminal justice system's real purpose is to promote public peace as a peace promoter, not punishment. This vision is known as restorative justice. [1] The guidelines in restorative justice have three critical principles: a. Groups "owning" the conflicts (including crime), b. The existence of materials and symbolic remedies for the crime victims, and; c. Social reintegration for the perpetrators.

[1] Ibid

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community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with certain independent reality and objectivity vis a vis members of the concerned group.¹⁸ Besides, social problem solving by community in many things can also serve to fill and complete the act of handling by government (state) institution. According to field finding, administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, formation of men and women, formation of paradise and hell, etc. Outer Baduy consists of a Jaro, that is Jaro Saija and a village secretary originated from out of Baduy tribe having a civil servant status. In the outer Baduy community there is monthly meeting, thus Jaro Saija is also invited like other Village Head. Inner Baduy is led by Puun, comprised of 3 Puun since there are 3 areas.

There are some violations that have occurred in Baduy Tribe: murder, theft, and adultery. In case of violation in Baduy community, they who violate will usually confess their action, followed with customary ceremony called ngabokoran by making available kris, mori cloth, ringgit money, incense, betel, uncaria, tumpeng, 40 later followed with tangkesan by **paranormal**.

The problem-solving mechanism includes: early stage with confessing to akhlak (morality), followed with silih hampura (forgive each other) for the act witnessed by Jaro, if deemed necessary taking oath, in case of murder the sanction: besides the foregoing, also 40 change clothes, tumpeng 40, imprisonment in Dangka for 40 days. Serious crimes: adultery, murder, santet (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. Jaro (village head) is appointed through descent choice and determined by paranormal. Children in Baduy Tribe are circumcised in odd age: 5 years old, 7 years old, while for marital age: 15-16 years old aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting. Sanction shall be social work in case of violation. Basically, the most serious customary violation is principally honesty and righteousness in implementing customary **law**.

Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary rule they need to enforce. Inner Baduy Community has stricter customary rule than Outer Baduy Community. However, in case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go to seclusion. Seclusion here is not defined as meditation, but in the sense of strengthening/conserving Baduy practice, confirming sun-da wiwitan religion. Outer Baduy Community, meanwhile, is assigned to be panamping, to guard Inner Baduy Community that is in seclusion, thus they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has stricter rule in implementing customary law and conserving Baduy **custom**.

Outer Baduy has looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong, pondok teu meunang disambung* (long it should not be cut, short it should not be spliced). Accord-

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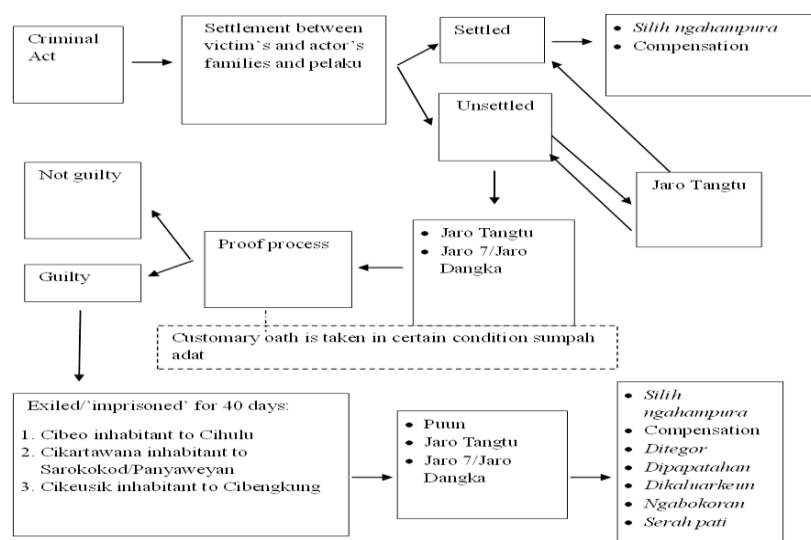
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¹⁸ Theodore M. Steeman, "Religious and National Integration" (Harvard University, 1973).

ing to Jaro Saija, the basic concept of teaching in Baduy is nature balance, nature conservation, thus Baduy has the obligation to conserve the nature and not to be against the laws of nature.

Criminal act settlement procedure in the customary criminal law of Baduy¹⁹



Explanation : 1. Silih ngahampura = forgive each other, 2. Dikaharkeun = kicked out from Inner Baduy to Outer Baduy, or kicked out from Outer Baduy to outside Baduy (for Outer Baduy member), 3. Ditegor = warned, 4. Dipapatahan = advised, 5. Jaro Tangtu is a jaro (village head) in Inner Baduy, 6. Jaro 7/Jaro Dangka is part of customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of 7 people and is in Outer Baduy, 7. Puun is the highest customary figure in each of Inner Baduy, sacred in spirituality, 8. Ngabokoran is spiritual clening ceremony for not really serious criminal act committed in Cihulu, Sarokod/Panyaweyan, Cibengkung (depending on where the actor is originated from). Anything needed for bokor is provided by actor, consisting of: sereh/betel, uncara, apu, incense, boeh/shroud, kris. Sereh is then didahar/eaten by customary figures: puun, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is jaro tangtu and puun, puun then continues the process with the ancestors, 9. Serah pati is a spiritual cleaning ceremony similar to bokor but for serious criminal act (causing death), 10. The customary criminal law of Badui is not codified into a book, the customary criminal law of Baduy is not written. According to Jaro Saija²⁰, to conserve the knowledge the customary criminal law of Baduy once every two months all people gather in the court of their each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy along with the sanctions are announced. Be-

Commented [A43]: Outer Baduy has a looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, lojor teu meunang dipotong, pondok teu meunang disambung (if it is too long, it should not be cut, if it is too short, it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance and conservation; thus, the Baduy community should conserve nature and not be against the laws of nature. A criminal act settlement procedure in the customary criminal law of Baduy are as follow:

Commented [A44]: The explanation is 1. Silih ngahampura = forgive each other, 2. Dikaharkeun = kicked out from Inner Baduy to Outer Baduy, or banished from Outer Baduy to outside Baduy (for Outer Baduy members), 3. Ditegor = warned 4. Dipapatahan = advised, 5. Jaro Tangtu is a jaro (village head) in Inner Baduy, 6. Jaro 7/Jaro Dangka is part of the customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of 7 people and is in Outer Baduy, 7. Puun is the highest figure in each of Inner Baduy, sacred in spirituality, 8. Ngabokoran is a spiritual cleaning ceremony for a not serious criminal act committed in Cihulu, Sarokod/Panyaweyan, Cibengkung (depending on where the actor originated from). Anything needed for bokor is provided by the actor, consisting of sereh/betel, uncara, apu, incense, boeh/shroud, kris. Sereh is then didahar/eaten by customary figures: puun, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is jaro tangtu and puun, puun then continues the process with the ancestors, 9. Serah pati is a spiritual cleaning ceremony similar to bokor but for a serious criminal act (causing death), 10. The customary criminal law of Badui is not codified into a book, the customary criminal law of Baduy is not written. According to Jaro Saija

¹⁹ Sistem Peradilan Pidana Baduy itu Restorative Justice [Baduy Criminal Justice System is Restorative Justice]. (FGD, Paper of Ferry Fathurokhman).

²⁰ Interview, Jaro Saija, Baduy, Thursday, 8 September 2021

sides the forum, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life, thus every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits criminal act must be cleaned physically and spiritually. Such cleaning is the form of criminal actor's accountability. Physical cleaning is actor's accountability to victim in the form of sanction received. The sanctions are in the form of ditegor/warned, dipapatahan/advised, silih ngahampura, compensation, through kicked out from Inner Baduy to Outer Baduy.

In Austria, New Zealand and Norway, restorative justice is not an alternative to the system, it is the system. It is the norm and the court system is only there as a fall-back if restorative justice cannot be carried out. And the new provisions in Northern Ireland also make restorative practices the heart of the youth justice system there. In these situations care needs to be taken that victims are not pressured into the processes against their will; but it is perfectly possible to introduce safeguards for this.²¹

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, this is marked by the existence of social units based on the differences in ethnicity, religion, customs and regions. The Indonesian society, according to Furnivall, is known as the plural society.²² Meanwhile, vertically, the structure of Indonesian society is characterized by vertical differences in the form of upper and lower layer level as well as the agrarian and industrial layer level. This can also lead to the inequality in making changes in development, because some people still perform the agricultural activities while on the other hand some other people have to step forward to the industrial world and even to the information world level. Fred W. Riggs calls it as the prismatic society.²³

The customary law characteristics In Indonesia show that each region basically supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still taken into account, while the restorative justice is actually not a new concept. Marc Levin stated that the approach previously considered obsolete, ancient, and traditional is now recognized as a progressive approach.²⁴

Restorative justice is based on Pancasila as a vehicle to overcome the children delinquency in the future and based on the substantive and structural aspects. Substantially, it is the idea to codify and/or unify the legal formation of restorative justice system in Indonesia based on

Commented [A45]: to conserve the knowledge of the customary criminal law of Baduy, once every two months, all people gather in the court of each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy and sanctions are announced. Besides the platform, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life; thus every generation in Baduy is aware of the law

Commented [A46]: In the customary criminal law of Baduy, an individual who commits a criminal act must be cleaned physically and spiritually. Such cleaning is a form of criminal actors' accountability. Physical cleaning is the actor's accountability to a victim through sanction received. The sanctions are in the form of ditegor/warned, dipapatahan/advised, silih ngahampura, compensation, through kicked out from Inner Baduy to Outer Baduy

Commented [A47]: Restorative justice is not an alternative to the legal system in Austria, New Zealand, and Norway. It is the system. It is the norm, and the court system is only a fallback if restorative justice cannot be carried out or fails. The new provisions in Northern Ireland also make restorative practices the heart of the youth justice system. In these situations, what needs to be taken is that victims are not pressured into the processes against their will, but it is perfectly possible to introduce safeguards for this

Commented [A48]: Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, it is marked by the existence of social units based on differences in ethnicity, religion, customs, and regions. The Indonesian society, according to Furnivall, is known as the plural society

Commented [A49]: Meanwhile, the structure of Indonesian society is vertically characterized by vertical differences in the form of upper and lower layer levels and the rural and industrial layer levels. It leads to inequality in development because some people still perform agricultural activities. On the other hand, some people have to step forward to the industrial world and even to the information world, as called by Fred W. Riggs as the prismatic society

Commented [A50]: The customary law characteristics In Indonesia show that each region supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still considered, while restorative justice, which has been introduced previously, is not a new concept. Marc Levin stated that the restorative justice approach, once considered obsolete, ancient, and traditional, is now recognized as a progressive approach

Commented [A51]: It is better to explain a little bit about Pancasila, as international readers probably have no idea about Pancasila or the writer could delete this, as it is not necessary to be put in the paper.

²¹ Restorative Justice, How It Works, Marian Liebmann, Jessica Kingsley Publishers London and Philadelphia. First published in 2007 by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Mark ISBN 978 1 84310 074 45.

²² Nasikun, Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia [An Approach to learn the Indonesian Social System], Yogyakarta: Faculty of Social and Political Sciences, UGM, 1974, pp. 31. The community plurality also shows the existing cultural diversification. These cultural differences will further result in contradictions. On one hand, the local principles are expected to be maintained, yet on the other hand are required to be adjusted with the global life principles.

²³ Ronny Hanitjo Soemitro, *Studi Hukum Dan Masyarakat [Law and Public Studies]*, ed. Alumni (Bandung, 1985).

²⁴ Eva Achjani Zulfa, *Keadilan Restoratif Indonesia*, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana), Ringkasan Disertasi, Universitas Indonesia, Fakultas Hukum Program Studi Ilmu Hukum Kekhususan Sistem Peradilan Pidana, 2009, pp. 67

legal politics which has a unified legal system between the substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders, community leaders without involving the law enforcement officers to avoid the psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the restorative justice processes. The victim position is to provide an agreement or convey his opinions to reach a consensus, so that no party will experience losses or under pressures in expressing their opinions. The Offender's is given an opportunity to express his opinion and ability to respond to the victim's request. Substantially, in the restorative justice, there are legal certainty, justice, and benefits for both parties as an effort to overcome the children delinquency in achieving the public welfare. Criminal law reform is related to various aspects of policy including social policy, criminal policy, and law enforcement policy influenced by various aspects, such as sociopolitical, socio-philosophical, and socio-cultural underlying and providing the norm contents and criminal law substances in the future.

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case. In its relationship with the public participation in the crime prevention efforts, the village structure institutions in this case should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, as well as public by involving the religious leaders, community leaders and teachers.

Legal culture is performing an education in the society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will actually run, work, and apply in the society. A nation's attitudes and behaviors will be related to the values adopted by humans running a certain legal system. These values for the Indonesian people are Pancasila. In its implementation, certain quality of human resources is needed to run on the empirical level.

Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines someone's attitudes, ideas, and values towards laws in the society. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others can be factors influencing someone's legal culture. Legal culture is a key to understand the differences between one legal system and others. In the restorative justice system, the role of community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes.

When a sentence is finalized, treatment degree is decided through a scientific classification review and inmates are transferred to an appropriate correctional institution according to an individual treatment plan. While in prison, inmates get ready to return to society through various correctional programs until being released through parole or the completion of a prison term.

Commented [A52]: Restorative justice is based on Pancasila as a vehicle to overcome children's delinquency in the future and is based on the substantive and structural aspects. Substantially, it is the idea to codify and/or unify the legal formation of the restorative justice system in Indonesia based on legal politics, which has a unified legal system between substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders and community leaders without involving the law enforcement officers to avoid psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the therapeutic restorative justice processes. The victim's position is to provide an agreement or convey his opinions to reach a consensus so that no party will experience losses or be under pressure to express their views. The offender is given an opportunity to express his opinion and the ability to respond to the victim's request. Substantially, in restorative justice, there are legal certainty, justice, and benefits for both parties in an effort to overcome the children's delinquency in achieving public welfare. Criminal law reform is related to various aspects of policy, including social policy, criminal policy, and law enforcement policy, influenced by various aspects, such as sociopolitical, socio-philosophical, and socio-cultural underlying, and providing the norm contents and criminal law substances in the future.

Commented [A53]: Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case. Therefore, in its relationship with public participation in crime prevention efforts, the village structure institutions, in this case, should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, as well as the public by involving the religious leaders, community leaders and teachers.

Commented [A54]: Legal culture is performing an education in society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will run, work, and apply in society. A nation's attitudes and behaviors will be related to the values adopted by humans running a particular legal system. These values for the Indonesian people are Pancasila. In its implementation, a certain quality of human resources is needed to run on the empirical level

Commented [A55]: Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines people's attitudes, ideas, and values toward laws. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others could influence someone's legal culture. Legal culture is key to understanding the differences between one legal system and others. In the restorative justice system, the role of the community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes

Classification review consists of classification research that looks into inmate's personal information and classification examination that conducts personality, intelligence, and aptitude tests. Inmates are classified at different treatment levels for facilities, custody, and work. In addition, regular and irregular reviews are carried out during their prison terms to adjust the treatment levels according to the degree of inmates' improvement.

In order to prevent recidivism and promote efficient accommodation of inmates, An 'Accommodation System Classifying Inmates by Security Level', an advanced correction model, was introduced and being operated. Furthermore, it developed a Correctional Recidivism Prediction Index (CO-REPI) which categorized inmates into five levels to analyze the possibility of subsequent convictions in an early stage depending on results of 23 evaluation tests.

Learning continues even during the accommodation period. Inmates can build knowledge through academic education and develop social consciousness and law-abiding spirit through intensive personality education. In addition, programs customized to inmates' characteristics, such as education for rehabilitation of the disabled, are provided to support successful reintegration.

Intensive personality education is being provided for inmates by categorizing their needs as basic education or re-education based on the progress of their sentences. Introduction of various programs from constitutional value and the humanities to communication and group counseling induce changes in inmates. A school qualification examination class is operated for inmates in need of mandatory education and opportunities to acquire a degree, including Korea National Open University courses and commissioned education courses of community colleges were provided in order to motivate them to achieve a better future. Programs customized to disabled inmates are performed to support self-sufficiency in society. The operation of Comprehensive Rehabilitation Center for the Disabled in Yeosu Correctional Institution and the Braille Training Program in the Cheongju Correctional Institution are representative of these schemes.

We are finding the power to change inmates by harnessing their interest in various fields. Inmates are supported to find emotional stability through artistic and religious activities, and to connect with society by watching various reformation broadcasting programs. Opportunities for inmates to appreciate art were expanded through the provision of various culture and art programs. In cooperation with Korea Arts & Culture Education Service, experience-based culture and art performances for art, play, and music currently take place in 52 correctional institutions. Such programs develop inmates' sensibility to change. Religious rallies and ceremonies have been launched and counseling with religious figures is provided so that inmates find mental stability through continuous religious practices. Reformation Broadcasting, which consists of general, education, and radio channels, airs programs such as education, liberal arts, dramas, sports, entertainment, and movies in accordance with the characteristics of inmates. Such broadcasting helps inmates cultivate cultural knowledge and emotion, and plays the role of a link between inmates and society.

CONCLUSION

The result research showed based on the juridical considerations, and reviewing the relationship of various laws and regulations, as well as legal products related to the restorative justice based on a vehicle to prevent from crime. Public participation in Indonesia are related to the

Commented [A56]: The blue highlighted paragraph(s) is not really related to the main topics and better be deleted.

It is better to put some best practices that have been conducted in Indonesia recently, either by the police, peosecutors, and/or judges.

customary groups having the legal characteristics as well as cultures, moral values, religions to solve problems through discussion which mechanisms are in accordance with the applicable customary law processes.

In the future, the criminal law reform, based on its logical substances to codify and/or unify the restorative justice based on the existence of general rules and guidelines on the restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice which is formed based on the principles of national legal system formation, as well as the existence of organizational structure implementing the restorative justice system, a supervisory system for the offenders, appointed institutions and individuals, and understanding the imposition of sanctions which is not a retaliation possibly resulting in stigma, yet providing justice.

Restorative justice is performed by combining criminal justice mechanisms with public participation within a discussion mediation to obtain an agreement between the victim, offender's, victim's family, offender's family, and parties related to the case. A comprehensive and complete understanding should be culturally formed in the public legal education by involving public active participation in understanding various legal products on restorative justice as the nation's personality reflections based on the Indonesian-based restorative justice characters.

Commented [A57]: It is better for the author to put more emphasis on the good practices practiced by indigenous peoples in the use of restorative justice, whose values can then be applied in everyday cases, not only among native peoples, but also applied by the police, prosecutors and judges.

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The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006

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Wing-Cheong Chan, Asian Journal of Criminology, March 2013, Volume 8, Issue 1 (2013).

[SLRev] Review Responses 2

Dari: Nur Rochaety <etikfh@live.undip.ac.id>
Kepada: NURHIDAYATULOH <nurhidayatuloh@fh.unsri.ac.id>
Tanggal: Senin, 22 Agustus 2022 09.00 WIB

Dear,
Nurhidayatuloh
(SCOPUS ID: 57211560728)
Managing Editor & Regional Handling Editor for Asia Pacific
Sriwijaya Law Review

We sent our revised article that's title "A Restorative Justice System Development: A Close View from the Indigenous Peoples' Practices in Indonesia."
Thank you very much.

Big Regards,

Nur Rochaeti



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Phone: +62711-580063 Fax: +62711-581179

E-mail: sriwijalayalawreview@unsri.ac.id | sriwijalayalawreview@gmail.com

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A Restorative Justice System Development: A Close View from the Indigenous Peoples' Practices in Indonesia

Article	Abstract
<p>Keywords:</p> <p>Restorative Justice; Integrated Criminal Justice System; Indonesian Legal System Reform</p> <p>Artikel History Received: ; Reviewed: ; Accepted: ; Published:</p> <p>DOI:</p>	<p>The crime rate in Indonesia in week 22, or the last one in May 2020, has increased compared to that in the previous week due to the public order and crime (known as <i>kamtibmas</i>) disturbances in week 22 of 2020 by 442 cases or 16.16 percent. Data obtained from the correctional institutions in February 2021 showed that the number of prisoners and inmates from 29 Law and Human Rights Regional Offices was already over capacity, while that from the other 4 Law and Human Rights Regional Offices were still in might be unnecessary normal condition. In the state life and legal development, the 1945 Constitution of the Republic of Indonesia in Article 18B has regulated that customary institutions are recognized for their existence in the criminal justice system. Then the judge, when deciding the cases, is obliged to explore, follow, and understand the legal values and justice senses living in the society. This research has several problems related to the restorative justice reconstruction in the Integrated Criminal Justice System in the Indonesian legal system reform. However, the resulting analysis showed that based on the juridical considerations and reviewing the relationship of various laws and regulations, as well as legal products related to restorative justice based on preventing crime. Public participation in Indonesia is related to the customary groups having the legal characteristics, cultures, moral values, and religions to solve problems through discussion, which mechanisms follow the applicable customary law processes.</p>

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INTRODUCTION

Criminal law is identical to punishment, which is characterized by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human rights in a harmonious balance from crimes/wrong actions on one hand and the despotic

authorities on the other.¹ Criminal law is considered a law of sanctions (*bijzondere sanctierecht*) since relying on sanctions functioning to ensure security, order, and justice.²

In the basic principles developed, the Tokyo Rules (also known as the Standard Minimum Rules Jiff Noncustodial Measures, for non-custodial criminal measures in the form of providing social work to protect society and victims, UN General Assembly Resolution Number 45/110) have several objectives, including: Standard Minimum Rules (known as SMR) establish basic principles to develop the non-custodial measures and guarantees for persons subject to the alternative prison measures; SMR intends to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility to the public; SMR must be implemented due to the political, economic, social, and cultural conditions and each country's criminal justice system objectives; In implementing this SMR, each country should ensure the balance between the criminal perpetrators' rights, victims' rights, and public interests in general security and crime prevention; and Member states should develop non-custodial measures in their legal systems concerning human rights, the need for social justice, and the need for rehabilitation for criminal perpetrators.

It is necessary for both non-penal and non-custodial facilities to be intensified and made effective for several reasons: According to Rubin, punishment (whatever the truth, whether intended to punish or improve) has little or no effect on criminal problems; Schultz stated that the increasing and decreasing crimes in a country are not related to changes in their laws or trends in court decisions but related to their operations or functions of major cultural changes in social life; Johanes Andenaes stated that the operation of criminal law should always be seen from the whole cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions; and Donald R. Taft and Ralph W. England said that the effectiveness of criminal law could not be accurately measured. Law is only a means of social control. Customs, religious beliefs, group support and disapproval, suppression and group interest, and the influence of public opinions, are more efficient vehicles for regulating human behaviors than legal sanctions.³

Furthermore, in "International Penal Reform Conference" held at the Royal Holloway College, University of London, on April 13-17, 1999, stating that one key element of a new agenda was the need to enrich the formal criminal justice system with an informal system or mechanism for the dispute resolution in meeting the human rights standards. This conference also identified nine development strategies in performing criminal law (penal) reform by developing/building: Restorative justice; Alternative dispute resolution; Informal justice; Alternatives to Custody; Alternative ways of dealing with juveniles and dealing with Violent Crime; Reducing the prison population; The proper management of prisons; and The Role of civil society in penal reform.

¹ Kanter E.Y and S.R Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya [Criminal Law Principles and Their Implementations in Indonesia]* (Jakarta: Stora Grafika, 2012).

² M. Hamdan, *Politik Hukum Pidana [Criminal Law Politics]* (Jakarta: PT. Raja Grafindo Persada, 1997).

³ Barda Nawawi Arief, *Masalah Perlindungan Hukum Bagi Anak*, Makalah, Bandung: Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, 1996. pp. 48 – 50

These various explanations are a reaction to how difficult it is to say that the criminal justice system, with its criminal sanctions, is an effective means to overcome crime (delinquency). However, in reality, the stigma experienced by former inmates/prisoners is not easily forgotten.

Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by criminal actions. Recovering these losses and relationships can be achieved through cooperative processes involving all stakeholders (interested parties)⁴

Restorative justice resolves criminal cases by repairing the resulting damages or losses. The amicable case settlement processes involve victims and perpetrators in a discussion to make the best agreement for both parties. Restorative justice aims to: simplify the procedures which must be followed; protect the rights of victims and perpetrators; minimize the negative impacts on the criminal justice processes followed so far; and involve public participation in law enforcement.⁵

The civil society movement is not meant to compete against the state or to fertilize power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration," it contains rights and obligations including: right to find, obtain, and provide information related to the state administration; right to receive equal and fair services from the state administration; right to responsibly convey suggestions and opinions on policies issued by the state administrators; right to obtain legal protection in terms of using their rights, and if requested to be present in the investigation, investigation, and at the court hearings as a reporting witness, witness, or expert witness, based on the provisions of the applicable laws and regulations; Those rights are used under the provisions of the applicable laws and regulations and by complying with religious norms and other social norms, and intended to avoid defamation and irresponsible reports; and public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on the one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.⁶

Public participation in criminal justice is expected to realize a favorable condition for all interested parties to create a better future. The Kanayatn Dayak and Sanggau Dayak tribes in

⁴ Muladi, *Kapita Selektta Hukum Pidana [Capita Selecta of Criminal Law]* (Semarang: Universitas Diponegoro Press, 1995).

⁵ Pemikiran penulis based on Restorative Justice Concept by D. Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Lawa Review, 1998, pp. 53 – 111.

⁶ Putusan Peradilan Perdamaian Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006]

Untuk keadilan nan badasarkan “Adat basandi Syarak, Syarak basandi Kitabullah [For Justice Based on “Adat basandi Syarak, Syarak basandi Kitabullah]”

Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air in this case “Nagari Customary Court Section”, based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on 29 August 2006 and bapidoman pado KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-2005, sarato Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice.

Pontianak, West Kalimantan, have a strong bond of values, morals, cultures, and local pearls of wisdom in solving the problems occurring in the society.⁷

According to Van Ness, the customary justice process significantly forms restorative justice, at least in 3 forms. First is the adaptations of customary practices such as the conferencing system (found in traditional Maori methods in New Zealand) and circular system (practiced by the first nation in America). Second, the judiciary tries to improve the injured crime structures in society and provide information related to restorative justice. Third, several customary justice forms include in the formal efforts in the crime-handling processes.⁸

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In general, justice systems are seen to create justice by giving the right and just punishment to the offender. This understanding is from the concept of retributive justice, correcting the offense with a penalty equal to the offense. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law' but as causing damage to individuals and the community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore, the people directly involved are encouraged to join the problem-solving process, especially the community's victim-focused effort, which supports victims and helps offenders take responsibility, which is necessary for preventing recurrence.

In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed by the court to challenge its constitutionality because it was an unlawful presumption of principle, the unjustified infringement of physical freedom, and a violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable explanation for treating discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge that such a protective disposition deprives the physical liberty of the body, but to rationalize the discrimination against the protected juvenile by its aim is to rehabilitate the youth with anti-

⁷ Nur Rochaeti, Rahmi Dwi Sutanti, Kontribusi Peradilan Adat dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana di Indonesia, *Masalah-Masalah Hukum*, Jilid 47 No. 3, Juli 2018, p. 208

⁸ Van Ness and P. Nolan, *Legislating for to Regent* [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, *Legislating for to Regent*], London: University Law Review (1998).

socialism and promote healthy development. Inhumane treatment is not tolerated because of more unfair laws than adults.

RESEARCH METHODS

Qualitative research methods, such as ethnography, case studies, and in-depth interviews, are well suited for studying complex social phenomena like developing a restorative justice system from the perspective of Indigenous peoples in Indonesia. These methods allow researchers to gather rich, detailed data on the beliefs, values, and practices of the people being studied. For example, an ethnographic study could involve researchers immersing themselves in the community and observing and participating in restorative justice practices. In-depth interviews could be conducted with community members to gather their perspectives on the current system and their vision for a more effective one. Through these methods, the researcher can gain an intimate and nuanced understanding of the local context and the specific challenges and opportunities for developing a restorative justice system responsive to the needs of Indigenous peoples in Indonesia.

This research used an approach method based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact. Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft/sollenwissenschaft*.⁹

The data collection method in this study used in-depth interviews with Jaro Saija, the Head of Outer Baduy Customs, and Focus Group Discussions with Lecturers in the Criminal Law Department, Faculty of Law, Sultan Ageng Tirtayasa University. All data obtained will then be analyzed qualitatively.

ANALYSIS AND DISCUSSION

Crime can result in decreasing self-restraint, stigmatization of delinquent children, weakening conventional bonds and family relations in society, breaking the established relationships between peer groups, and encouraging the delinquent perpetrators to only think about themselves more than the victim. Meanwhile, supervisory on perpetrators is considered a juvenile justice program oriented only to the perpetrators with a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.¹⁰

According to Gordon Bazemore, the main points of thought in the Restorative juvenile justice paradigm include a. purposes of imposing sanctions: there is an assumption that by achieving the goal of imposing sanctions, the victim is then included to have the right to be actively involved in the judicial process. The indicators of fulfilling the purposes of imposing sanctions are by looking at whether or not the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements made, as well as the quality of working services and the overall occurring process-

⁹ Bruggink, Bruggink, JJH, *Refleksi Tentang Hukum*, Alih Bahasa Arief Sidharta, Bandung : Citra Aditya Bhakti, 1996, p. 4

¹⁰ Ibid

es. The sanctions include restitution, mediation for perpetrator and victim, victim services, public restoration, direct services to victims, or restorative fines. The imposed sanctions involve perpetrators, victims, the public, and law enforcers. Offenders work actively to restore the victims' losses and deal with the victims/victim representatives. A victim should be active in all process stages and assist in determining the sanctions imposed on an offender.

Unlike in Australia and New Zealand, family conferencing is not used in Singapore as a replacement for formal criminal proceedings to divert the juvenile offender from the criminal justice system. It caters to selected juvenile offenders who have either been found guilty or pleaded guilty to the charges brought against them. The objectives of family conferencing have been described as (Subordinate Courts of Singapore 1998a): To ensure that the juvenile understands the seriousness of the offending behaviour; To minimize the likelihood of juvenile re-offending; To provide the juvenile with the opportunity to accept responsibility for the offending behaviour; To address the issue of family and community accountability; and To provide the victim(s), where possible, with an opportunity to contribute to the cautioning process.¹¹

The public is a mediator, helping victims and supporting the fulfillment of perpetrators' obligations. Law enforcers facilitate the mediation. Perpetrators' rehabilitation: The main focus of restorative justice is for the benefit and positive development; therefore, children and families are the primary sources. Children are considered competent and positively have both preventive and proactive abilities. For the perpetrators' rehabilitative purposes, changing the social institutions' attitudes and adults' behaviors is necessary. Perpetrators' rehabilitation is performed with the perpetrators through learning by doing, counseling, and therapy to motivate the related parties' active involvement. Public protection aspect: assumptions in restorative justice related to the achievement of public protection by the efforts of the judicial system collaborated with the public to develop prevention. Confinement is limited only to the last attempt. The public is actively responsible for supporting the implementation of restoration. The achievement indicators on the restoration of public protection are shown if the number of recidivists has decreased and the perpetrators are under general supervision; people feel safe and confident about the role of the juvenile justice system, schools are involved, families and public institutions can prevent from crime; social bonding and reintegration have increased.¹²

Howard Zehr, a pioneer of restorative justice in the United States, introduced the "restorative lens," in which crime is seen as a violation of individuals and relationships between individuals. Justice is interpreted as a joint search for solutions through healing and reconciliation. In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms that cause losses to individuals who are highly affected by crime; to the sentencing and imposing misery, moving on to loss repair. A key element in the restorative justice paradigm is loss restoration.¹³

Howard Zehr further reminded us that restorative justice is more precisely defined in contrast to the "adversarial system" in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) "fight each other" in front of "referee," where the judge leads the trial. Crimes in restorative justice are understood as losses imposed

¹¹ Ibid

¹² Ibid

¹³ Ibid

on victims and their communities, while in the adversarial system, it is understood as a violation of the state. Restorative justice is actively performed by the public, where victims are assisted in explaining how losses should be remedied, and perpetrators are encouraged to be responsible. At the same time, the adversarial system is organized and controlled by professionals, where victims are generally prevented from explaining their losses.¹⁴

Some scholars believe the criminal justice system's real purpose is to promote public peace as a peace promoter, not punishment. This vision is known as restorative justice.¹⁵ The guidelines in restorative justice have three critical principles: a. Groups "owning" the conflicts (including crime), b. The existence of materials and symbolic remedies for the crime victims, and; c. Social reintegration for the perpetrators.¹⁶

The conventional criminal justice system generally focuses on three questions. First, what laws have been broken?; the second, who did it?; and the third, what do the perpetrators deserve? Furthermore, in the perspective of restorative justice, the questions are entirely different: (1) who has been hurt; (2) what are their needs; (3) whose obligations are these?¹⁷

Various cultures and diversity of behavioral habits in the society in Indonesia are the wealth of values guiding people to play their role and participate in the restorative justice process of the juvenile criminal justice system. Indonesian cultural life and system interact and color each other as a legal system colored by a cultural system forming a legal culture in the Indonesian legal system.

According to Menski, all values in the community are obtained from various sources that must be acknowledged and understood as values that can be the source of law in the community.¹⁸ Therefore, according to Menski, Legal Pluralism can fill the scenario and conflict arising from the strict application of each different source of law. In his language, Menski states: Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law-making sources rules roots absolutely. The Centre of this triangle would appear to indicate 'perfect' justice as the result of equilibrium between the various competing forces.¹⁹

Plurality, or *Bhinneka* is typical of Indonesia with its many islands, tribes, languages, and cultures. Indonesia desires to establish a stable and modern nation with a strong national bond. Therefore, avoiding pluralism is equal to avoiding different realities of the existing perspective and beliefs in the Indonesian community. Legal pluralism means different legal systems or cultures in a single political community. Pluralism arises in many forms. Pluralism is horizontal, in which sub-cultures or sub-systems have equal legitimacy status, or vertical or hierarchically, where there is a "higher" and "lower" legal system or culture.²⁰

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Second Condition, New York; Cambridge University Press, 2006, p. 72.

¹⁹ Werner Menski, *Ibid*, pp. 186 – 187

Legal Pluralism fills the central space in in this triangle since all of it signifies all conflict scenarios and situations where none of the top three in law makes the root source of rule are absolute. At the center of this triangle, it will emerge to show that justice is 'perfect' as the result of balance between various contending powers.

²⁰ Lawrence Friedman, *Op.cit*, p. 257

In Indonesia, the characteristics of customary law in every region support the application of restorative justice. Customary law views its own violation of custom or customary acts and its solving mechanism. The existence of customary law and justice in some regions is still taken into consideration, and restorative justice is not a new concept.

Community involvement in the law enforcement process is expected to be a form of control and empathy in the sense of sensitivity to the problems faced by the community, social changes, public necessities, and the state of the community's real responsibility in the field of law. Theoretically, the community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with unavoidable independent reality and objectivity vis a vis members of the concerned group.²¹ Besides, social problem-solving by the community in many things can also serve to fill and complete the act of handling by the government (state) institution. Administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, the appearance of men and women, the appearance of paradise and hell, etc. Outer Baduy consists of a Jaro, that is, Jaro Saija, and a village secretary originating from out of the Baduy tribe having a civil servant status. In the outer Baduy community, there is a monthly meeting; thus, Jaro Saija is invited like other Village Heads. Inner Baduy is led by Puun, comprised of 3 Puun since there are three areas.

Some violations have occurred in Baduy Tribe (a native Sundanese tribe of Banten who still maintains anti-modernization traditions, both in the way they dress and in other lifestyles. The Baduy-Rawayan tribe lives in the Kendeng Mountains Cultural Heritage area of 5,101.85 hectares in the Kanekes area, Leuwidamar District, Lebak Regency), i.e., murder, theft, and adultery. In case of violation in the Baduy community, those who violate will usually confess their action, followed by a customary ceremony called *ngabokoran*, by making available *keris*, *mori* cloth, *ringgit* money, incense, betel, *uncaria*, *tumpeng*, 40 later followed with *tangkesan* by paranormal.

The problem-solving mechanism includes the early stage with confessing to *akhlak* (morality), followed by *silih ngahampura* (forgive each other) for the act witnessed by *Jaro* (head of a hamlet or village), if deemed necessary, taking an oath, in case of murder, the sanction: besides the previous, also 40 change clothes, 40 *tumpeng*, imprisonment in Dangka (a term for Baduy people who live outside the traditional area) for 40 days. Serious crimes: adultery, murder, *santet* (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. *Jaro* (village head) is appointed through descent choice and determined by the paranormal. Children in Baduy Tribe are circumcised at odd ages: five and seven years old, while for marital age: 15-16 years old, aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting. The sanction shall be social work in case of violation. The most serious customary violation is principally honesty and righteousness in implementing customary law.

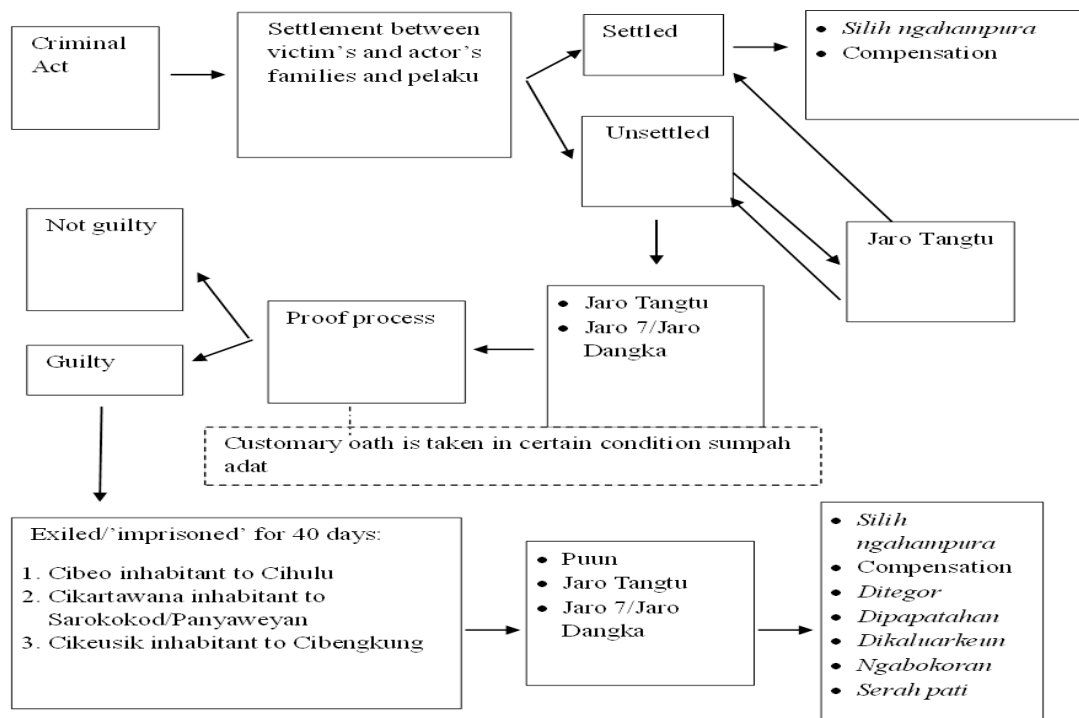
Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary regulations they

²¹ Theodore M. Steeman, "Religious and National Integration" (Harvard University, 1973).

must enforce. Inner Baduy Community has stricter customary rules than Outer Baduy Community. However, in the case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go into seclusion. Seclusion here is not defined as meditation but as strengthening/conserving Baduy practice, confirming *sunda wiwitan* religion. Outer Baduy Community, meanwhile, is assigned to be pan-amping, to guard Inner Baduy Community that is in seclusion; thus, they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has a stricter rule in implementing customary law and conserving Baduy custom.

Outer Baduy has a looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong*, *pondok teu meunang disambung* (if it is too long, it should not be cut, if it is too short, it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance and conservation; thus, the Baduy community should conserve nature and not be against the laws of nature.

A criminal act settlement procedure in the customary criminal law of Baduy are as follow:²²



The explanation is 1. *Silih ngahampura* = forgive each other, 2. *Dikaluarkeun* = kicked out from Inner Baduy to Outer Baduy, or banished from Outer Baduy to outside Baduy (for Outer Baduy members), 3. *Ditegor* = warned 4. *Dipapatahan* = being advised, 5. *Jaro Tangtu* is a jaro (village head) in Inner Baduy, 6. *Jaro 7/Jaro Dangka* is part of the customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of 7 people and is in Outer Baduy, 7. *Puun* is the highest figure in each of Inner Baduy, sacred in spirituality, 8. *Ngaboko-*

²² Sistem Peradilan Pidana Baduy itu Restorative Justice [Baduy Criminal Justice System is Restorative Justice]. (FGD, Paper of Ferry Fathurokhman).

ran is a spiritual cleaning ceremony for a not serious criminal act committed in Cihulu, Sarokod/Panyaweyan, Cibengkung (depending on where the actor originated from). Anything needed for *bokor* is provided by the actor, consisting of *sereh*/betel, uncaria, apu, incense, boeh/shroud, keris. *Sereh* is then *didahar*/eaten by customary figures: *Puun*, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is *Jaro Tangtu* and *Puun*, *Puun* then continues the process with the ancestors, 9. *Serah pati* is a spiritual cleaning ceremony similar to *bokor* (a large wide-brimmed dish (usually made of metal))²³ but for a serious criminal act (causing death), 10. The customary criminal law of Baduy is not codified into a book, the customary criminal law of Baduy is not written. According to *Jaro Saija*²⁴, to conserve the knowledge of the customary criminal law of Baduy, once every two months, all people gather in the court of each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy and sanctions are announced. Besides the platform, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life; thus every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits a criminal act must be cleaned physically and spiritually. Such cleaning is a form of criminal actors' accountability. Physical cleaning is the actor's accountability to a victim through sanction received. The sanctions are in the form of *ditegor*/warned, *dipapataan*/advised, *silih ngahampura*, compensation, through kicked out from Inner Baduy to Outer Baduy.

Restorative justice is not an alternative to the legal system in Austria, New Zealand, and Norway. It is the system. It is the norm, and the court system is only a fallback if restorative justice cannot be carried out or fails. The new provisions in Northern Ireland also make restorative practices the heart of the youth justice system. In these situations, what needs to be taken is that victims are not pressured into the processes against their will, but it is perfectly possible to introduce safeguards for this.²⁵

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, it is marked by the existence of social units based on differences in ethnicity, religion, customs, and regions. The Indonesian society, according to Furnivall, is known as the plural society.²⁶ Meanwhile, the structure of Indonesian society is vertically characterized by vertical differences in the form of upper- and lower-layer levels and the rural and industrial layer levels. It leads to inequality in development because some people still perform agricultural activities. On the other hand, some people have to step forward to the

²³ Kristianto, Dody and Seha, Nur, Nilai Moral Dalam Tanda Basa Baduy (Moral Values Inside Tanda Basa Baduy), *Kandai* Vol. 12, No. 2, November 2016; p. 269—282

²⁴ Interview, Jaro Saija, Baduy, Thursday, 8 September 2021

²⁵ Restorative Justice, How It Works, Marian Liebmann, Jessica Kingsley Publishers London and Philadelphia. First published in 2007 by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Mark ISBN 978 1 84310 074 45.

²⁶ Nasikun, Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia [An Approach to learn the Indonesian Social System], Yogyakarta: Faculty of Social and Political Sciences, UGM, 1974, pp. 31. The community plurality also shows the existing cultural diversification. These cultural differences will further result in contradictions. On one hand, the local principles are expected to be maintained, yet on the other hand are required to be adjusted with the global life principles.

industrial world and even to the information world, as called by Fred W. Riggs as the prismatic society.²⁷

The customary law characteristics In Indonesia show that each region supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still considered, while restorative justice, which has been introduced previously, is not a new concept. Marc Levin stated that the restorative justice approach, once considered obsolete, ancient, and traditional, is now recognized as a progressive approach.²⁸

Restorative justice is based on *Pancasila* (is the ideological pillar of the Indonesian state) as a vehicle to overcome children's delinquency in the future and is based on the substantive and structural aspects. Substantially, it is the idea to codify and/or unify the legal formation of the restorative justice system in Indonesia based on legal politics, which has a unified legal system between substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders and community leaders without involving the law enforcement officers to avoid psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the therapeutic restorative justice processes. The victim's position is to provide an agreement or convey his opinions to reach a consensus so that no party will experience losses or be under pressure to express their views. The offender is given an opportunity to express his opinion and the ability to respond to the victim's request. Substantially, in restorative justice, there are legal certainty, justice, and benefits for both parties in an effort to overcome the children's delinquency in achieving public welfare. Criminal law reform is related to various aspects of policy, including social policy, criminal policy, and law enforcement policy, influenced by various aspects, such as sociopolitical, socio-philosophical, and socio-cultural underlying, and providing the norm contents and criminal law substances in the future.

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case. Therefore, in its relationship with public participation in crime prevention efforts, the village structure institutions, in this case, should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, as well as the public by involving the religious leaders, community leaders and teachers.

Legal culture is performing an education in society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In

²⁷ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* [Law and Public Studies], ed. Alumni (Bandung, 1985).

²⁸ Eva Achjani Zulfa, *Keadilan Restoratif Indonesia*, *Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana*, Ringkasan Disertasi, Universitas Indonesia, Fakultas Hukum Program Studi Ilmu Hukum Kekhususan Sistem Peradilan Pidana, 2009, pp. 67

legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will run, work, and apply in society. A nation's attitudes and behaviors will be related to the values adopted by humans running a particular legal system. These values for the Indonesian people are *Pancasila*. In its implementation, a certain quality of human resources is needed to run on the empirical level.

Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines people's attitudes, ideas, and values toward laws. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others could influence someone's legal culture.²⁹ Legal culture is key to understanding the differences between one legal system and others. In the restorative justice system, the role of the community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes. When a sentence is finalized, treatment degree is decided through a scientific classification review and inmates are transferred to an appropriate correctional institution according to an individual treatment plan. While in prison, inmates get ready to return to society through various correctional programs until being released through parole or the completion of a prison term.

Classification review consists of classification research that looks into inmate's personal information and classification examination that conducts personality, intelligence, and aptitude tests. Inmates are classified at different treatment levels for facilities, custody, and work. In addition, regular and irregular reviews are carried out during their prison terms to adjust the treatment levels according to the degree of inmates' improvement.

In order to prevent recidivism and promote efficient accommodation of inmates, An 'Accommodation System Classifying Inmates by Security Level', an advanced correction model, was introduced and being operated. Furthermore, it developed a Correctional Recidivism Prediction Index (CO-REPI) which categorized inmates into five levels to analyze the possibility of subsequent convictions in an early stage depending on results of 23 evaluation tests.

Learning continues even during the accommodation period. Inmates can build knowledge through academic education and develop social consciousness and law-abiding spirit through intensive personality education. In addition, programs customized to inmates' characteristics, such as education for rehabilitation of the disabled, are provided to support successful reintegration.

Intensive personality education is being provided for inmates by categorizing their needs as basic education or re-education based on the progress of their sentences. Introduction of various programs from constitutional value and the humanities to communication and group counseling induce changes in inmates. A school qualification examination class is operated for inmates in need of mandatory education and opportunities to acquire a degree, including Korea National Open University courses and commissioned education courses of community colleges were provided in order to motivate them to achieve a better future. Programs customized to disabled inmates are performed to support self-sufficiency in society. The operation of Compre-

²⁹ Friedman, Lawrence M., *The Legal System : A Social Science Perspective*, New Yorks : The Russell Sage Foundation, 1975, p. 184

hensive Rehabilitation Center for the Disabled in Yeoju Correctional Institution and the Braille Training Program in the Cheongju Correctional Institution are representative of these schemes.

We are finding the power to change inmates by harnessing their interest in various fields. Inmates are supported to find emotional stability through artistic and religious activities, and to connect with society by watching various reformation broadcasting programs. Opportunities for inmates to appreciate art were expanded through the provision of various culture and art programs. In cooperation with Korea Arts & Culture Education Service, experience-based culture and art performances for art, play, and music currently take place in 52 correctional institutions. Such programs develop inmates' sensibility to change. Religious rallies and ceremonies have been launched and counseling with religious figures is provided so that inmates find mental stability through continuous religious practices. Reformation Broadcasting, which consists of general, education, and radio channels, airs programs such as education, liberal arts, dramas, sports, entertainment, and movies in accordance with the characteristics of inmates. Such broadcasting helps inmates cultivate cultural knowledge and emotion, and plays the role of a link between inmates and society.

CONCLUSION

The results of research on the Baduy community in Lebak, Banten have regulated and recognized the existence of customary justice and implemented it as an effort to handle cases that occurred in their environment. In substance, customary law and its legal sanctions are still valid in indigenous peoples. In Baduy customary criminal law, a criminal must be cleansed physically and spiritually. The purge is a manifestation of the responsibility of the offenders of criminal acts. Cleansing out-wardly in the form of accountability of offenders to victims that manifests in the sanctions they receive. Settlement of cases in the indigenous Baduy community is very simple and straightfor-ward, the settlement prioritizes forgiving each other (close to each other) because the main purpose of resolving cases is to create peace, restore balance to nature and return to the atmosphere as before. In terms of legal culture, people's behaviour still respects and implement decisions given through customary courts.

In the future, the criminal law reform, based on its logical substances to codify and/or unify the restorative justice based on the existence of general rules and guidelines on the restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice which is formed based on the principles of national legal system formation, as well as the existence of organizational structure implementing the restorative justice system, a supervisory system for the offenders, appointed institutions and individuals, and understanding the imposition of sanctions which is not a retaliation possibly resulting in stigma, yet providing justice. Restorative justice is performed by combining criminal justice mechanisms with public participation within a discussion mediation to obtain an agreement between the victim, offender's, victim's family, offender's family, and parties related to the case. A comprehensive and complete under-standing should be culturally formed in the public legal education by involving public active participation in understanding various legal products on restorative justice as the nation's personality reflections based on the Indonesian-based restorative justice characters. Future reconstruction in the renewal of the legal system of indigenous peoples' justice mechanisms needs to be regulated as a sub-system within the mechanism of the criminal justice system in Indonesia.

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Dari: NURHIDAYATULOH <nurhidayatuloh@fh.unsri.ac.id>

Kepada: Nur Rochaety <etikfh@live.undip.ac.id>

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Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices

Nur Rochaeti^{a*}, Mujiono Hafidh Prasetyo^a, Umi Rozah^a, Jihyun Park^c

^{a*} Faculty of Law, Universitas Diponegoro, Indonesia. Corresponding author Nur Rochaeti, e-mail: etikfh@live.undip.ac.id

^c Faculty of Law, Youngsan University, Republic of Korea. E-mail: shabd@ysu.ac.kr

Article	Abstract
<p>Keywords:</p> <p>Restorative Justice; Integrated Criminal Justice System; Indonesian Legal System Reform</p> <p>Artikel History Received: Reviewed: Accepted: Published:</p> <p>DOI:</p>	<p>The crime rate in Indonesia in week 22, or the last one in May 2020, has increased compared to that in the previous week due to the public order and crime (known as <i>kamtibmas</i>) disturbances in week 22 of 2020 by 442 cases or 16.16 per cent. Data obtained from the correctional institutions in February 2021 showed that the number of prisoners and inmates from 29 Law and Human Rights Regional Offices was already over capacity, while that from the other 4 Law and Human Rights Regional Offices were still in might be an unnecessary normal condition. In the state life and legal development, the 1945 Constitution of the Republic of Indonesia in Article 18B has regulated that customary institutions are recognized for their existence in the criminal justice system. Then the judge, when deciding the cases, is obliged to explore, follow, and understand the legal values and justice senses living in the society. This research has several problems related to the restorative justice reconstruction in the Integrated Criminal Justice System in the Indonesian legal system reform. However, the resulting analysis showed that based on the juridical considerations and reviewing the relationship of various laws and regulations, as well as legal products related to restorative justice based on preventing crime. Public participation in Indonesia is related to the customary groups having the legal characteristics, cultures, moral values, and religions to solve problems through discussion, which mechanisms follow the applicable customary law processes.</p>

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INTRODUCTION

Criminal law is identical to punishment, which is characterized by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human rights in a harmonious balance from crimes/wrong actions on one hand and the despotic

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authorities on the other.¹ Criminal law is considered a law of sanctions (*bijzondere sanctierecht*) since relying on sanctions functioning to ensure security, order, and justice.²

In the basic principles developed, the Tokyo Rules (also known as the Standard Minimum Rules Jiff Noncustodial Measures, for non-custodial criminal measures in the form of providing social work to protect society and victims, UN General Assembly Resolution Number 45/110) have several objectives, including: Standard Minimum Rules (known as SMR) establish basic principles to develop the non-custodial measures and guarantees for persons subject to the alternative prison measures; SMR intends to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility to the public; SMR must be implemented due to the political, economic, social, and cultural conditions and each country's criminal justice system objectives; In implementing this SMR, each country should ensure the balance between the criminal perpetrators' rights, victims' rights, and public interests in general security and crime prevention; and Member states should develop non-custodial measures in their legal systems concerning human rights, the need for social justice, and the need for rehabilitation for criminal perpetrators.

It is necessary for both non-penal and non-custodial facilities to be intensified and made effective for several reasons: According to Rubin, punishment (whatever the truth, whether intended to punish or improve) has little or no effect on criminal problems; Schultz stated that the increasing and decreasing crimes in a country are not related to changes in their laws or trends in court decisions but related to their operations or functions of major cultural changes in social life; Johannes Andenaes stated that the operation of criminal law should always be seen from the whole cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions; and Donald R. Taft and Ralph W. England said that the effectiveness of criminal law could not be accurately measured. Law is only a means of social control. Customs, religious beliefs, group support and disapproval, suppression and group interest, and the influence of public opinions, are more efficient vehicles for regulating human behaviors than legal sanctions.³

Furthermore, in "International Penal Reform Conference" held at the Royal Holloway College, University of London, on April 13-17, 1999, stating that one key element of a new agenda was the need to enrich the formal criminal justice system with an informal system or mechanism for the dispute resolution in meeting the human rights standards. This conference also identified nine development strategies in performing criminal law (penal) reform by developing/building: Restorative justice; Alternative dispute resolution; Informal justice; Alternatives to Custody; Alternative ways of dealing with juveniles and dealing with Violent Crime; Reducing the prison population; The proper management of prisons; and The Role of civil society in penal reform.

¹ Kanter E.Y and S.R Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya [Criminal Law Principles and Their Implementations in Indonesia]* (Jakarta: Stora Grafika, 2012).

² M. Hamdan, *Politik Hukum Pidana [Criminal Law Politics]* (Jakarta: PT. Raja Grafindo Persada, 1997).

³ Barda Nawawi Arief, *Masalah Perlindungan Hukum Bagi Anak*, Makalah, Bandung: Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, 1996. pp. 48 – 50

These various explanations are a reaction to how difficult it is to say that the criminal justice system, with its criminal sanctions, is an effective means to overcome crime (delinquency). However, in reality, the stigma experienced by former inmates/prisoners is not easily forgotten.

Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by criminal actions. Recovering these losses and relationships can be achieved through cooperative processes involving all stakeholders (interested parties)⁴

Restorative justice resolves criminal cases by repairing the resulting damages or losses. The amicable case settlement processes involve victims and perpetrators in a discussion to make the best agreement for both parties. Restorative justice aims to: simplify the procedures which must be followed; protect the rights of victims and perpetrators; minimize the negative impacts on the criminal justice processes followed so far; and involve public participation in law enforcement.⁵

The civil society movement is not meant to compete against the state or to fertilize power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration," it contains rights and obligations including: right to find, obtain, and provide information related to the state administration; right to receive equal and fair services from the state administration; right to responsibly convey suggestions and opinions on policies issued by the state administrators; right to obtain legal protection in terms of using their rights, and if requested to be present in the investigation, investigation, and at the court hearings as a reporting witness, witness, or expert witness, based on the provisions of the applicable laws and regulations; Those rights are used under the provisions of the applicable laws and regulations and by complying with religious norms and other social norms, and intended to avoid defamation and irresponsible reports; and public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on the one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.⁶

Public participation in criminal justice is expected to realize a favorable condition for all interested parties to create a better future. The Kanayatn Dayak and Sanggau Dayak tribes in

⁴ Muladi, *Kapita Selekta Hukum Pidana [Capita Selecta of Criminal Law]* (Semarang: Universitas Diponegoro Press, 1995).

⁵ Pemikiran penulis based on Restorative Justice Concept by D. Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Lawa Review, 1998, pp. 53 – 111.

⁶ Putusan Peradilan Perdamaiian Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006] Untuk keadilan nan badasarkan "Adat basandi Syarak, Syarak basandi Kitabullah [For Justice Based on "Adat basandi Syarak, Syarak basandi Kitabullah]" Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air in this case "Nagari Customary Court Section", based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on 29 August 2006 and bapidoman pado KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-2005, sarato Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice.

Pontianak, West Kalimantan, have a strong bond of values, morals, cultures, and local pearls of wisdom in solving the problems occurring in the society.⁷

According to Van Ness, the customary justice process significantly forms restorative justice, at least in 3 forms. First is the adaptations of customary practices such as the conferencing system (found in traditional Maori methods in New Zealand) and circular system (practiced by the first nation in America). Second, the judiciary tries to improve the injured crime structures in society and provide information related to restorative justice. Third, several customary justice forms include in the formal efforts in the crime-handling processes.⁸

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In general, justice systems are seen to create justice by giving the right and just punishment to the offender. This understanding is from the concept of retributive justice, correcting the offense with a penalty equal to the offense. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law' but as causing damage to individuals and the community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore, the people directly involved are encouraged to join the problem-solving process, especially the community's victim-focused effort, which supports victims and helps offenders take responsibility, which is necessary for preventing recurrence.

In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed by the court to challenge its constitutionality because it was an unlawful presumption of principle, the unjustified infringement of physical freedom, and a violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable explanation for treating discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge that such a protective disposition deprives the physical liberty of the body, but to rationalize the discrimination against the protected juvenile by its aim is to rehabilitate the youth with anti-

⁷ Nur Rochaeti, Rahmi Dwi Sutanti, Kontribusi Peradilan Adat dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana di Indonesia, *Masalah-Masalah Hukum*, Jilid 47 No. 3, Juli 2018, p. 208

⁸ Van Ness and P. Nolan, *Legislating for to Regent* [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, *Legislating for to Regent*], London: University Lawa Review (1998).

socialism and promote healthy development. Inhumane treatment is not tolerated because of more unfair laws than adults.

RESEARCH METHODS

Qualitative research methods, such as ethnography, case studies, and in-depth interviews, are well suited for studying complex social phenomena like developing a restorative justice system from the perspective of Indigenous peoples in Indonesia. These methods allow researchers to gather rich, detailed data on the beliefs, values, and practices of the people being studied. For example, an ethnographic study could involve researchers immersing themselves in the community and observing and participating in restorative justice practices. In-depth interviews could be conducted with community members to gather their perspectives on the current system and their vision for a more effective one. Through these methods, the researcher can gain an intimate and nuanced understanding of the local context and the specific challenges and opportunities for developing a restorative justice system responsive to the needs of Indigenous peoples in Indonesia.

This research used an approach method based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact. Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft/sollenwissenschaft*.⁹

The data collection method in this study used in-depth interviews with Jaro Saija, the Head of Outer Baduy Customs, and Focus Group Discussions with Lecturers in the Criminal Law Department, Faculty of Law, Sultan Ageng Tirtayasa University. All data obtained will then be analyzed qualitatively.

ANALYSIS AND DISCUSSION

Crime can result in decreasing self-restraint, stigmatization of delinquent children, weakening conventional bonds and family relations in society, breaking the established relationships between peer groups, and encouraging the delinquent perpetrators to only think about themselves more than the victim. Meanwhile, supervisory on perpetrators is considered a juvenile justice program oriented only to the perpetrators with a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.¹⁰

According to Gordon Bazemore, the main points of thought in the Restorative juvenile justice paradigm include a. purposes of imposing sanctions: there is an assumption that by achieving the goal of imposing sanctions, the victim is then included to have the right to be actively involved in the judicial process. The indicators of fulfilling the purposes of imposing sanctions are by looking at whether or not the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements made, as well as the quality of working services and the overall occurring process-

⁹ Bruggink, Bruggink, JJH, *Refleksi Tentang Hukum*, Alih Bahasa Arief Sidharta, Bandung : Citra Aditya Bhakti, 1996, p. 4

¹⁰ Ibid

es. The sanctions include restitution, mediation for perpetrator and victim, victim services, public restoration, direct services to victims, or restorative fines. The imposed sanctions involve perpetrators, victims, the public, and law enforcers. Offenders work actively to restore the victims' losses and deal with the victims/victim representatives. A victim should be active in all process stages and assist in determining the sanctions imposed on an offender.

Unlike in Australia and New Zealand, family conferencing is not used in Singapore as a replacement for formal criminal proceedings to divert the juvenile offender from the criminal justice system. It caters to selected juvenile offenders who have either been found guilty or pleaded guilty to the charges brought against them. The objectives of family conferencing have been described as (Subordinate Courts of Singapore 1998a): To ensure that the juvenile understands the seriousness of the offending behaviour; To minimize the likelihood of juvenile re-offending; To provide the juvenile with the opportunity to accept responsibility for the offending behaviour; To address the issue of family and community accountability; and To provide the victim(s), where possible, with an opportunity to contribute to the cautioning process.¹¹

The public is a mediator, helping victims and supporting the fulfillment of perpetrators' obligations. Law enforcers facilitate the mediation. Perpetrators' rehabilitation: The main focus of restorative justice is for the benefit and positive development; therefore, children and families are the primary sources. Children are considered competent and positively have both preventive and proactive abilities. For the perpetrators' rehabilitative purposes, changing the social institutions' attitudes and adults' behaviors is necessary. Perpetrators' rehabilitation is performed with the perpetrators through learning by doing, counseling, and therapy to motivate the related parties' active involvement. Public protection aspect: assumptions in restorative justice related to the achievement of public protection by the efforts of the judicial system collaborated with the public to develop prevention. Confinement is limited only to the last attempt. The public is actively responsible for supporting the implementation of restoration. The achievement indicators on the restoration of public protection are shown if the number of recidivists has decreased and the perpetrators are under general supervision; people feel safe and confident about the role of the juvenile justice system, schools are involved, families and public institutions can prevent from crime; social bonding and reintegration have increased.¹²

Howard Zehr, a pioneer of restorative justice in the United States, introduced the "restorative lens," in which crime is seen as a violation of individuals and relationships between individuals. Justice is interpreted as a joint search for solutions through healing and reconciliation. In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms that cause losses to individuals who are highly affected by crime; to the sentencing and imposing misery, moving on to loss repair. A key element in the restorative justice paradigm is loss restoration.¹³

Howard Zehr further reminded us that restorative justice is more precisely defined in contrast to the "adversarial system" in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) "fight each other" in front of "referee," where the judge leads the trial. Crimes in restorative justice are understood as losses imposed

¹¹ Ibid

¹² Ibid

¹³ Ibid

on victims and their communities, while in the adversarial system, it is understood as a violation of the state. Restorative justice is actively performed by the public, where victims are assisted in explaining how losses should be remedied, and perpetrators are encouraged to be responsible. At the same time, the adversarial system is organized and controlled by professionals, where victims are generally prevented from explaining their losses.¹⁴

Some scholars believe the criminal justice system's real purpose is to promote public peace as a peace promoter, not punishment. This vision is known as restorative justice.¹⁵ The guidelines in restorative justice have three critical principles: a. Groups "owning" the conflicts (including crime), b. The existence of materials and symbolic remedies for the crime victims, and; c. Social reintegration for the perpetrators.¹⁶

The conventional criminal justice system generally focuses on three questions. First, what laws have been broken?; the second, who did it?; and the third, what do the perpetrators deserve? Furthermore, in the perspective of restorative justice, the questions are entirely different: (1) who has been hurt; (2) what are their needs; (3) whose obligations are these?¹⁷

Various cultures and diversity of behavioral habits in the society in Indonesia are the wealth of values guiding people to play their role and participate in the restorative justice process of the juvenile criminal justice system. Indonesian cultural life and system interact and color each other as a legal system colored by a cultural system forming a legal culture in the Indonesian legal system.

According to Menski, all values in the community are obtained from various sources that must be acknowledged and understood as values that can be the source of law in the community.¹⁸ Therefore, according to Menski, Legal Pluralism can fill the scenario and conflict arising from the strict application of each different source of law. In his language, Menski states: Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law-making sources rules roots absolutely. The Centre of this triangle would appear to indicate 'perfect' justice as the result of equilibrium between the various competing forces.¹⁹

Plurality, or *Bhinneka* is typical of Indonesia with its many islands, tribes, languages, and cultures. Indonesia desires to establish a stable and modern nation with a strong national bond. Therefore, avoiding pluralism is equal to avoiding different realities of the existing perspective and beliefs in the Indonesian community. Legal pluralism means different legal systems or cultures in a single political community. Pluralism arises in many forms. Pluralism is horizontal, in which sub-cultures or sub-systems have equal legitimacy status, or vertical or hierarchically, where there is a "higher" and "lower" legal system or culture.²⁰

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Second Condition, New York; Cambridge University Press, 2006, p. 72.

¹⁹ Werner Menski, *Ibid*, pp. 186 – 187

Legal Pluralism fills the central space in in this triangle since all of it signifies all conflict scenarios and situations where none of the top three in law makes the root source of rule are absolute. At the center of this triangle, it will emerge to show that justice is 'perfect' as the result of balance between various contending powers.

²⁰ Lawrence Friedman, *Op.cit*, p. 257

In Indonesia, the characteristics of customary law in every region support the application of restorative justice. Customary law views its own violation of custom or customary acts and its solving mechanism. The existence of customary law and justice in some regions is still taken into consideration, and restorative justice is not a new concept.

Community involvement in the law enforcement process is expected to be a form of control and empathy in the sense of sensitivity to the problems faced by the community, social changes, public necessities, and the state of the community's real responsibility in the field of law. Theoretically, the community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with unavoidable independent reality and objectivity vis a vis members of the concerned group.²¹ Besides, social problem-solving by the community in many things can also serve to fill and complete the act of handling by the government (state) institution. Administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, the appearance of men and women, the appearance of paradise and hell, etc. Outer Baduy consists of a Jaro, that is, Jaro Saija, and a village secretary originating from out of the Baduy tribe having a civil servant status. In the outer Baduy community, there is a monthly meeting; thus, Jaro Saija is invited like other Village Heads. Inner Baduy is led by Puun, comprised of 3 Puun since there are three areas.

Some violations have occurred in Baduy Tribe (a native Sundanese tribe of Banten who still maintains anti-modernization traditions, both in the way they dress and in other lifestyles. The Baduy-Rawayan tribe lives in the Kendeng Mountains Cultural Heritage area of 5,101.85 hectares in the Kanekes area, Leuwidamar District, Lebak Regency), i.e., murder, theft, and adultery. In case of violation in the Baduy community, those who violate will usually confess their action, followed by a customary ceremony called *ngabokoran*, by making available *keris*, *mori* cloth, *ringgit* money, incense, betel, *uncaria*, *tumpeng*, 40 later followed with *tangkesan* by paranormal.

The problem-solving mechanism includes the early stage with confessing to *akhlak* (morality), followed by *silih ngahampura* (forgive each other) for the act witnessed by *Jaro* (head of a hamlet or village), if deemed necessary, taking an oath, in case of murder, the sanction: besides the previous, also 40 change clothes, 40 *tumpeng*, imprisonment in Dangka (a term for Baduy people who live outside the traditional area) for 40 days. Serious crimes: adultery, murder, *san-tet* (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. Jaro (village head) is appointed through descent choice and determined by the paranormal. Children in Baduy Tribe are circumcised at odd ages: five and seven years old, while for marital age: 15-16 years old, aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting. The sanction shall be social work in case of violation. The most serious customary violation is principally honesty and righteousness in implementing customary law.

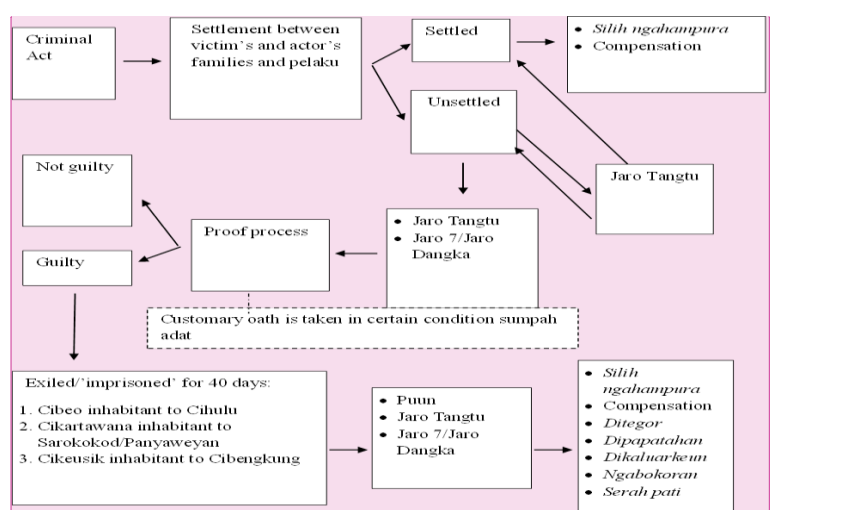
Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary regulations they

²¹ Theodore M. Steeman, "Religious and National Integration" (Harvard University, 1973).

must enforce. Inner Baduy Community has stricter customary rules than Outer Baduy Community. However, in the case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go into seclusion. Seclusion here is not defined as meditation but as strengthening/conserving Baduy practice, confirming *sunda wiwitan* religion. Outer Baduy Community, meanwhile, is assigned to be pan-amping, to guard Inner Baduy Community that is in seclusion; thus, they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has a stricter rule in implementing customary law and conserving Baduy custom.

Outer Baduy has a looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong, pondok teu meunang disambung* (if it is too long, it should not be cut, if it is too short, it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance and conservation; thus, the Baduy community should conserve nature and not be against the laws of nature.

A criminal act settlement procedure in the customary criminal law of Baduy are as follow:²²



The explanation is 1. *Silih ngahampura* = forgive each other, 2. *Dikaluarkeun* = kicked out from Inner Baduy to Outer Baduy, or banished from Outer Baduy to outside Baduy (for Outer Baduy members), 3. *Ditegor* = warned 4. *Dipapatahan* = being advised, 5. *Jaro Tangtu* is a jaro (village head) in Inner Baduy, 6. *Jaro 7/Jaro Dangka* is part of the customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of 7 people and is in Outer Baduy, 7. *Puan* is the highest figure in each of Inner Baduy, sacred in spirituality, 8. *Ngabokoran* is a spiritual cleaning ceremony for a not serious criminal act committed in Cihulu, Sarokokod/Panyaweyan, Cibengkung (depending on where the actor originated from). Anything

²² Sistem Peradilan Pidana Baduy itu Restorative Justice [Baduy Criminal Justice System is Restorative Justice]. (FGD, Paper of Ferry Fathurokhman).

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needed for *bokor* is provided by the actor, consisting of *sereh*/betel, *uncaria*, *apu*, incense, *boeh*/shroud, *keris*. *Sereh* is then *didahar*/eaten by customary figures: *Puun*, *girang serat*, *baresan salapan*, *jaro tangtu*. The one to decide the actor is *Jaro Tangtu* and *Puun*, *Puun* then continues the process with the ancestors, 9. *Serah pati* is a spiritual cleaning ceremony similar to *bokor* (a large wide-brimmed dish (usually made of metal))²³ but for a serious criminal act (causing death), 10. The customary criminal law of Baduy is not codified into a book, the customary criminal law of Baduy is not written. According to *Jaro Saija*²⁴, to conserve the knowledge of the customary criminal law of Baduy, once every two months, all people gather in the court of each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy and sanctions are announced. Besides the platform, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life; thus every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits a criminal act must be cleaned physically and spiritually. Such cleaning is a form of criminal actors' accountability. Physical cleaning is the actor's accountability to a victim through sanction received. The sanctions are in the form of *ditegor*/warned, *dipapatahan*/advised, *silih ngahampura*, compensation, through kicked out from Inner Baduy to Outer Baduy.

Restorative justice is not an alternative to the legal system in Austria, New Zealand, and Norway. It is the system. It is the norm, and the court system is only a fallback if restorative justice cannot be carried out or fails. The new provisions in Northern Ireland also make restorative practices the heart of the youth justice system. In these situations, what needs to be taken is that victims are not pressured into the processes against their will, but it is perfectly possible to introduce safeguards for this.²⁵

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, it is marked by the existence of social units based on differences in ethnicity, religion, customs, and regions. The Indonesian society, according to Furnivall, is known as the plural society.²⁶ Meanwhile, the structure of Indonesian society is vertically characterized by vertical differences in the form of upper- and lower-layer levels and the rural and industrial layer levels. It leads to inequality in development because some people still perform agricultural activities. On the other hand, some people have to step forward to the

²³ Kristianto, Dody and Seha, Nur, Nilai Moral Dalam Tanda Basa Baduy (Moral Values Inside Tanda Basa Baduy), *Kandai* Vol. 12, No. 2, November 2016; p. 269—282

²⁴ Interview, Jaro Saija, Baduy, Thursday, 8 September 2021

²⁵ Restorative Justice, How It Works, Marian Liebmann, Jessica Kingsley Publishers London and Philadelphia. First published in 2007 by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Mark ISBN 978 1 84310 074 45.

²⁶ Nasikun, Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia [An Approach to learn the Indonesian Social System], Yogyakarta: Faculty of Social and Political Sciences, UGM, 1974, pp. 31. The community plurality also shows the existing cultural diversification. These cultural differences will further result in contradictions. On one hand, the local principles are expected to be maintained, yet on the other hand are required to be adjusted with the global life principles.

industrial world and even to the information world, as called by Fred W. Riggs as the prismatic society.²⁷

The customary law characteristics In Indonesia show that each region supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still considered, while restorative justice, which has been introduced previously, is not a new concept. Marc Levin stated that the restorative justice approach, once considered obsolete, ancient, and traditional, is now recognized as a progressive approach.²⁸

Restorative justice is based on *Pancasila* (is the ideological pillar of the Indonesian state) as a vehicle to overcome children's delinquency in the future and is based on the substantive and structural aspects. Substantially, it is the idea to codify and/or unify the legal formation of the restorative justice system in Indonesia based on legal politics, which has a unified legal system between substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders and community leaders without involving the law enforcement officers to avoid psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the therapeutic restorative justice processes. The victim's position is to provide an agreement or convey his opinions to reach a consensus so that no party will experience losses or be under pressure to express their views. The offender is given an opportunity to express his opinion and the ability to respond to the victim's request. Substantially, in restorative justice, there are legal certainty, justice, and benefits for both parties in an effort to overcome the children's delinquency in achieving public welfare. Criminal law reform is related to various aspects of policy, including social policy, criminal policy, and law enforcement policy, influenced by various aspects, such as sociopolitical, socio-philosophical, and socio-cultural underlying, and providing the norm contents and criminal law substances in the future.

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case. Therefore, in its relationship with public participation in crime prevention efforts, the village structure institutions, in this case, should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, as well as the public by involving the religious leaders, community leaders and teachers.

Legal culture is performing an education in society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In

²⁷ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* [Law and Public Studies], ed. Alumni (Bandung, 1985).

²⁸ Eva Achjani Zulfa, *Keadilan Restoratif Indonesia*, *Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana*, Ringkasan Disertasi, Universitas Indonesia, Fakultas Hukum Program Studi Ilmu Hukum Kekhususan Sistem Peradilan Pidana, 2009, pp. 67

legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will run, work, and apply in society. A nation's attitudes and behaviors will be related to the values adopted by humans running a particular legal system. These values for the Indonesian people are *Pancasila*. In its implementation, a certain quality of human resources is needed to run on the empirical level.

Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines people's attitudes, ideas, and values toward laws. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others could influence someone's legal culture.²⁹ Legal culture is key to understanding the differences between one legal system and others. In the restorative justice system, the role of the community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes. When a sentence is finalized, treatment degree is decided through a scientific classification review and inmates are transferred to an appropriate correctional institution according to an individual treatment plan. While in prison, inmates get ready to return to society through various correctional programs until being released through parole or the completion of a prison term.

Classification review consists of classification research that looks into inmate's personal information and classification examination that conducts personality, intelligence, and aptitude tests. Inmates are classified at different treatment levels for facilities, custody, and work. In addition, regular and irregular reviews are carried out during their prison terms to adjust the treatment levels according to the degree of inmates' improvement.

In order to prevent recidivism and promote efficient accommodation of inmates, An 'Accommodation System Classifying Inmates by Security Level', an advanced correction model, was introduced and being operated. Furthermore, it developed a Correctional Recidivism Prediction Index (CO-REPI) which categorized inmates into five levels to analyze the possibility of subsequent convictions in an early stage depending on results of 23 evaluation tests.

Learning continues even during the accommodation period. Inmates can build knowledge through academic education and develop social consciousness and law-abiding spirit through intensive personality education. In addition, programs customized to inmates' characteristics, such as education for rehabilitation of the disabled, are provided to support successful reintegration.

Intensive personality education is being provided for inmates by categorizing their needs as basic education or re-education based on the progress of their sentences. Introduction of various programs from constitutional value and the humanities to communication and group counseling induce changes in inmates. A school qualification examination class is operated for inmates in need of mandatory education and opportunities to acquire a degree, including Korea National Open University courses and commissioned education courses of community colleges were provided in order to motivate them to achieve a better future. Programs customized to disabled inmates are performed to support self-sufficiency in society. The operation of Compre-

²⁹ Friedman, Lawrence M., *The Legal System : A Social Science Perspective*, New Yorks : The Russell Sage Foundation, 1975, p. 184

hensive Rehabilitation Center for the Disabled in Yeoju Correctional Institution and the Braille Training Program in the Cheongju Correctional Institution are representative of these schemes.

We are finding the power to change inmates by harnessing their interest in various fields. Inmates are supported to find emotional stability through artistic and religious activities, and to connect with society by watching various reformation broadcasting programs. Opportunities for inmates to appreciate art were expanded through the provision of various culture and art programs. In cooperation with Korea Arts & Culture Education Service, experience-based culture and art performances for art, play, and music currently take place in 52 correctional institutions. Such programs develop inmates' sensibility to change. Religious rallies and ceremonies have been launched and counseling with religious figures is provided so that inmates find mental stability through continuous religious practices. Reformation Broadcasting, which consists of general, education, and radio channels, airs programs such as education, liberal arts, dramas, sports, entertainment, and movies in accordance with the characteristics of inmates. Such broadcasting helps inmates cultivate cultural knowledge and emotion, and plays the role of a link between inmates and society.

CONCLUSION

The results of research on the Baduy community in Lebak, Banten have regulated and recognized the existence of customary justice and implemented it as an effort to handle cases that occurred in their environment. In substance, customary law and its legal sanctions are still valid in indigenous peoples. In Baduy customary criminal law, a criminal must be cleansed physically and spiritually. The purge is a manifestation of the responsibility of the offenders of criminal acts. Cleansing out-wardly in the form of accountability of offenders to victims that manifests in the sanctions they receive. Settlement of cases in the indigenous Baduy community is very simple and straightforward, the settlement prioritizes forgiving each other (close to each other) because the main purpose of resolving cases is to create peace, restore balance to nature and return to the atmosphere as before. In terms of legal culture, people's behaviour still respects and implement decisions given through customary courts.

In the future, the criminal law reform, based on its logical substances to codify and/or unify the restorative justice based on the existence of general rules and guidelines on the restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice which is formed based on the principles of national legal system formation, as well as the existence of organizational structure implementing the restorative justice system, a supervisory system for the offenders, appointed institutions and individuals, and understanding the imposition of sanctions which is not a retaliation possibly resulting in stigma, yet providing justice. Restorative justice is performed by combining criminal justice mechanisms with public participation within a discussion mediation to obtain an agreement between the victim, offender's, victim's family, offender's family, and parties related to the case. A comprehensive and complete understanding should be culturally formed in the public legal education by involving public active participation in understanding various legal products on restorative justice as the nation's personality reflections based on the Indonesian-based restorative justice characters. Future reconstruction in the renewal of the legal system of indigenous peoples' justice mechanisms needs to be regulated as a sub-system within the mechanism of the criminal justice system in Indonesia.

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Tanggal: Kamis, 8 September 2022 08.00 WIB

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Best Regards,

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A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices

Nur Rochaeti^{a*}, Mujiono Hafidh Prasetyo^a, Umi Rozah^a, Jihyun Park^c

^{a*} Faculty of Law, Universitas Diponegoro, Indonesia. Corresponding author Nur Rochaeti, e-mail: etikfh@live.undip.ac.id

^c Faculty of Law, Youngsan University, Republic of Korea. E-mail: shabd@ysu.ac.kr

Article	Abstract
<p>Keywords:</p> <p>Restorative Justice; Integrated Criminal Justice System; Indonesian Legal System Reform</p> <p>Artikel History Received: Reviewed: Accepted: Published:</p> <p>DOI:</p>	<p>The crime rate in Indonesia in week 22 of May 2020 increased due to public orders and crime disturbances. Data from correctional institutions in February 2021 showed that some regional offices were over capacity while others were still normal. The 1945 Constitution of Indonesia recognizes customary institutions in the criminal justice system and requires judges to consider legal values and a sense of Justice in society. This study aims to determine Indonesia's customary criminal justice system as a form of restorative Justice. This research used a socio-legal approach and found that public participation in Indonesia, through customary groups, can help prevent crime and solve problems through discussion and following applicable customary law processes. The study results show that Indonesian researchers have regulated and recognized customary Justice's existence and implemented it to deal with cases in their environment. Restorative Justice is a criminal mechanism that aims to restore the relationship of the conflicting parties to the state before the conflict and is carried out informally. This concept is also an acknowledgement of oriental legal philosophy which, in resolving any conflict, always seeks to restore relations; macro stability or society can even affect the stability of the universe. The practice of Restorative Justice occurs in customary law. As a legal philosophy, the legal policy of implementing Restorative Justice should be interpreted mainly as revitalizing customary law if conflicts occur between fellow supporters of the same customary law. The settlement of cases in Baduy community is straightforward. The settlement prioritizes forgiving each other. Restorative Justice is performed by combining criminal justice mechanisms with public participation in a discussion mediation. The crime rate in Indonesia in week 22, or the last one in May 2020, has increased compared to that in the previous week due to the public order and crime (known as <i>kamtibmas</i>) disturbances in week 22 of 2020 by 442 cases or 16.16 per cent. Data obtained from the correctional institutions in February 2021 showed that the number of prisoners and inmates from 29 Law and Human Rights Regional Offices was already over capacity, while that from the other 4 Law and Human Rights Regional Offices were still in might be an unnecessary normal condition. In the state life and legal development, the</p>

1945 Constitution of the Republic of Indonesia in Article 18B has regulated that customary institutions are recognized for their existence in the criminal justice system. Then the judge, when deciding the cases, is obliged to explore, follow, and understand the legal values and justice senses living in the society. This research used an approach method based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact. However, the resulting analysis showed that based on the juridical considerations and reviewing the relationship of various laws and regulations, as well as legal products related to restorative justice based on preventing crime. Public participation in Indonesia is related to the customary groups having the legal characteristics, cultures, moral values, and religions to solve problems through discussion, which mechanisms follow the applicable customary law processes.

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INTRODUCTION

Criminal law is identical to punishment, which is characterized by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human rights in a harmonious balance from crimes/wrong actions on one hand and the despotic authorities on the other.¹² Criminal law is considered a law of sanctions (*bijzondere sanctierecht*) since relying on sanctions functioning to ensure security, order, and justice.³⁴

In the basic principles developed, the Tokyo Rules (also known as the Standard Minimum Rules Jiff Noncustodial Measures, for non-custodial criminal measures in the form of providing social work to protect society and victims, UN General Assembly Resolution Number 45/110) have several objectives, including: Standard Minimum Rules (known as SMR) establish basic principles to develop the non-custodial measures and guarantees for persons subject to the alternative prison measures; SMR intends to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility to the public; SMR must be implemented due to the political, economic, social, and cultural conditions and each country's criminal justice system objectives; In implementing this SMR, each country should ensure the balance between the criminal perpetrators' rights, victims' rights, and public interests in general security and crime prevention; and Member states should develop non-custodial measures in their legal systems concerning human rights, the need for social justice, and the need for rehabilitation for criminal perpetrators.

It is necessary for both non-penal and non-custodial facilities to be intensified and made effective for several reasons: According to Rubin, punishment (whatever the truth, whether intended to punish or improve) has little or no effect on criminal problems; Schultz stated that the

¹ E.Y. Kanter and S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Jakarta: Storia Grafika, 2022).

² Kanter E.Y and S.R Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya [Criminal Law Principles and Their Implementations in Indonesia]* (Jakarta: Storia Grafika, 2012).

³ M. Hamdan, *Politik Hukum Pidana* (Jakarta: Raja Grafindo Persada, 1997).

⁴ M. Hamdan, *Politik Hukum Pidana [Criminal Law Politics]* (Jakarta: PT. Raja Grafindo Persada, 1997).

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increasing and decreasing crimes in a country are not related to changes in their laws or trends in court decisions but related to their operations or functions of major cultural changes in social life; Johannes Andenaes stated that the operation of criminal law should always be seen from the whole cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions; and Donald R. Taft and Ralph W. England said that the effectiveness of criminal law could not be accurately measured. Law is only a means of social control. Customs, religious beliefs, group support and disapproval, suppression and group interest, and the influence of public opinions, are more efficient vehicles for regulating human behaviors than legal sanctions.⁵⁶

Furthermore, in "International Penal Reform Conference" held at the Royal Holloway College, University of London, on April 13-17, 1999, stating that one key element of a new agenda was the need to enrich the formal criminal justice system with an informal system or mechanism for the dispute resolution in meeting the human rights standards. This conference also identified nine development strategies in performing criminal law (penal) reform by developing/building: Restorative justice; Alternative dispute resolution; Informal justice; Alternatives to Custody; Alternative ways of dealing with juveniles and dealing with Violent Crime; Reducing the prison population; The proper management of prisons; and The Role of civil society in penal reform. These various explanations are a reaction to how difficult it is to say that the criminal justice system, with its criminal sanctions, is an effective means to overcome crime (delinquency). However, in reality, the stigma experienced by former inmates/prisoners is not easily forgotten. The existence of the restorative justice process as an alternative to solving criminal cases is very much determined by the awareness and knowledge of the community itself, including law enforcement officials. Understanding the judiciary that only puts forward the application of rules to prove the wrongdoers and then punishes them will not accept this concept.⁷⁸⁹

Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by criminal actions. Recovering these losses and relationships can be achieved through cooperative processes involving all stakeholders (interested parties).¹⁰¹⁴ The main principle and restorative justice is deter criminals of the formal criminal

⁵ Barda Nawawi Arief, "Masalah Perlindungan Hukum Bagi Anak" (Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, Bandung, 1996).

⁶ Barda Nawawi Arief, *Masalah Perlindungan Hukum Bagi Anak*, Makalah, Bandung: Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, 1996, pp. 48–50.

⁷ Edhei Sulistyio, Pujiyono Pujiyono, and Nur Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators," *International Journal of Criminology and Sociology* 10 (April 30, 2021): 595–602, <https://doi.org/10.6000/1929-4409.2021.10.69>.

⁸ Edhei Sulistyio, "Notary as a Reporting Party in the Eradication of the Crime of Money Laundering," *Jurnal Hukum Progresif* 9, no. 2 (October 30, 2021): 87–98, <https://doi.org/10.14710/jhp.9.2.87-98>.

⁹ Edhei Sulistyio, Pujiyono, and Nur Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators," *International Journal of Criminology and Sociology*, 2021, 10, p. 601.

¹⁰ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Badan Penerbit Universitas Diponegoro, 1995).

¹¹ Muladi, *Kapita Selekta Hukum Pidana [Capita Selecta of Criminal Law]* (Semarang: Universitas Diponegoro Press, 1995).

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justice system and give the perpetrator a chance carry out alternative sanctions without imprisonment.^{12,13}

Restorative justice resolves criminal cases by repairing the resulting damages or losses. The amicable case settlement processes involve victims and perpetrators in a discussion to make the best agreement for both parties. Restorative justice aims to: simplify the procedures which must be followed; protect the rights of victims and perpetrators; minimize the negative impacts on the criminal justice processes followed so far; and involve public participation in law enforcement.^{14,15}

The civil society movement is not meant to compete against the state or to fertilize power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration," it contains rights and obligations including: right to find, obtain, and provide information related to the state administration; right to receive equal and fair services from the state administration; right to responsibly convey suggestions and opinions on policies issued by the state administrators; right to obtain legal protection in terms of using their rights, and if requested to be present in the investigation, investigation, and at the court hearings as a reporting witness, witness, or expert witness, based on the provisions of the applicable laws and regulations; Those rights are used under the provisions of the applicable laws and regulations and by complying with religious norms and other social norms, and intended to avoid defamation and irresponsible reports; and public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on the one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.¹⁶

Public participation in criminal justice is expected to realize a favorable condition for all interested parties to create a better future. The Kanayatn Dayak and Sanggau Dayak tribes in

¹² Pangestika Rizki Utami, "Konsep Diversi dan Restorative Justice sebagai Pergeseran Tanggung Jawab Pidana pada Sistem Peradilan Pidana Anak," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 1, no. 1 (June 19, 2018): 95–106, <https://doi.org/10.24090/volksgeist.v1i1.1691>.

¹³ Pangestika Rizki Utami, "Konsep Diversi dan Restorative Justice Sebagai Pergeseran Tanggung Jawab Pidana Pada Sistem Peradilan Pidana Anak," *Volksgeist*, Vol. 1 No. 1 June 2018, p. 105.

¹⁴ Daniel W van Ness and Pat Nolan, "Legislating for Restorative Justice," *Regent University Law Review* 10 (1998): 53–110.

¹⁵ ~~Pemikiran penulis based on Restorative Justice Concept by D. Van Ness and P. Nolan, Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent], London: University Lawa Review, 1998, pp. 53–111.~~

¹⁶ Putusan Peradilan Perdamaian Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006]

~~Untuk keadilan nan basasarkan "Adat Basandi Syarak, Syarak basandi Kitabullah [For Justice Based on "Adat basandi Syarak, Syarak basandi Kitabullah]"~~

~~Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air in this case "Nagari Customary Court Section", based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on 29 August 2006 and bapidoman pado KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-2005, sarato Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice.~~

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Pontianak, West Kalimantan, have a strong bond of values, morals, cultures, and local pearls of wisdom in solving the problems occurring in the society.^{17,18,19}

According to Van Ness, the customary justice process significantly forms restorative justice, at least in three forms. First is the adaptations of customary practices such as the conferencing system (found in traditional Maori methods in New Zealand) and circular system (practiced by the first nation in America). Second, the judiciary tries to improve the injured crime structures in society and provide information related to restorative justice. Third, several customary justice forms include in the formal efforts in the crime-handling processes.^{20,21}

In general, justice systems are seen to create justice by giving the right and just punishment to the offender.²² This understanding is from the concept of retributive justice, correcting the offense with a penalty equal to the offense. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law' but as causing damage to individuals and the community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore, the people directly involved are encouraged to join the problem-solving process, especially the community's victim-focused effort, which supports victims and helps offenders take responsibility, which is necessary for preventing recurrence.²³

In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed by the court to challenge its constitutionality because it was an unlawful presumption of principle, the unjustified infringement of physical freedom, and a violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable explanation for treating discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge that such a protective disposition deprives the physical liberty of the body, but to rationalize the dis-

¹⁷ Nur Rochaeti and Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia," *Masalah-Masalah Hukum* 47, no. 3 (2018): 198–214, <https://doi.org/10.14710/mmh.47.3.2018.198-214>.

¹⁸ Sulistyo, Pujiyono, and Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators."

¹⁹ Nur Rochaeti, Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana di Indonesia, Masalah Masalah Hukum, Jilid 47 No. 3, Juli 2018, p. 208

²⁰ Ness and Nolan, "Legislating for Restorative Justice."

²¹ Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Law Review (1998).

²² Barry C. Feld, "Juvenile and Criminal Justice Systems' Responses to Youth Violence," *Crime and Justice* 24 (January 1, 1998): 189–261, <https://doi.org/10.1086/449280>.

²³ John Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," *Crime and Justice* 25 (1999): 1–127.

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crimination against the protected juvenile by its aim is to rehabilitate the youth with anti-socialism and promote healthy development. Inhumane treatment is not tolerated because of more unfair laws than adults.

RESEARCH METHODS

Qualitative research methods, such as ethnography, case studies, and in-depth interviews, are well suited for studying complex social phenomena like developing a restorative justice system from the perspective of Indigenous peoples in Indonesia. These methods allow researchers to gather rich, detailed data on the beliefs, values, and practices of the people being studied. For example, an ethnographic study could involve researchers immersing themselves in the community and observing and participating in restorative justice practices. In-depth interviews could be conducted with community members to gather their perspectives on the current system and their vision for a more effective one. Through these methods, the researcher can gain an intimate and nuanced understanding of the local context and the specific challenges and opportunities for developing a restorative justice system responsive to the needs of Indigenous peoples in Indonesia.

This research used an approach method based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact. Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft/sollenwissenschaft*.^{24,25}

The data collection method in this study used in-depth interviews with Jaro Saija, the Head of Outer Baduy Customs, and Focus Group Discussions with Lecturers in the Criminal Law Department, Faculty of Law, Sultan Ageng Tirtayasa University. All data obtained will then be analyzed qualitatively.

ANALYSIS AND DISCUSSION

Crime can result in decreasing self-restraint, stigmatization of delinquent children, weakening conventional bonds and family relations in society, breaking the established relationships between peer groups, and encouraging the delinquent perpetrators to only think about themselves more than the victim. Meanwhile, supervisory on perpetrators is considered a juvenile justice program oriented only to the perpetrators with a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.^{26,27,28}

²⁴ J. H. Bruggink, *Refleksi Tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum*, trans. Arief Sidharta (Bandung: Citra Aditya Bakti, 2015).

²⁵ Bruggink, Bruggink, J. H., *Refleksi Tentang Hukum*, Alih Bahasa Arief Sidharta, Bandung : Citra Aditya Bhakti, 1996, p. 4

²⁶ Constance L. Chapple, "Self-Control, Peer Relations, and Delinquency," *Justice Quarterly* 22, no. 1 (March 1, 2005): 89–106, <https://doi.org/10.1080/0741882042000333654>.

²⁷ Bruggink, *Refleksi Tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum*.

²⁸ Ibid

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According to Gordon Bazemore²⁹, the main points of thought in the Restorative juvenile justice paradigm include a. purposes of imposing sanctions: there is an assumption that by achieving the goal of imposing sanctions, the victim is then included to have the right to be actively involved in the judicial process. The indicators of fulfilling the purposes of imposing sanctions are by looking at whether or not the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements made, as well as the quality of working services and the overall occurring processes. The sanctions include restitution, mediation for perpetrator and victim, victim services, public restoration, direct services to victims, or restorative fines. The imposed sanctions involve perpetrators, victims, the public, and law enforcers. Offenders work actively to restore the victims' losses and deal with the victims/victim representatives. A victim should be active in all process stages and assist in determining the sanctions imposed on an offender.

Unlike in Australia and New Zealand, family conferencing is not used in Singapore as a replacement for formal criminal proceedings to divert the juvenile offender from the criminal justice system. It caters to selected juvenile offenders who have either been found guilty or pleaded guilty to the charges brought against them. The objectives of family conferencing have been described as (Subordinate Courts of Singapore 1998a): To ensure that the juvenile understands the seriousness of the offending behaviour; To minimize the likelihood of juvenile re-offending; To provide the juvenile with the opportunity to accept responsibility for the offending behaviour; To address the issue of family and community accountability; and To provide the victim(s), where possible, with an opportunity to contribute to the cautioning process.³⁰

The public is a mediator, helping victims and supporting the fulfillment of perpetrators' obligations. Law enforcers facilitate the mediation. Perpetrators' rehabilitation: The main focus of restorative justice is for the benefit and positive development; therefore, children and families are the primary sources. Children are considered competent and positively have both preventive and proactive abilities. For the perpetrators' rehabilitative purposes, changing the social institutions' attitudes and adults' behaviors is necessary. Perpetrators' rehabilitation is performed with the perpetrators through learning by doing, counseling, and therapy to motivate the related parties' active involvement. Public protection aspect: assumptions in restorative justice related to the achievement of public protection by the efforts of the judicial system collaborated with the public to develop prevention. Confinement is limited only to the last attempt. The public is actively responsible for supporting the implementation of restoration. The achievement indicators on the restoration of public protection are shown if the number of recidivists has decreased and the perpetrators are under general supervision; people feel safe and confident about the role of the juvenile justice system, schools are involved, families and public institutions can prevent from crime; social bonding and reintegration have increased.³¹

Howard Zehr, a pioneer of restorative justice in the United States, introduced the "restorative lens," in which crime is seen as a violation of individuals and relationships between individuals. Justice is interpreted as a joint search for solutions through healing and reconciliation.

²⁹ Gordon Bazemore and Leslie Leip, "Victim Participation in the New Juvenile Court: Tracking Judicial Attitudes Toward Restorative Justice Reforms," *The Justice System Journal* 21, no. 2 (2000): 199–226.

³⁰ *Ibid*

³¹ *Ibid*

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In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms that cause losses to individuals who are highly affected by crime; to the sentencing and imposing misery, moving on to loss repair. A key element in the restorative justice paradigm is loss restoration.^{32,33}

Howard Zehr further reminded us that restorative justice is more precisely defined in contrast to the “adversarial system” in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) “fight each other” in front of “referee,” where the judge leads the trial. Crimes in restorative justice are understood as losses imposed on victims and their communities, while in the adversarial system, it is understood as a violation of the state. Restorative justice is actively performed by the public, where victims are assisted in explaining how losses should be remedied, and perpetrators are encouraged to be responsible. At the same time, the adversarial system is organized and controlled by professionals, where victims are generally prevented from explaining their losses.³⁴

Some scholars believe the criminal justice system's real purpose is to promote public peace as a peace promoter, not punishment. This vision is known as restorative justice.³⁵ The guidelines in restorative justice have three critical principles: ~~a-~~Groups “owning” the conflicts (including crime); ~~b-~~The existence of materials and symbolic remedies for the crime victims; ~~c-~~ Social reintegration for the perpetrators.^{36,37}

The conventional criminal justice system generally focuses on three questions. First, what laws have been broken?; the second, who did it?; and the third, what do the perpetrators deserve? Furthermore, in the perspective of restorative justice, the questions are entirely different: ~~(1)-~~who has been hurt; ~~(2)-~~ what are their needs; ~~and~~ ~~(3)-~~ whose obligations are these?^{38,39}

Various cultures and diversity of behavioral habits in the society in Indonesia are the wealth of values guiding people to play their role and participate in the restorative justice process of the juvenile criminal justice system. Indonesian cultural life and system interact and color each other as a legal system colored by a cultural system forming a legal culture in the Indonesian legal system.

According to Menski⁴⁰, all values in the community are obtained from various sources that must be acknowledged and understood as values that can be the source of law in the community.⁴¹ Therefore, according to Menski, Legal Pluralism can fill the scenario and conflict arising from the strict application of each different source of law. In his language, Menski states: Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and con-

³² Anna Nylund, Kaijus Ervasti, and Lin Adrian, eds., *Nordic Mediation Research* (Cham: Springer International Publishing, 2018), <https://doi.org/10.1007/978-3-319-73019-6>.

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ Joseph Robinson and Jennifer Hudson, “Restorative Justice,” *Willamette Journal of International Law and Dispute Resolution* 23, no. 2 (2016): 335–66.

³⁷ *Ibid*

³⁸ Mark S Umbreit and Marilyn Peterson Armour, “Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community,” *Washington University Journal of Law & Policy* 36 (2011): 65–89.

³⁹ *Ibid*

⁴⁰ W. Menski, “Remembering and Applying Legal Pluralism: Law as Kite Flying,” January 1, 2014, 91–108.

⁴¹ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa, Second Edition*, New York: Cambridge University Press, 2006, p. 72.

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flict situations in which neither of the three major law-making sources rules roots absolutely. The Centre of this triangle would appear to indicate 'perfect' justice as the result of equilibrium between the various competing forces.⁴²

Plurality, or *Bhinneka* is typical of Indonesia with its many islands, tribes, languages, and cultures. Indonesia desires to establish a stable and modern nation with a strong national bond. Therefore, avoiding pluralism is equal to avoiding different realities of the existing perspective and beliefs in the Indonesian community⁴³. Legal pluralism means different legal systems or cultures in a single political community. Pluralism arises in many forms. Pluralism is horizontal, in which sub-cultures or sub-systems have equal legitimacy status, or vertical or hierarchically, where there is a "higher" and "lower" legal system or culture.^{44,45}

In Indonesia, the characteristics of customary law in every region support the application of restorative justice. Customary law views its own violation of custom or customary acts and its solving mechanism. The existence of customary law and justice in some regions is still taken into consideration, and restorative justice is not a new concept.⁴⁶

Community involvement in the law enforcement process is expected to be a form of control and empathy in the sense of sensitivity to the problems faced by the community, social changes, public necessities, and the state of the community's real responsibility in the field of law. Theoretically, the community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with unavoidable independent reality and objectivity vis a vis members of the concerned group.^{47,48} Besides, social problem-solving by the community in many things can also serve to fill and complete the act of handling by the government (state) institution. Administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, the appearance of men and women, the appearance of paradise and hell, etc. Outer Baduy consists of a Jaro, that is, Jaro Saija, and a village secretary originating from out of the Baduy tribe having a civil servant status. In the outer Baduy community, there is a monthly meeting; thus, Jaro Saija is invited like other Village Heads. Inner Baduy is led by Puun, comprised of 3 Puun since there are three areas.

⁴² Werner Menski, *Ibid.*, pp. 186–187.

⁴³ Legal Pluralism fills the central space in in this triangle since all of it signifies all conflict scenarios and situations where none of the top three in law makes the root source of rule are absolute. At the center of this triangle, it will emerge to show that justice is 'perfect' as the result of balance between various contending powers.

⁴⁴ Reimar Schefold, "The Domestication of Culture: Nation-Building and Ethnic Diversity in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 154, no. 2 (1998): 259–80.

⁴⁵ L.M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

⁴⁶ Lawrence Friedman, *Op.cit.*, p. 257.

⁴⁷ Simon Butt and Tim Lindsey, "Traditional and Customary Law: Adat," in *Indonesian Law*, ed. Tim Lindsey and Simon Butt (Oxford University Press, 2018), 0, <https://doi.org/10.1093/oso/9780199677740.003.0007>; Nur Rochaeti and Rahmi Dwi Sutanti, "Revitalization of Customary Court in the Juvenile Criminal Justice System in Indonesia," in *SHS Web of Conferences*, ed. A. Raharjo and T. Sudrajat, vol. 54, 2018, 07011, <https://doi.org/10.1051/shsconf/20185407011>.

⁴⁸ Theodore M Steeman, "Religious Pluralism and National Integration" (Dissertation, Cambridge, Harvard University, 1973).

⁴⁹ Theodore M. Steeman, "Religious and National Integration" (Harvard University, 1973).

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Some violations have occurred in Baduy Tribe (a native Sundanese tribe of Banten who still maintains anti-modernization traditions, both in the way they dress and in other lifestyles. The Baduy-Rawayan tribe lives in the Kendeng Mountains Cultural Heritage area of 5,101.85 hectares in the Kanekes area, Leuwidamar District, Lebak Regency), i.e., murder, theft, and adultery. In case of violation in the Baduy community, those who violate will usually confess their action, followed by a customary ceremony called *ngabokoran*, by making available *keris*, *mori* cloth, *ringgit* money, incense, betel, *uncaria*, *tumpeng*, 40 later followed with *tangkesan* by paranormal.

The problem-solving mechanism includes the early stage with confessing to *akhlak* (morality), followed by *silih ngahampura* (forgive each other) for the act witnessed by *Jaro* (head of a hamlet or village), if deemed necessary, taking an oath, in case of murder, the sanction: besides the previous, also 40 change clothes, 40 *tumpeng*, imprisonment in Dangka (a term for Baduy people who live outside the traditional area) for 40 days. Serious crimes: adultery, murder, *san-tet* (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. *Jaro* (village head) is appointed through descent choice and determined by the paranormal. Children in Baduy Tribe are circumcised at odd ages: five and seven years old, while for marital age: 15-16 years old, aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting. The sanction shall be social work in case of violation. The most serious customary violation is principally honesty and righteousness in implementing customary law.

Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary regulations they must enforce. Inner Baduy Community has stricter customary rules than Outer Baduy Community. However, in the case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go into seclusion. Seclusion here is not defined as meditation but as strengthening/conserving Baduy practice, confirming *sunda wiwitan* religion. Outer Baduy Community, meanwhile, is assigned to be *pan-amping*, to guard Inner Baduy Community that is in seclusion; thus, they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has a stricter rule in implementing customary law and conserving Baduy custom.

Outer Baduy has a looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong*, *pondok teu meunang disambung* (if it is too long, it should not be cut, if it is too short, it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance and conservation; thus, the Baduy community should conserve nature and not be against the laws of nature.

A criminal act settlement procedure in the customary criminal law of Baduy are as follow:⁴⁹⁵⁰

⁴⁹ Ferry Faturrahman, "Hukum Pidana Adat Baduy Dan Relevansinya Dalam Pembaharuan Hukum Pidana," *Law Reform* 5, no. 2 (October 2, 2010): 1–38, <https://doi.org/10.14710/Lr.v5i2.12493>.

⁵⁰ *Sistem Peradilan Pidana Baduy itu Restorative Justice [Baduy Criminal Justice System is Restorative Justice]*. (FGD, Paper of Ferry Fathurokhman).

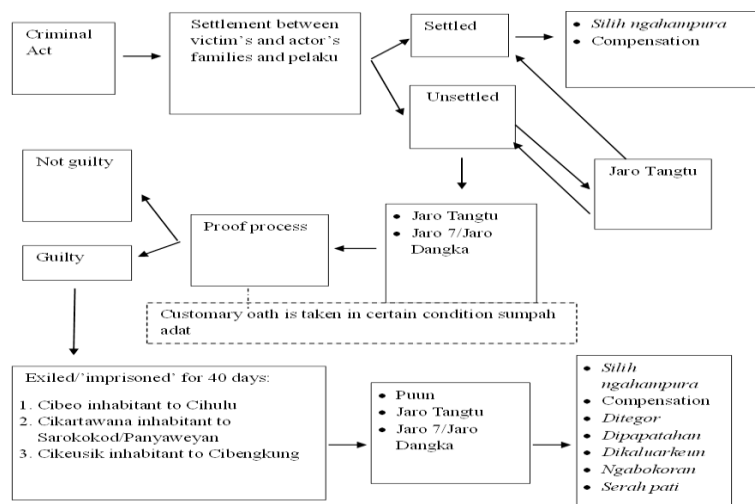
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The explanation is *Pelaku* = offender; *Silih ngahampura* = forgive each other; *Dikaluarkeun* = kicked out from Inner Baduy to Outer Baduy, or banished from Outer Baduy to outside Baduy (for Outer Baduy members); *Ditegor* = warned; *Dipapatahan* = being advised; *Jaro Tangtu* is a jaro (village head) in Inner Baduy; *Jaro 7/Jaro Dangka* is part of the customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of seven people and is in Outer Baduy; *Puun* is the highest figure in each of Inner Baduy, sacred in spirituality; *Ngabokoran* is a spiritual cleaning ceremony for a not serious criminal act committed in Cihulu, Sarokokod/Panyaweyan, Cibengkung (depending on where the actor originated from). Anything needed for *bokor* is provided by the actor, consisting of *sereh*/betel, uncaria, apu, incense, boeh/shroud, keris. *Sereh* is then *didahar*/eaten by customary figures: *Puun*, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is *Jaro Tangtu* and *Puun*, *Puun* then continues the process with the ancestors; *Serah pati* is a spiritual cleaning ceremony similar to *bokor* (a large wide-brimmed dish (usually made of metal))^{51,52} but for a serious criminal act (causing death); The customary criminal law of Baduy is not codified into a book, the customary criminal law of Baduy is not written. According to *Jaro Saija*⁵³, to conserve the knowledge of the customary criminal law of Baduy, once every two months, all people gather in the court of each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy and sanctions are announced. Besides the platform, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life; thus every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits a criminal act must be cleaned physically and spiritually. Such cleaning is a form of criminal actors' accountability.

⁵¹ Dody Kristianto and Nur Seha, "Nilai Moral Dalam Tanda Basa Baduy," *Kandai* 12, no. 2 (2018): 269–82.

⁵² Kristianto, Dody and Seha, Nur, *Nilai Moral Dalam Tanda Basa Baduy (Moral Values Inside Tanda Basa Baduy)*, *Kandai* Vol. 12, No. 2, November 2016; p. 269–282

⁵³ Interview, Jaro Saija, Baduy, Thursday, 8 September 2021

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Physical cleaning is the actor's accountability to a victim through sanction received. The sanctions are in the form of *ditegor/warned*, *dipapatahan/advised*, *silih ngahampura*, compensation, through kicked out from Inner Baduy to Outer Baduy.

Restorative justice is not an alternative to the legal system in Austria, New Zealand, and Norway⁵⁴. It is the system. It is the norm, and the court system is only a fallback if restorative justice cannot be carried out or fails. The new provisions in Northern Ireland also make restorative practices the heart of the youth justice system. In these situations, what needs to be taken is that victims are not pressured into the processes against their will, but it is perfectly possible to introduce safeguards for this.⁵⁵⁵⁶

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, it is marked by the existence of social units based on differences in ethnicity, religion, customs, and regions. The Indonesian society, according to Furnivall, is known as the plural society.⁵⁷⁵⁸ Meanwhile, the structure of Indonesian society is vertically characterized by vertical differences in the form of upper- and lower-layer levels and the rural and industrial layer levels. It leads to inequality in development because some people still perform agricultural activities. On the other hand, some people have to step forward to the industrial world and even to the information world, as called by Fred W. Riggs as the prismatic society.^{59,606162}

The customary law characteristics In Indonesia show that each region supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still considered, while restorative justice, which has been introduced previously, is not a new concept. Marc Levin stated that the restorative justice approach, once considered obsolete, ancient, and traditional, is now recognized as a progressive approach.⁶³⁶⁴⁶⁵

⁵⁴ Tony F. Marshall, *Restorative Justice: An Overview* (London: Home Office, Research Development and Statistics Directorate, 1999).

⁵⁵ Marian Liebmann, *Restorative Justice: How It Works.*, Restorative Justice: How It Works. (London, England: Jessica Kingsley Publishers, 2007).

⁵⁶ Restorative Justice, *How It Works*, Marian Liebmann, Jessica Kingsley Publishers London and Philadelphia. First published in 2007 by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Mark ISBN 978 1 84310 074 45.

⁵⁷ Nasikun, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia* (Yogyakarta: Fakultas Ilmu Sosial dan Politik UGM, 1974).

⁵⁸ Nasikun, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia* [An Approach to learn the Indonesian Social System], Yogyakarta: Faculty of Social and Political Sciences, UGM, 1974, pp. 31. The community plurality also shows the existing cultural diversification. These cultural differences will further result in contradictions. On one hand, the local principles are expected to be maintained, yet on the other hand are required to be adjusted with the global life principles.

⁵⁹ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* (Bandung: Alumni, 1985).

⁶⁰ Fred Warren Riggs, *Administration in Developing Countries: The Theory of Prismatic Society*, ed. Dayton David MacKean (Boston: Houghton Mifflin, 1964).

⁶¹ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 2011).

⁶² Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* [Law and Public Studies], ed. Alumni (Bandung, 1985).

⁶³ Eva Achjani Zulfa, "Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana" (Dissertation, Jakarta, Universitas Indonesia, 2009).

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Restorative justice is based on *Pancasila* (is the ideological pillar of the Indonesian state) as a vehicle to overcome children's delinquency in the future and is based on the substantive and structural aspects. Based on this, *Pancasila* is the source of all sources in Indonesian law; the ambiance of philosophical basis provides the grounds for a philosophical justification so that the reform of legal structure for law in execution of criminal sanctions based on *Pancasila* should be carried out accordingly. A philosophical basis is a justification that bases its legitimacy upon considering value aspects and legal principles. Indonesia has a value system based on the state philosophical foundation called *Pancasila* as the philosophical values.⁶⁶⁻⁶⁷ Substantially, it is the idea to codify and/or unify the legal formation of the restorative justice system in Indonesia based on legal politics, which has a unified legal system between substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders and community leaders without involving the law enforcement officers to avoid psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the therapeutic restorative justice processes. The victim's position is to provide an agreement or convey his opinions to reach a consensus so that no party will experience losses or be under pressure to express their views. The offender is given an opportunity to express his opinion and the ability to respond to the victim's request. Substantially, in restorative justice, there are legal certainty, justice, and benefits for both parties in an effort to overcome the children's delinquency in achieving public welfare. Criminal law reform is related to various aspects of policy, including social policy, criminal policy, and law enforcement policy, influenced by various aspects, such as sociopolitical, socio-philosophical, and socio-cultural underlying, and providing the norm contents and criminal law substances in the future.

Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case⁶⁸. Therefore, in its relationship with public participation in crime prevention efforts, the village structure institutions, in this case, should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their

⁶⁴ Eva Achjani Zulfa, "Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana" (Dissertation, Jakarta, Universitas Indonesia, n.d.).

⁶⁵ Eva Achjani Zulfa, Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana), Ringkasan Disertasi, Universitas Indonesia, Fakultas Hukum Program Studi Ilmu Hukum Kekhususan Sistem Peradilan Pidana, 2009, pp. 67

⁶⁶ Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 327–58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

⁶⁷ Anis Widyawati, Pujiyono, Nur Rochaeli, Genjie Ompoy, and Nurul Natasha Binti Muhammad Zaki, "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, No. 2 (2022): 327–358, <https://doi.org/10.15294/lesrev.v6i2.58131>, p. 336

⁶⁸ Sri Hartanto, Indah Sri Utari, and Ridwan Arifin, "Implementation of Penal Mediation in the Perspective of Progressive Law (Study at the Semarang City Police Department)," *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): 161–88.

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families, as well as the public by involving the religious leaders, community leaders and teachers.

Legal culture is performing an education in society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will run, work, and apply in society. A nation's attitudes and behaviors will be related to the values adopted by humans running a particular legal system. These values for the Indonesian people are *Pancasila*. In its implementation, a certain quality of human resources is needed to run on the empirical level.

Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines people's attitudes, ideas, and values toward laws. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others could influence someone's legal culture.⁶⁹ Legal culture is key to understanding the differences between one legal system and others. In the restorative justice system, the role of the community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of process-⁷⁰. When a sentence is finalized, treatment degree is decided through a scientific classification review and inmates are transferred to an appropriate correctional institution according to an individual treatment plan. While in prison, inmates get ready to return to society through various correctional programs until being released through parole or the completion of a prison term.⁷¹

Classification review consists of classification research that looks into inmate's personal information and classification examination that conducts personality, intelligence, and aptitude tests. Inmates are classified at different treatment levels for facilities, custody, and work. In addition, regular and irregular reviews are carried out during their prison terms to adjust the treatment levels according to the degree of inmates' improvement.⁷²

In order to prevent recidivism and promote efficient accommodation of inmates, An 'Accommodation System Classifying Inmates by Security Level', an advanced correction model, was introduced and being operated. Furthermore, it developed a Correctional Recidivism Prediction Index (CO-REPI) which categorized inmates into five levels to analyze the possibility of subsequent convictions in an early stage depending on results of 23 evaluation tests.

Learning continues even during the accommodation period. Inmates can build knowledge through academic education and develop social consciousness and law-abiding spirit through intensive personality education. In addition, programs customized to inmates' characteristics,

⁶⁹ Friedman, Lawrence M., *The Legal System : A Social Science Perspective*, New Yorks : The Russell Sage Foundation, 1975, p. 184

⁷⁰ William R. Wood and Masahiro Suzuki, "Four Challenges in the Future of Restorative Justice," *Victims & Offenders* 11, no. 1 (January 2, 2016): 149–72, <https://doi.org/10.1080/15564886.2016.1145610>.

⁷¹ Derita Prapti Rahayu et al., "Law Enforcement in the Context of Legal Culture in Society," *Law Reform* 16, no. 2 (September 27, 2020): 276–89, <https://doi.org/10.14710/lr.v16i2.33780>.

⁷² Tim Brennan, "Classification for Control in Jails and Prisons," *Crime and Justice* 9 (January 1, 1987): 323–66, <https://doi.org/10.1086/449139>.

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such as education for rehabilitation of the disabled, are provided to support successful reintegration.

Intensive personality education is being provided for inmates by categorizing their needs as basic education or re-education based on the progress of their sentences. Introduction of various programs from constitutional value and the humanities to communication and group counseling induce changes in inmates. A school qualification examination class is operated for inmates in need of mandatory education and opportunities to acquire a degree, including Korea National Open University courses and commissioned education courses of community colleges were provided in order to motivate them to achieve a better future. Programs customized to disabled inmates are performed to support self-sufficiency in society. The operation of Comprehensive Rehabilitation Center for the Disabled in Yeosu Correctional Institution and the Braille Training Program in the Cheongju Correctional Institution are representative of these schemes.

We are finding the power to change inmates by harnessing their interest in various fields. Inmates are supported to find emotional stability through artistic and religious activities, and to connect with society by watching various reformation broadcasting programs. Opportunities for inmates to appreciate art were expanded through the provision of various culture and art programs. In cooperation with Korea Arts & Culture Education Service, experience-based culture and art performances for art, play, and music currently take place in 52 correctional institutions. Such programs develop inmates' sensibility to change. Religious rallies and ceremonies have been launched and counseling with religious figures is provided so that inmates find mental stability through continuous religious practices. Reformation Broadcasting, which consists of general, education, and radio channels, airs programs such as education, liberal arts, dramas, sports, entertainment, and movies in accordance with the characteristics of inmates. Such broadcasting helps inmates cultivate cultural knowledge and emotion, and plays the role of a link between inmates and society.

CONCLUSION

The results of research on the Baduy community in Lebak, Banten have regulated and recognized the existence of customary justice and implemented it as an effort to handle cases that occurred in their environment. In substance, customary law and its legal sanctions are still valid in indigenous peoples. In Baduy customary criminal law, a criminal must be cleansed physically and spiritually. The purge is a manifestation of the responsibility of the offenders of criminal acts. Cleansing outwardly in the form of accountability of offenders to victims that manifests in the sanctions they receive. Settlement of cases in the indigenous Baduy community is very simple and straightforward, the settlement prioritizes forgiving each other (close to each other) because the main purpose of resolving cases is to create peace, restore balance to nature and return to the atmosphere as before. In terms of legal culture, people's behaviour still respects and implement decisions given through customary courts.

In the future, the criminal law reform, based on its logical substances to codify and/or unify the restorative justice based on the existence of general rules and guidelines on the restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice which is formed based on the principles of national legal system formation, as well as the existence of organizational structure implementing the restorative justice system, a supervisory system for the offenders, appointed institutions and individuals, and understanding the imposition of sanctions which is not a retaliation possibly resulting

in stigma, yet providing justice. Restorative justice is performed by combining criminal justice mechanisms with public participation within a discussion mediation to obtain an agreement between the victim, offender's, victim's family, offender's family, and parties related to the case. A comprehensive and complete understanding should be culturally formed in the public legal education by involving public active participation in understanding various legal products on restorative justice as the nation's personality reflections based on the Indonesian-based restorative justice characters. Future reconstruction in the renewal of the legal system of indigenous peoples' justice mechanisms needs to be regulated as a sub-system within the mechanism of the criminal justice system in Indonesia.

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A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices

Nur Rochaeti^{a*}, Mujiono Hafidh Prasetyo^a, Umi Rozah^a, Jihyun Park^c

^{a*} Faculty of Law, Universitas Diponegoro, Indonesia. Corresponding author Nur Rochaeti, e-mail: etikfh@live.undip.ac.id

^c Faculty of Law, Youngsan University, Republic of Korea. E-mail: shabd@ysu.ac.kr

Article	Abstract
<p>Keywords:</p> <p>Restorative Justice; Integrated Criminal Justice System; Indonesian Legal System Reform</p> <p>Artikel History</p> <p>Received: Reviewed: Accepted: Published:</p> <p>DOI:</p>	<p>The crime rate in Indonesia in week 22 of May 2020 increased due to public orders and crime disturbances. Data from correctional institutions in February 2021 showed that some regional offices were over capacity while others were still normal. The 1945 Constitution of Indonesia recognizes customary institutions in the criminal justice system and requires judges to consider legal values and a sense of Justice in society. This study aims to determine Indonesia's customary criminal justice system as a form of restorative Justice. This research used a socio-legal approach and found that public participation in Indonesia, through customary groups, can help prevent crime and solve problems through discussion and following applicable customary law processes. The study results show that Indonesian researchers have regulated and recognized customary Justice's existence and implemented it to deal with cases in their environment. Restorative Justice is a criminal mechanism that aims to restore the relationship of the conflicting parties to the state before the conflict and is carried out informally. This concept is also an acknowledgement of oriental legal philosophy which, in resolving any conflict, always seeks to restore relations; macro stability or society can even affect the stability of the universe. The practice of Restorative Justice occurs in customary law. As a legal philosophy, the legal policy of implementing Restorative Justice should be interpreted mainly as revitalizing customary law if conflicts occur between fellow supporters of the same customary law. The settlement of cases in Baduy community is straightforward. The settlement prioritizes forgiving each other. Restorative Justice is performed by combining criminal justice mechanisms with public participation in a discussion mediation. The crime rate in Indonesia in week 22, or the last one in May 2020, has increased compared to that in the previous week due to the public order and crime (known as <i>kamtibmas</i>) disturbances in week 22 of 2020 by 442 cases or 16.16 per cent. Data obtained from the correctional institutions in February 2021 showed that the number of prisoners and inmates from 29 Law and Human Rights Regional Offices was already over capacity, while that from the other 4 Law and Human Rights Regional Offices were still in might be an unnecessary normal condition. In the state life and legal development, the</p>

1945 Constitution of the Republic of Indonesia in Article 18B has regulated that customary institutions are recognized for their existence in the criminal justice system. Then the judge, when deciding the cases, is obliged to explore, follow, and understand the legal values and justice senses living in the society. This research used an approach method based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact. However, the resulting analysis showed that based on the juridical considerations and reviewing the relationship of various laws and regulations, as well as legal products related to restorative justice based on preventing crime. Public participation in Indonesia is related to the customary groups having the legal characteristics, cultures, moral values, and religions to solve problems through discussion, which mechanisms follow the applicable customary law processes.

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INTRODUCTION

Criminal law is identical to punishment, which is characterized by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human rights in a harmonious balance from crimes/wrong actions on one hand and the despotic authorities on the other.^{1,2} Criminal law is considered a law of sanctions (*bijzondere sanctierecht*) since relying on sanctions functioning to ensure security, order, and justice.^{3,4}

In the basic principles developed, the Tokyo Rules (also known as the Standard Minimum Rules Jiff Noncustodial Measures, for non-custodial criminal measures in the form of providing social work to protect society and victims, UN General Assembly Resolution Number 45/110) have several objectives, including: Standard Minimum Rules (known as SMR) establish basic principles to develop the non-custodial measures and guarantees for persons subject to the alternative prison measures; SMR intends to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility to the public; SMR must be implemented due to the political, economic, social, and cultural conditions and each country's criminal justice system objectives; In implementing this SMR, each country should ensure the balance between the criminal perpetrators' rights, victims' rights, and public interests in general security and crime prevention; and Member states should develop non-custodial measures in their legal systems concerning human rights, the need for social justice, and the need for rehabilitation for criminal perpetrators.

Intensifying and making non-penal and non-custodial institutions as effective as possible is vital for several reasons, including the following: According to Rubin, punishment (whatever the reality, whether intended to punish or improve) has very little to no influence on societal

¹ E.Y. Kanter and S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Jakarta: Storia Grafika, 2022).

² Kanter E.Y and S.R Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya [Criminal Law Principles and Their Implementations in Indonesia]* (Jakarta: Storia Grafika, 2012).

³ M. Hamdan, *Politik Hukum Pidana* (Jakarta: Raja Grafindo Persada, 1997).

⁴ M. Hamdan, *Politik Hukum Pidana [Criminal Law Politics]* (Jakarta: PT. Raja Grafindo Persada, 1997).

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issues about criminal behaviour; Schultz stated that the increasing and decreasing crime rates in a country are not related to changes in that country's laws or trends in court decisions, but rather are related to that country's operations or functions of significant cultural changes in social life; Johannes Andenaes stated that the operation of criminal law should always be seen from the perspective of the entire cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions, and Donald R. Taft and Ralph W. England said that the effectiveness of criminal law could not be accurately measured. This is because there is a mutual influence between law and these other factors. The law is nothing more than a tool for maintaining social order. Legal punishments are only some of the effective methods for regulating human behaviour. Instead, social norms, religious beliefs, community approval and disapproval, suppression and group interest, and the impact of public opinion are all more effective. It is necessary for both non-penal and non-custodial facilities to be intensified and made effective for several reasons: According to Rubin, punishment (whatever the truth, whether intended to punish or improve) has little or no effect on criminal problems; Schultz stated that the increasing and decreasing crimes in a country are not related to changes in their laws or trends in court decisions but related to their operations or functions of major cultural changes in social life; Johannes Andenaes stated that the operation of criminal law should always be seen from the whole cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions; and Donald R. Taft and Ralph W. England said that the effectiveness of criminal law could not be accurately measured. Law is only a means of social control. Customs, religious beliefs, group support and disapproval, suppression and group interest, and the influence of public opinions, are more efficient vehicles for regulating human behaviors than legal sanctions.⁵⁶

In addition, in the "International Penal Reform Conference" that was held at the Royal Holloway College of the University of London from April 13-17, 1999, it was stated that one key component of a new agenda was the necessity to enrich the formal criminal justice system with an informal system or mechanism for the resolution of disputes in order to meet human rights standards. This was stated in the conference's abstract. In addition, during this conference, nine development plans for carrying out criminal law (penal) reform were selected through constructing and building: Restorative justice, alternative dispute resolution, informal justice, alternatives to custody, alternative ways of dealing with juveniles and dealing with violent crime, reducing the prison population, the proper management of prisons, and the role of civil society in penal reform are all examples of areas that fall under the umbrella term "alternatives to custody." Alternatives to custody include restorative justice, alternative dispute resolution, and informal justice. These many reasons are a reaction to how difficult it is to declare that the criminal justice system, with its criminal consequences, is an effective tool to overcome crime. It is difficult to say this because it is difficult to say that the criminal justice system effectively overcomes crime (delinquency). However, the stigma attached to a person's previous status as an inmate or prisoner is not readily forgotten in the real world. The level of awareness and

⁵ Barda Nawawi Arief, "Masalah Perlindungan Hukum Bagi Anak" (Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, Bandung, 1996).

⁶ Barda Nawawi Arief, Masalah Perlindungan Hukum Bagi Anak, Makalah, Bandung: Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, 1996. pp. 48—50

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knowledge of the community as a whole, including members of law enforcement, is a significant factor in determining whether or not a restorative justice process exists as an alternative to the traditional methods of handling criminal cases. It is essential to realise that a judicial system that relies solely on the application of rules to identify wrongdoers and, after that, punishes those individuals will not accept this approach. Furthermore, in “International Penal Reform Conference” held at the Royal Holloway College, University of London, on April 13-17, 1999, stating that one key element of a new agenda was the need to enrich the formal criminal justice system with an informal system or mechanism for the dispute resolution in meeting the human rights standards. This conference also identified nine development strategies in performing criminal law (penal) reform by developing/building: Restorative justice; Alternative dispute resolution; Informal justice; Alternatives to Custody; Alternative ways of dealing with juveniles and dealing with Violent Crime; Reducing the prison population; The proper management of prisons; and The Role of civil society in penal reform. These various explanations are a reaction to how difficult it is to say that the criminal justice system, with its criminal sanctions, is an effective means to overcome crime (delinquency). However, in reality, the stigma experienced by former inmates/prisoners is not easily forgotten. The existence of the restorative justice process as an alternative to solving criminal cases is very much determined by the awareness and knowledge of the community itself, including law enforcement officials. Understanding the judiciary that only puts forward the application of rules to prove the wrongdoers and then punishes them will not accept this concept.⁷⁸⁹

Restorative justice is essential because it offers an alternative to criminal punishment for crime prevention and does not sidestep the obligation to provide justice for victims of crime. A doctrine known as restorative justice emphasizes repairing the losses and broken relationships brought about or incurred as a result of criminal behaviour. It is possible to regain both these losses and these relationships through collaborative methods that involve all of the relevant stakeholders (interested parties). Restorative justice is needed as a form of non-penal crime prevention and does not neglect justice for crime victims. Restorative justice is a theory emphasizing on recovering losses and damaged relationships caused or incurred by criminal actions. Recovering these losses and relationships can be achieved through cooperative processes involving all stakeholders (interested parties).¹⁰¹¹ The primary goal of both restorative justice and the formal criminal justice system is to discourage criminal behaviour by allowing offenders to participate in alternative punishments that do not result in incarceration. The main principle and

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⁷ Edhei Sulisty, Pujiyono Pujiyono, and Nur Rochaeti, “Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators,” *International Journal of Criminology and Sociology* 10 (April 30, 2021): 595–602, <https://doi.org/10.6000/1929-4409.2021.10.69>.

⁸ Edhei Sulisty, “Notary as a Reporting Party in the Eradication of the Crime of Money Laundering,” *Jurnal Hukum Progresif* 9, no. 2 (October 30, 2021): 87–98, <https://doi.org/10.14710/jhp.9.2.87-98>.

⁹ Edhei Sulisty, Pujiyono, and Nur Rochaeti, “Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators,” *International Journal of Criminology and Sociology*, 2021, 10, p. 601.

¹⁰ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Badan Penerbit Universitas Diponegoro, 1995).

¹¹ Muladi, *Kapita Selekta Hukum Pidana [Capita Selecta of Criminal Law]* (Semarang: Universitas Diponegoro Press, 1995).

restorative justice is deter criminals of the formal criminal justice system and give the perpetrator a chance carry out alternative sanctions without imprisonment.^{12,13}

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Through the use of restitution and compensation, criminal matters can be resolved through the use of restorative justice. In the process of amicable case settlement, both victims and perpetrators participate in a dialogue to reach an agreement that benefits both parties. The goals of restorative justice are to reduce the complexity of the processes that must be followed, to protect the rights of both victims and perpetrators, to protect the rights of victims and perpetrators, to minimise the negative impacts on the processes of criminal justice that have been followed up to this point, and to increase public participation in law enforcement. Restorative justice resolves criminal cases by repairing the resulting damages or losses. The amicable case settlement processes involve victims and perpetrators in a discussion to make the best agreement for both parties. Restorative justice aims to: simplify the procedures which must be followed; protect the rights of victims and perpetrators; minimize the negative impacts on the criminal justice processes followed so far; and involve public participation in law enforcement.^{14,15}

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The civil society movement is not meant to compete against the state or to fertilize power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration," it contains rights and obligations including: right to find, obtain, and provide information related to the state administration; right to receive equal and fair services from the state administration; right to responsibly convey suggestions and opinions on policies issued by the state administrators; right to obtain legal protection in terms of using their rights, and if requested to be present in the investigation, investigation, and at the court hearings as a reporting witness, witness, or expert witness, based on the provisions of the applicable laws and regulations; Those rights are used under the provisions of the applicable laws and regulations and by complying with religious norms and other social norms, and intended to avoid defamation and irresponsible reports; and public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on the one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.¹⁶

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¹² Pangestika Rizki Utami, "Konsep Diversi dan Restorative Justice sebagai Pergeseran Tanggung Jawab Pidana pada Sistem Peradilan Pidana Anak," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 1, no. 1 (June 19, 2018): 95–106, <https://doi.org/10.24090/volksgeist.v1i1.1691>.

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¹³ Pangestika Rizki Utami, "Konsep Diversi dan Restorative Justice Sebagai Pergeseran Tanggung Jawab Pidana pada Sistem Peradilan Pidana Anak," *Volksgeist*, Vol. 1 No. 1 June 2018, p. 105.

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¹⁴ Daniel W van Ness and Pat Nolan, "Legislating for Restorative Justice," *Regent University Law Review* 10 (1998): 53–110.

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¹⁵ Pemikiran penulis based on Restorative Justice Concept by D. Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Lawa Review, 1998, pp. 53–111.

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¹⁶ Putusan Peradilan Perdata Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006]

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—Untuk keadilan nan berdasarkan "Adat Basandi Syarak, Syarak basandi Kitabullah [For Justice Based on "Adat basandi Syarak, Syarak basandi Kitabullah]"

Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air in this case "Nagari Customary Court Section", based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on 29 August 2006 and bapadoman pado KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-

Public participation in criminal justice is expected to realize a favorable condition for all interested parties to create a better future. The Kanayatn Dayak and Sanggau Dayak tribes in Pontianak, West Kalimantan, have a strong bond of values, morals, cultures, and local pearls of wisdom in solving the problems occurring in the society.^{17,18,19}

Van Ness claims that the process of customary justice dramatically contributes to the formation of restorative justice in at least three different forms. The first is the modification of traditional traditions, such as the conference system and the circular system, which are both present in the traditional ways used by Maori people in New Zealand (practised by the first nation in America). Second, the judicial system works to repair the broken institutions associated with crime and makes information about restorative justice available to the public. Third, certain kinds of traditional justice are incorporated within the official procedures for dealing with criminal cases. According to Van Ness, the customary justice process significantly forms restorative justice, at least in three forms. First is the adaptations of customary practices such as the conferencing system (found in traditional Maori methods in New Zealand) and circular system (practiced by the first nation in America). Second, the judiciary tries to improve the injured crime structures in society and provide information related to restorative justice. Third, several customary justice forms include in the formal efforts in the crime handling processes.^{20,21}

In general, justice systems are seen to create justice by giving the right and just punishment to the offender.²² This understanding is from the concept of retributive justice, correcting the offense with a penalty equal to the offense. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law' but as causing damage to individuals and the community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore, the people directly involved are encouraged to join the problem-solving process, especially the community's victim-focused effort, which supports victims and helps offenders take responsibility, which is necessary for preventing recurrence.²³

2005, sarato Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice.

¹⁷ Nur Rochaeti and Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia," *Masalah-Masalah Hukum* 47, no. 3 (2018): 198–214, <https://doi.org/10.14710/mmh.47.3.2018.198-214>.

¹⁸ Sulistyono, Pujiyono, and Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators."

¹⁹ Nur Rochaeti, Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana di Indonesia," *Masalah-Masalah Hukum*, Jilid 47 No. 3, Juli 2018, p. 208

²⁰ Ness and Nolan, "Legislating for Restorative Justice."

²¹ Van Ness and P. Nolan, *Legislating for to Regent [The Authors' Thoughts based on the Restorative Justice Concept Developed by D. Van Ness and P. Nolan, Legislating for to Regent]*, London: University Lawa Review (1998).

²² Barry C. Feld, "Juvenile and Criminal Justice Systems' Responses to Youth Violence," *Crime and Justice* 24 (January 1, 1998): 189–261, <https://doi.org/10.1086/449280>.

²³ John Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," *Crime and Justice* 25 (1999): 1–127.

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In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed by the court to challenge its constitutionality because it was an unlawful presumption of principle, the unjustified infringement of physical freedom, and a violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable explanation for treating discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge that such a protective disposition deprives the physical liberty of the body, but to rationalize the discrimination against the protected juvenile by its aim is to rehabilitate the youth with anti-socialism and promote healthy development. Inhumane treatment is not tolerated because of more unfair laws than adults.

RESEARCH METHODS

Qualitative research methods, such as ethnography, case studies, and in-depth interviews, are well suited for studying complex social phenomena like developing a restorative justice system from the perspective of Indigenous peoples in Indonesia. These methods allow researchers to gather rich, detailed data on the beliefs, values, and practices of the people being studied. For example, an ethnographic study could involve researchers immersing themselves in the community and observing and participating in restorative justice practices. In-depth interviews could be conducted with community members to gather their perspectives on the current system and their vision for a more effective one. Through these methods, the researcher can gain an intimate and nuanced understanding of the local context and the specific challenges and opportunities for developing a restorative justice system responsive to the needs of Indigenous peoples in Indonesia.

~~This research utilised an approach method that was based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioural pattern in the form of social institutions, legal studies conceptualising and theorising law as a positive and empirical social fact, and socio-legal studies reviewing law as a social fact that can be seen in experience as a behavioural pattern in the form of social institutions. In the field of study known as normwissenschaft/sollenwissenschaft, in-depth investigations and research on the contents or values of the laws that already exist in society have been done. This research used an approach method based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact. Deep investigations and studies were conducted on the contents or values of the existing law in society called normwissenschaft/sollenwissenschaft.~~^{24,25}

²⁴ JJ. H Bruggink, *Refleksi Tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum*, trans. Arief Sidharta (Bandung: Citra Aditya Bakti, 2015).

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The data collection method in this study used in-depth interviews with Jaro Saija, the Head of Outer Baduy Customs, and Focus Group Discussions with Lecturers in the Criminal Law Department, Faculty of Law, Sultan Ageng Tirtayasa University. All data obtained will then be analyzed qualitatively.

ANALYSIS AND DISCUSSION

Crime can result in decreasing self-restraint, stigmatization of delinquent children, weakening conventional bonds and family relations in society, breaking the established relationships between peer groups, and encouraging the delinquent perpetrators to only think about themselves more than the victim. Meanwhile, supervisory on perpetrators is considered a juvenile justice program oriented only to the perpetrators with a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.^{25,26,27,28}

According to Gordon Bazemore²⁹, the primary schools of thought in the Restorative Juvenile Justice paradigm include the following: a. purposes of imposing sanctions: there is an assumption that by achieving the goal of imposing sanctions, the victim will then have the right to be actively involved in the judicial process. This is one of the primary thought points in the Restorative Juvenile Justice paradigm. The indicators that determine whether or not the goals of imposing sanctions have been met include determining whether or not the victim has been restored, the victim's level of satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements that have been made, as well as the quality of the working services and the overall processes that are occurring. Restitution, mediation between the offender and the victim, victim services, public restoration, direct assistance to victims, or restorative fines are all examples of the types of punishments that may be imposed. Participants in the imposed sanctions include those who committed the crime, victims of the crime, members of the public, and law enforcement. Offenders make a concerted effort to compensate victims for their losses and communicate with victims or representatives of victims. A victim should be active in all phases of the process and contribute to the determination of the sanctions imposed on an offender. The main points of thought in the Restorative juvenile justice paradigm include a. purposes of imposing sanctions: there is an assumption that by achieving the goal of imposing sanctions, the victim is then included to have the right to be actively involved in the judicial process. The indicators of fulfilling the purposes of imposing sanctions are by looking at whether or not the victim has been restored, the victim's satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements made, as well as the quality of working services and the overall occurring processes. The sanctions include restitution, mediation for perpetrator and victim, victim services, pub-

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²⁵ Bruggink, Bruggink, JHH, *Refleksi Tentang Hukum*, Alih Bahasa Arief Sidharta, Bandung : Citra Aditya Bhakti, 1996, p. 4

²⁶ Constance L. Chapple, "Self-Control, Peer Relations, and Delinquency," *Justice Quarterly* 22, no. 1 (March 1, 2005): 89–106, <https://doi.org/10.1080/0741882042000333654>.

²⁷ Bruggink, *Refleksi Tentang Hukum: Pengertian-Pengertian-Dasar Dalam Teori Hukum*.

²⁸ Ibid

²⁹ Gordon Bazemore and Leslie Leip, "Victim Participation in the New Juvenile Court: Tracking Judicial Attitudes Toward Restorative Justice Reforms," *The Justice System Journal* 21, no. 2 (2000): 199–226.

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lie restoration, direct services to victims, or restorative fines. The imposed sanctions involve perpetrators, victims, the public, and law enforcers. Offenders work actively to restore the victims' losses and deal with the victims/victim representatives. A victim should be active in all process stages and assist in determining the sanctions imposed on an offender.

Family conferences are not used in Singapore as a substitute for formal criminal procedures to redirect juvenile offenders away from the criminal justice system. This is in contrast to the practices followed in Australia and New Zealand³⁰. It provides services to chosen juvenile offenders who have either been found guilty of the charges levied against them or have pleaded guilty to those charges. According to (Subordinate Courts of Singapore 1998a), the following are the goals that should be accomplished by family conferencing: To ensure that the juvenile understands the seriousness of the offending behaviour; To minimise the likelihood of the juvenile committing additional offences; To allow the juvenile to accept responsibility for the offending behaviour; To address the issue of family and community accountability; And to give the victim(s), when this is possible, the opportunity to contribute to the cautioning process³¹. Unlike in Australia and New Zealand, family conferencing is not used in Singapore as a replacement for formal criminal proceedings to divert the juvenile offender from the criminal justice system. It caters to selected juvenile offenders who have either been found guilty or pleaded guilty to the charges brought against them. The objectives of family conferencing have been described as (Subordinate Courts of Singapore 1998a): To ensure that the juvenile understands the seriousness of the offending behaviour; To minimize the likelihood of juvenile re-offending; To provide the juvenile with the opportunity to accept responsibility for the offending behaviour; To address the issue of family and community accountability; and To provide the victim(s), where possible, with an opportunity to contribute to the cautioning process.³²

The general public acts as a mediator, assisting victims while supporting and fulfilling obligations imposed on criminals. Mediation is made more accessible by those who uphold the law. Children and families are the key sources of information for perpetrators' rehabilitation because the primary focus of restorative justice is on the benefit and positive development of those affected by the crime. It is generally agreed that children are capable, and it is widely acknowledged that they possess both preventative and proactive talents. To rehabilitate the perpetrators, it is required to change the attitudes held by social institutions and the actions taken by adults. Rehabilitating perpetrators requires the active participation of the perpetrators and typically involves learning by doing, counselling, and therapy to encourage the associated parties' participation. Aspects relating to attaining public protection through the efforts of the court system partnered with the public to promote prevention are critical tenets of restorative justice. The confinement period only applies to the most recent attempt. The participation and support

³⁰ Susan Young, Ben Greer, and Richard Church, "Juvenile Delinquency, Welfare, Justice and Therapeutic Interventions: A Global Perspective," *BJPsych Bulletin* 41, no. 1 (2017): 21–29, <https://doi.org/10.1192/pb.bp.115.052274>.

³¹ Suriakumari Sidambaram, "The Role of Police, Prosecution and the Judiciary in the Changing Society—the Singapore Approach," *Resource Material Series*, no. 55 (2000): 303–35.

³² *Ibid*

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of the general public are essential to the success of the restoration project. People feel safe and confident about the role of the juvenile justice system, schools are involved, families and public institutions can prevent crime, and there has been an increase in social bonding and reintegration. These are the achievement indicators for the restoration of public protection. If the number of recidivists has decreased and the perpetrators are under general supervision, then the restoration of public protection has been successful.³³ The public is a mediator, helping victims and supporting the fulfillment of perpetrators' obligations. Law enforcers facilitate the mediation. Perpetrators' rehabilitation: The main focus of restorative justice is for the benefit and positive development; therefore, children and families are the primary sources. Children are considered competent and positively have both preventive and proactive abilities. For the perpetrators' rehabilitative purposes, changing the social institutions' attitudes and adults' behaviors is necessary. Perpetrators' rehabilitation is performed with the perpetrators through learning by doing, counseling, and therapy to motivate the related parties' active involvement. Public protection aspect: assumptions in restorative justice related to the achievement of public protection by the efforts of the judicial system collaborated with the public to develop prevention. Confinement is limited only to the last attempt. The public is actively responsible for supporting the implementation of restoration. The achievement indicators on the restoration of public protection are shown if the number of recidivists has decreased and the perpetrators are under general supervision; people feel safe and confident about the role of the juvenile justice system, schools are involved, families and public institutions can prevent from crime; social bonding and reintegration have increased.³⁴

Howard Zehr, a pioneer of restorative justice in the United States, introduced the "restorative lens," in which crime is seen as a violation of individuals and relationships between individuals. Justice is interpreted as a joint search for solutions through healing and reconciliation. In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms that cause losses to individuals who are highly affected by crime; to the sentencing and imposing misery, moving on to loss repair. A key element in the restorative justice paradigm is loss restoration.^{35,36}

Howard Zehr further reminded us that restorative justice is more precisely defined in contrast to the "adversarial system" in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) "fight each other" in front of "referee," where the judge leads the trial. Crimes in restorative justice are understood as losses imposed on victims and their communities, while in the adversarial system, it is understood as a violation of the state. Restorative justice is actively performed by the public, where victims are assisted in explaining how losses should be remedied, and perpetrators are encouraged to be re-

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³³ David B Wilson, Ajima Olaghere, and Catherine S Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis* (Inter-university Consortium for Political and Social Research, 2018).

³⁴ Ibid

³⁵ Anna Nylund, Kaijus Ervasti, and Lin Adrian, eds., *Nordic Mediation Research* (Cham: Springer International Publishing, 2018), <https://doi.org/10.1007/978-3-319-73019-6>.

³⁶ Ibid

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sponsible. At the same time, the adversarial system is organized and controlled by professionals, where victims are generally prevented from explaining their losses.³⁷

Some scholars believe the criminal justice system's real purpose is to promote public peace as a peace promoter, not punishment. This vision is known as restorative justice.³⁸ The guidelines in restorative justice have three critical principles: ~~a-~~ Groups "owning" the conflicts (including crime); ~~b-~~ The existence of materials and symbolic remedies for the crime victims; ~~c-~~ Social reintegration for the perpetrators.^{39,40}

The conventional criminal justice system generally focuses on three questions. First, what laws have been broken?; the second, who did it?; and the third, what do the perpetrators deserve? Furthermore, in the perspective of restorative justice, the questions are entirely different: ~~(1)-~~ who has been hurt; ~~(2)-~~ what are their needs; ~~and (3)-~~ whose obligations are these?^{41,42}

~~The variety of values directing people to play their role and participate in the restorative justice process of the juvenile criminal justice system in Indonesia can be found in the country's many different cultures, as well as the diversity of behavioural habits that exist within the society. The culture and system of Indonesia interact with one another and colour each other, much as the legal system in Indonesia is tinted by a cultural system, which together produces a legal culture within the Indonesian legal system. Various cultures and diversity of behavioral habits in the society in Indonesia are the wealth of values guiding people to play their role and participate in the restorative justice process of the juvenile criminal justice system. Indonesian cultural life and system interact and color each other as a legal system colored by a cultural system forming a legal culture in the Indonesian legal system.~~

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According to Menski⁴⁴, ~~all of the community's values are gathered from a variety of sources, each of which must be acknowledged and comprehended as values that have the potential to serve as the source of law within the community. According to Menski's interpretation, this means that Legal Pluralism has the potential to resolve the scenario and conflict that results from the rigorous application of each distinct source of law. In his words, Menski explains that "Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law-making sources rules roots absolutely."~~⁴⁵ ~~In other words, Legal Pluralism fills the space in the middle of the triangle because it refers to all of those scenarios It would appear that "perfect" justice can be found at~~

³⁷ Ibid

³⁸ Ibid

³⁹ Joseph Robinson and Jennifer Hudson, "Restorative Justice," *Willamette Journal of International Law and Dispute Resolution* 23, no. 2 (2016): 335–66.

⁴⁰ Ibid

⁴¹ Mark S Umbreit and Marilyn Peterson Armour, "Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community," *Washington University Journal of Law & Policy* 36 (2011): 65–89.

⁴² Ibid

⁴³ Brian Septiadi Daud and Irma Cahyaningtyas, "Criminal Justice System Toward Children With Legal Conflict Seen In Justice Restorative Prespective," *Jurnal Hukum Prasada* 7, no. 1 (April 7, 2020): 14–26, <https://doi.org/10.22225/jhp.7.1.1223.14-26>.

⁴⁴ W. Menski, "Remembering and Applying Legal Pluralism: Law as Kite Flying," January 1, 2014, 91–108.

⁴⁵ Samuel Hamonangan Simanjuntak and FX Joko Priyono, "Legal Pluralism as Pancasila's Reflection to Realize Substantive Justice in Law Enforcement and Law-Making," *Pancasila: Jurnal Keindonesiaan* 3, no. 1 (April 25, 2022): 37–48, <https://doi.org/10.52738/pjk.v2i1.88>.

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the centre of this triangle, where all of the conflicting forces have been brought to a state of equilibrium, all values in the community are obtained from various sources that must be acknowledged and understood as values that can be the source of law in the community.⁴⁶ Therefore, according to Menski, Legal Pluralism can fill the scenario and conflict arising from the strict application of each different source of law. In his language, Menski states: Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law making sources rules roots absolutely. The Centre of this triangle would appear to indicate 'perfect' justice as the result of equilibrium between the various competing forces.⁴⁷

Plurality, also known as *Bhinneka*, is characteristic of Indonesia due to the country's many different languages, cultures, and ethnic groups. Indonesia's long-term goal is to build a secure, forward-thinking nation and closely knit together. Therefore, avoiding pluralism is equivalent to avoiding diverse realities of the various perspectives and views existing within the Indonesian community. Plurality, or *Bhinneka* is typical of Indonesia with its many islands, tribes, languages, and cultures. Indonesia desires to establish a stable and modern nation with a strong national bond. Therefore, avoiding pluralism is equal to avoiding different realities of the existing perspective and beliefs in the Indonesian community.⁴⁸ Different legal systems or cultures coexisting inside a single political community are examples of legal pluralism. There are many different manifestations of pluralism. Vertical or hierarchical pluralism is characterised by the existence of a "higher" and "lower" legal system or culture. On the other hand, horizontal pluralism refers to a situation in which all sub-cultures or sub-systems are accorded the same level of legitimacy. Legal pluralism means different legal systems or cultures in a single political community. Pluralism arises in many forms. Pluralism is horizontal, in which sub-cultures or sub-systems have equal legitimacy status, or vertical or hierarchically, where there is a "higher" and "lower" legal system or culture.⁴⁹

The principles of restorative justice are supported across Indonesia by the aspects of customary law common to each country's region.⁵¹ The violation of custom or activities performed by custom is viewed as a problem for which customary law provides a solution. In some areas, customary law and justice are still considered, and the idea of restorative justice is not a novel one. In Indonesia, the characteristics of customary law in every region support the application of restorative justice. Customary law views its own violation of custom or customary acts and its

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⁴⁶ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Second Condition, New York: Cambridge University Press, 2006, p. 72.

⁴⁷ Werner Menski, *Ibid.*, pp. 186–187.

⁴⁸ Legal Pluralism fills the central space in in this triangle since all of it signifies all conflict scenarios and situations where none of the top three in-law makes the root source of rule are absolute. At the center of this triangle, it will emerge to show that justice is 'perfect' as the result of balance between various contending powers.

⁴⁹ Reimar Schefold, "The Domestication of Culture: Nation-Building and Ethnic Diversity in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 154, no. 2 (1998): 259–80.

⁵⁰ L.M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

⁵¹ Lawrence Friedman, *Op.cit.*, p. 257.

⁵² Virginia Garcia, "The Enforcement of Restorative Justice in Indonesian Criminal Law," *Legality : Jurnal Ilmiah Hukum* 28, no. 1 (April 10, 2020): 22–35, <https://doi.org/10.22219/ljih.v28i1.10680>.

solving mechanism. The existence of customary law and justice in some regions is still taken into consideration, and restorative justice is not a new concept.⁵²

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Community involvement in the law enforcement process is expected to be a form of control and empathy in the sense of sensitivity to the problems faced by the community, social changes, public necessities, and the state of the community's real responsibility in the field of law. Theoretically, the community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with unavoidable independent reality and objectivity vis a vis members of the concerned group.⁵³ Besides, social problem-solving by the community in many things can also serve to fill and complete the act of handling by the government (state) institution. Administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, the appearance of men and women, the appearance of paradise and hell, etc. Outer Baduy consists of a Jaro, that is, Jaro Saija, and a village secretary originating from out of the Baduy tribe having a civil servant status. In the outer Baduy community, there is a monthly meeting; thus, Jaro Saija is invited like other Village Heads. Inner Baduy is led by Puun, comprised of 3 Puun since there are three areas.

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Some violations have occurred in Baduy Tribe (a native Sundanese tribe of Banten who still maintains anti-modernization traditions, both in the way they dress and in other lifestyles. The Baduy-Rawayan tribe lives in the Kendeng Mountains Cultural Heritage area of 5,101.85 hectares in the Kanekes area, Leuwidamar District, Lebak Regency), i.e., murder, theft, and adultery. In case of violation in the Baduy community, those who violate will usually confess their action, followed by a customary ceremony called *ngabokoran*, by making available *keris*, *mori* cloth, *ringgit* money, incense, betel, *uncaria*, *tumpeng*, 40 later followed with *tangkesan* by paranormal.

The problem-solving mechanism includes the early stage with confessing to *akhlak* (morality), followed by *silih ngahampura* (forgive each other) for the act witnessed by *Jaro* (head of a hamlet or village), if deemed necessary, taking an oath, in case of murder, the sanction: besides the previous, also 40 change clothes, 40 *tumpeng*, imprisonment in *Dangka* (a term for Baduy people who live outside the traditional area) for 40 days. Serious crimes: adultery, murder, *san-tet* (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. *Jaro* (village head) is appointed through descent choice and determined by the paranormal. Children in Baduy Tribe are circumcised at odd ages: five and seven years old, while for marital age: 15-16 years old, aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting.

⁵² Simon Butt and Tim Lindsey, "Traditional and Customary Law: Adat," in *Indonesian Law*, ed. Tim Lindsey and Simon Butt (Oxford University Press, 2018), 0, <https://doi.org/10.1093/oso/9780199677740.003.0007>; Nur Rochaeti and Rahmi Dwi Sutanti, "Revitalization of Customary Court in the Juvenile Criminal Justice System in Indonesia," in *SHS Web of Conferences*, ed. A. Raharjo and T. Sudrajat, vol. 54, 2018, 07011, <https://doi.org/10.1051/shsconf/20185407011>.

⁵³ Theodore M Steeman, "Religious Pluralism and National Integration" (Dissertation, Cambridge, Harvard University, 1973).

⁵⁴ Theodore M. Steeman, "Religious and National Integration" (Harvard University, 1973).

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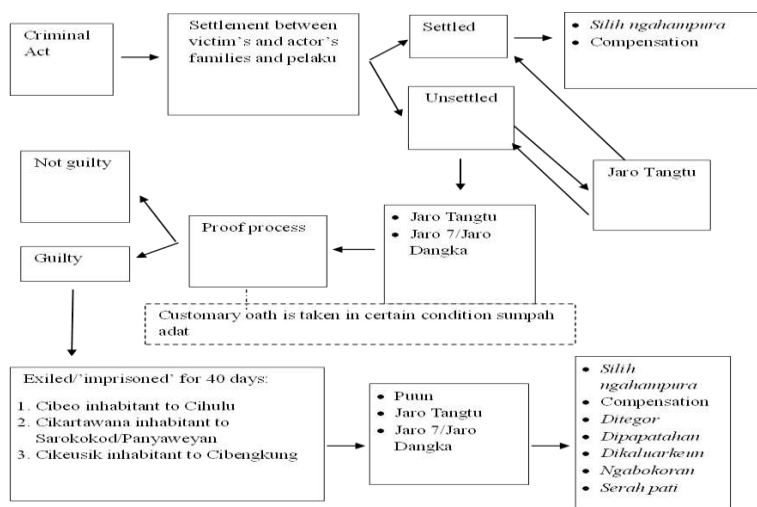
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The sanction shall be social work in case of violation. The most serious customary violation is principally honesty and righteousness in implementing customary law.

Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary regulations they must enforce. Inner Baduy Community has stricter customary rules than Outer Baduy Community. However, in the case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go into seclusion. Seclusion here is not defined as meditation but as strengthening/conserving Baduy practice, confirming *sunda wiwitan* religion. Outer Baduy Community, meanwhile, is assigned to be pan-amping, to guard Inner Baduy Community that is in seclusion; thus, they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has a stricter rule in implementing customary law and conserving Baduy custom.

Outer Baduy has a looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong, pondok teu meunang disambung* (if it is too long, it should not be cut, if it is too short, it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance and conservation; thus, the Baduy community should conserve nature and not be against the laws of nature.

A criminal act settlement procedure in the customary criminal law of Baduy are as follow:^{55,56}



The explanation is *Pelaku* = offender; *Silih ngahampura* = forgive each other; *Dikaluarkeun* = kicked out from Inner Baduy to Outer Baduy, or banished from Outer Baduy to outside Baduy

⁵⁵ Ferry Faturrahman, "Hukum Pidana Adat Baduy Dan Relevansinya Dalam Pembaharuan Hukum Pidana," *Law Reform* 5, no. 2 (October 2, 2010): 1–38, <https://doi.org/10.14710/Lr.v5i2.12493>.

⁵⁶ *Sistem Peradilan Pidana Baduy itu Restorative Justice [Baduy Criminal Justice System is Restorative Justice]*. (FGD, Paper of Ferry Fathurokhman).

(for Outer Baduy members); *Ditegor* = warned; *Dipapatahan* = being advised; *Jaro Tangtu* is a jaro (village head) in Inner Baduy; *Jaro 7/Jaro Dangka* is part of the customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of seven people and is in Outer Baduy; *Puun* is the highest figure in each of Inner Baduy, sacred in spirituality; *Nga-bokoran* is a spiritual cleaning ceremony for a not serious criminal act committed in Cihulu, Sarokokod/Panyaweyan, Cibengkung (depending on where the actor originated from). Anything needed for *bokor* is provided by the actor, consisting of *sereh*/betel, uncaria, apu, incense, boeh/shroud, keris. *Sereh* is then *didahar*/eaten by customary figures: *Puun*, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is *Jaro Tangtu* and *Puun*, *Puun* then continues the process with the ancestors; *Serah pati* is a spiritual cleaning ceremony similar to *bokor* (a large wide-brimmed dish (usually made of metal))^{57ss} but for a serious criminal act (causing death); The customary criminal law of Baduy is not codified into a book, the customary criminal law of Baduy is not written. According to *Jaro Saija*⁵⁹, to conserve the knowledge of the customary criminal law of Baduy, once every two months, all people gather in the court of each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy and sanctions are announced. Besides the platform, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life; thus every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits a criminal act must be cleaned physically and spiritually. Such cleaning is a form of criminal actors' accountability. Physical cleaning is the actor's accountability to a victim through sanction received. The sanctions are in the form of *ditegor*/warned, *dipapatahan*/advised, *silih ngahampura*, compensation, through kicked out from Inner Baduy to Outer Baduy.

The traditional judicial system cannot replace restorative justice in Austria, New Zealand, and Norway. Restorative justice is not an alternative to the legal system in Austria, New Zealand, and Norway. It is all part of the system. It is the standard, and going to court is only done as a last resort if restorative justice cannot be carried out or is unsuccessful. Because of the new laws passed, restorative practices are now at the centre of the juvenile justice system in Northern Ireland. In the circumstances like this, it is essential to ensure that victims are not coerced into participating in the proceedings against their will, and it is very feasible to implement safeguards to ensure this does not occur. It is the system. It is the norm, and the court system is only a fallback if restorative justice cannot be carried out or fails. The new provisions in Northern Ireland also make restorative practices the heart of the youth justice system. In these situations, what needs to be taken is that victims are not pressured into the processes against their will, but it is perfectly possible to introduce safeguards for this.^{61ss}

⁵⁷ Dody Kristianto and Nur Seha, "Nilai Moral Dalam Tanda Basa Baduy," *Kandai* 12, no. 2 (2018): 269–82.

⁵⁸ Kristianto, Dody and Seha, Nur, *Nilai Moral Dalam Tanda Basa Baduy (Moral Values Inside Tanda Basa Baduy)*, *Kandai* Vol. 12, No. 2, November 2016; p. 269–282

⁵⁹ Interview, Jaro Saija, Baduy, Thursday, 8 September 2021

⁶⁰ Tony F. Marshall, *Restorative Justice: An Overview* (London: Home Office, Research Development and Statistics Directorate, 1999).

⁶¹ Marian Liebmann, *Restorative Justice: How It Works.*, Restorative Justice: How It Works. (London, England: Jessica Kingsley Publishers, 2007).

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Indonesian legal system demonstrates that the structure of Indonesian society possesses two unique characteristics: horizontally and vertically. In a horizontal sense, it is characterised by social units differentiated by differences in factors such as ethnicity, religion, customs, and geographic location. According to Furni-vall, the society that exists in Indonesia is referred to as a plural society. Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform shows that the structure of Indonesian society has two unique characteristics: horizontally and vertically. Horizontally, it is marked by the existence of social units based on differences in ethnicity, religion, customs, and regions. The Indonesian society, according to Furnivall, is known as the plural society.⁶²⁻⁶⁶ In the meantime, the structure of Indonesian society may be vertically characterised by vertical disparities. These vertical differences can be seen in upper- and lower-layer levels and rural and industrial-layer levels. It contributes to development inequality due to the fact that some people continue to engage in agricultural activities. On the other hand, specific individuals are required to advance into the world of industry and even the world of information to participate in what Fred W. Riggs refers to as the prismatic society. Meanwhile, the structure of Indonesian society is vertically characterized by vertical differences in the form of upper- and lower-layer levels and the rural and industrial-layer levels. It leads to inequality in development because some people still perform agricultural activities. On the other hand, some people have to step forward to the industrial world and even to the information world, as called by Fred W. Riggs as the prismatic society.^{65-66,70}

The customary law characteristics In Indonesia show that each region supports the implementation of restorative justice. Due to the customary violations or customary offenses, and settlement mechanisms, the customary law has its own views. The existence of customary justice in some areas is still considered, while restorative justice, which has been introduced previously, is not a new concept. Marc Levin stated that the restorative justice approach, once considered obsolete, ancient, and traditional, is now recognized as a progressive approach.^{69,70}

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⁶² Restorative Justice, How It Works, Marian Liebmann, Jessica Kingsley Publishers London and Philadelphia. First published in 2007 by Jessica Kingsley Publishers 116 Pentonville Road London N1 9JB, UK and 400 Mark ISBN 978 1 84310 074 45.

⁶³ Nasikun, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia* (Yogyakarta: Fakultas Ilmu Sosial dan Politik UGM, 1974).

⁶⁴ Nasikun, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia* [An Approach to learn the Indonesian Social System], Yogyakarta: Faculty of Social and Political Sciences, UGM, 1974, pp. 31. The community plurality also shows the existing cultural diversification. These cultural differences will further result in contradictions. On one hand, the local principles are expected to be maintained, yet on the other hand are required to be adjusted with the global life principles.

⁶⁵ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* (Bandung: Alumni, 1985).

⁶⁶ Fred Warren Riggs, *Administration in Developing Countries: The Theory of Prismatic Society*, ed. Dayton David MacKean (Boston: Houghton Mifflin, 1964).

⁶⁷ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 2011).

⁶⁸ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* [Law and Public Studies], ed. Alumni (Bandung, 1985).

⁶⁹ Eva Achjani Zulfa, "Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana" (Dissertation, Jakarta, Universitas Indonesia, 2009).

⁷⁰ Eva Achjani Zulfa, "Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana" (Dissertation, Jakarta, Universitas Indonesia, n.d.).

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Restorative justice is based on *Pancasila* (is the ideological pillar of the Indonesian state) as a vehicle to overcome children's delinquency in the future and is based on the substantive and structural aspects. Based on this, *Pancasila* is the source of all sources in Indonesian law; the ambiance of philosophical basis provides the grounds for a philosophical justification so that the reform of legal structure for law in execution of criminal sanctions based on *Pancasila* should be carried out accordingly. A philosophical basis is a justification that bases its legitimacy upon considering value aspects and legal principles. Indonesia has a value system based on the state philosophical foundation called *Pancasila* as the philosophical values.⁷² Substantially, it is the idea to codify and/or unify the legal formation of the restorative justice system in Indonesia based on legal politics, which has a unified legal system between substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders and community leaders without involving the law enforcement officers to avoid psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the therapeutic restorative justice processes. The victim's position is to provide an agreement or convey his opinions to reach a consensus so that no party will experience losses or be under pressure to express their views. The offender is given an opportunity to express his opinion and the ability to respond to the victim's request. As a significant matter of fact, the practice of restorative justice offers legal certainty, justice, and benefits for all parties to overcome the delinquency of children in the interest of promoting the general welfare of the community. The reform of criminal law is connected to many facets of policy, such as social policy, criminal policy, and law enforcement policy. It is influenced by many facets, such as the sociopolitical, socio-philosophical, and sociocultural underpinnings, and it will provide the norm contents and criminal law substances of the future. Substantially, in restorative justice, there are legal certainty, justice, and benefits for both parties in an effort to overcome the children's delinquency in achieving public welfare. Criminal law reform is related to various aspects of policy, including social policy, criminal policy, and law enforcement policy, influenced by various aspects, such as sociopolitical, socio-philosophical, and socio-cultural underlying, and providing the norm contents and criminal law substances in the future.

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Restorative justice is a reconstruction of an integrated criminal justice system as part of the Indonesian legal system reform. Structurally, in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, the perpetrator, the victim's family, the perpetrator's family, and the involved parties directly

⁷⁴ Eva Achjani Zulfa, *Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana*, Ringkasan Disertasi, Universitas Indonesia, Fakultas Hukum Program Studi Ilmu Hukum Kekhususan Sistem Peradilan Pidana, 2009, pp. 67

⁷² Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 327–58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

⁷³ Anis Widyawati, Pujiyono, Nur Roehaeti, Genjie Ompoy, and Nurul Natasha Binti Muhammad Zaki, "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, No. 2 (2022): 327–358, <https://doi.org/10.15294/lesrev.v6i2.58131>, p. 336

⁷⁴ William R. Wood, Masahiro Suzuki, and Hennessey Hayes, "Restorative Justice in Youth and Adult Criminal Justice," September 15, 2022, <https://doi.org/10.1093/acrefore/9780190264079.013.658>.

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related to the case. Restorative justice reconstruction of an integrated criminal justice system in the Indonesian legal system reform, structurally in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, perpetrator, victim's family, perpetrator's family, and the involved parties directly related to the case⁷⁵. Therefore, in its relationship with public participation in efforts to prevent crime, the institutions that make up the village structure should, in this particular instance, provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, and the public by involving the religious leaders, community leaders, and teachers. This should be done to bring about reconciliation between the parties involved. Therefore, in its relationship with public participation in crime prevention efforts, the village structure institutions, in this case, should provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, as well as the public by involving the religious leaders, community leaders and teachers.

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Performing an education in society so that the law can be developed and accepted as a manifestation of a nation's self-image is what we mean when we talk about legal culture. People get enlightenment when they become aware that there is more than one legal way to approach a situation in this world due to the presence of legal culture and the discourse surrounding it. The law is functional and is ingrained in a sociocultural matrix in a culture where it is practised. The power of the public or the community will direct, limit, and decide how far and how the law will run and how it will operate and apply in society. The ideals upheld by the people in charge of a particular legal system will have an effect on the attitudes and behaviours of the people who live in that nation. *Pancasila* is the name given to these principles by the people of Indonesia. For it to function on the practical level, its execution requires a specific quantity and quality of human resources.⁷⁶ Legal culture is performing an education in society so that the law is made and accepted as a manifestation of a nation's self-image. The presence and discourse of legal culture provide enlightenment as people then know that there is not only one same legal way in this world. In legal culture, the law works and is embedded in a socio-cultural matrix. Public or community power will guide, limit, and determine how far and how the law will run, work, and apply in society. A nation's attitudes and behaviors will be related to the values adopted by humans running a particular legal system. These values for the Indonesian people are *Pancasila*. In its implementation, a certain quality of human resources is needed to run on the empirical level.

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Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines people's attitudes, ideas, and values toward laws. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others could influence

⁷⁵ Sri Hartanto, Indah Sri Utari, and Ridwan Arifin, "Implementation of Penal Mediation in the Perspective of Progressive Law (Study at the Semarang City Police Department)," *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): 161–88.

⁷⁶ Jagad Aditya Dewantara et al., "Pancasila as Ideology and Characteristics Civic Education in Indonesia," *International Journal for Educational and Vocational Studies* 1, no. 5 (July 20, 2019): 400–405, <https://doi.org/10.29103/ijevs.v1i5.1617>.

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someone's legal culture.⁷⁷ Legal culture is key to understanding the differences between one legal system and others. In the restorative justice system, the role of the community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes.⁷⁸ When a sentence is finally handed down, a scientific classification review is used to determine the right level of treatment for the offender. They are then moved to an appropriate correctional institution by an individualised treatment plan. Inmates participate in various programmes designed to help them adjust to life outside of prison in preparation for their eventual release, which may come in the form of parole or the natural expiration of their sentence. When a sentence is finalized, treatment degree is decided through a scientific classification review and inmates are transferred to an appropriate correctional institution according to an individual treatment plan. While in prison, inmates get ready to return to society through various correctional programs until being released through parole or the completion of a prison term.⁷⁹

The classification review consists of two parts: classification research, which investigates the inmate's personal information, and classification examination, which examines the inmate's IQ, personality, and aptitude. Different facilities, types of detention, and employment are assigned to different treatment levels for inmates. In addition, during their sentences, routine and ad hoc evaluations are conducted to modify the offenders' treatment levels by the extent to which they have progressed. Classification review consists of classification research that looks into inmate's personal information and classification examination that conducts personality, intelligence, and aptitude tests. Inmates are classified at different treatment levels for facilities, custody, and work. In addition, regular and irregular reviews are carried out during their prison terms to adjust the treatment levels according to the degree of inmates' improvement.⁸⁰

An innovative punishment model known as the "Accommodation System Classifying Convicts by Security Level" was recently implemented and is currently in use with the goals of reducing the rate of recidivism and improving the efficiency with which inmates are housed. Additionally, it developed a Correctional Recidivism Prediction Index (CO-REPI) that categorised inmates into five levels to analyse the possibility of subsequent convictions at an early stage based on the results of 23 evaluation tests. This index categorises inmates based on their likelihood of committing additional crimes in the future.

Even throughout the time spent adjusting, students continue to gain knowledge. Education in the classroom can help inmates expand their knowledge, and intensive personality education can help them acquire a social consciousness and a spirit of law-abiding behaviour. In addition, to promote offenders' successful reintegration into society, programmes specifically tailored to the inmates' characteristics, such as education for the rehabilitation of the disabled, are provided. In order to prevent recidivism and promote efficient accommodation of inmates, an 'Accommodation System Classifying Convicts by Security Level' was recently implemented and is currently in use with the goals of reducing the rate of recidivism and improving the efficiency with which inmates are housed.

⁷⁷ Friedman, Lawrence M., *The Legal System : A Social Science Perspective*, New Yorks : The Russell Sage Foundation, 1975, p. 184

⁷⁸ William R. Wood and Masahiro Suzuki, "Four Challenges in the Future of Restorative Justice," *Victims & Offenders* 11, no. 1 (January 2, 2016): 149–72, <https://doi.org/10.1080/15564886.2016.1145610>.

⁷⁹ Derita Prapti Rahayu et al., "Law Enforcement in the Context of Legal Culture in Society," *Law Reform* 16, no. 2 (September 27, 2020): 276–89, <https://doi.org/10.14710/lr.v16i2.33780>.

⁸⁰ Tim Brennan, "Classification for Control in Jails and Prisons," *Crime and Justice* 9 (January 1, 1987): 323–66, <https://doi.org/10.1086/449139>.

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accommodation System Classifying Inmates by Security Level', an advanced correction model, was introduced and being operated. Furthermore, it developed a Correctional Recidivism Prediction Index (CO-REPI) which categorized inmates into five levels to analyze the possibility of subsequent convictions in an early stage depending on results of 23 evaluation tests.

To provide inmates with intensive personality education, their educational requirements are categorised as either primary education or re-education, depending on the stage of their sentences. Changes in inmates can be attributed to the introduction of various programmes, including those dealing with constitutional value and the humanities, communication, and group counselling. Inmates who are required to have an education are allowed to participate in a school qualification examination class. Additionally, opportunities to earn a degree, such as classes offered by the Korea National Open University and commissioned education classes offered by community colleges, have been made available to these inmates to encourage them to work toward a more positive future. To aid inmates with disabilities in becoming self-sufficient members of society, specialised programming has been developed and implemented. These programmes are exemplified by the Comprehensive Rehabilitation Center for the Disabled, run at the Yeosu Correctional Institution, and the Braille Training Program, run at the Cheongju Correctional Institution.

By capitalising on the offenders' interest in various subjects, we are discovering new ways to effect change in them. Inmates are encouraged to discover emotional stability through participation in artistic and religious activities, and they are allowed to reconnect with society through viewing various reformation programming programmes. The availability of various cultural and artistic programmes has increased the number of opportunities for inmates to enjoy art. In conjunction with the Korea Arts & Culture Education Service, there are currently experience-based cultural and artistic performances taking place in 52 different correctional institutions. These performances include art, theatre, and music. These activities heighten the convicts' awareness of and receptivity to change. In order to help offenders establish mental stability through ongoing religious practises, religious rallies and rituals have been initiated, and counselling sessions with prominent religious people are made available. Programs such as education, liberal arts, dramas, sports, entertainment, and movies are broadcast on the general education and radio channels that makeup Reformation Broadcasting. These programmes are tailored to the preferences of the convicts in Reformation Broadcasting's facilities. This type of programming not only acts as a link between inmates and society but also helps inmates acquire cultural understanding and emotional connections to that culture. Learning continues even during the accommodation period. Inmates can build knowledge through academic education and develop social consciousness and law-abiding spirit through intensive personality education. In addition, programs customized to inmates' characteristics, such as education for rehabilitation of the disabled, are provided to support successful reintegration.

Intensive personality education is being provided for inmates by categorizing their needs as basic education or re-education based on the progress of their sentences. Introduction of various programs from constitutional value and the humanities to communication and group counseling in duce changes in inmates. A school qualification examination class is operated for in-

mates in need of mandatory education and opportunities to acquire a degree, including Korea National Open University courses and commissioned education courses of community colleges were provided in order to motivate them to achieve a better future. Programs customized to disabled inmates are performed to support self-sufficiency in society. The operation of Comprehensive Rehabilitation Center for the Disabled in Yeosu Correctional Institution and the Braille Training Program in the Cheongju Correctional Institution are representative of these schemes.

We are finding the power to change inmates by harnessing their interest in various fields. Inmates are supported to find emotional stability through artistic and religious activities, and to connect with society by watching various reformation broadcasting programs. Opportunities for inmates to appreciate art were expanded through the provision of various culture and art programs. In cooperation with Korea Arts & Culture Education Service, experience-based culture and art performances for art, play, and music currently take place in 52 correctional institutions. Such programs develop inmates' sensibility to change. Religious rallies and ceremonies have been launched and counseling with religious figures is provided so that inmates find mental stability through continuous religious practices. Reformation Broadcasting, which consists of general, education, and radio channels, airs programs such as education, liberal arts, dramas, sports, entertainment, and movies in accordance with the characteristics of inmates. Such broadcasting helps inmates cultivate cultural knowledge and emotion, and plays the role of a link between inmates and society.

CONCLUSION

The findings of a study conducted on the Baduy community in Lebak, Banten, have resulted in the regulation and recognition of the presence of customary justice, as well as the implementation of this system to deal with issues that arose in their surroundings. To a significant extent, indigenous peoples are still subject to the legal punishments associated with customary law. A person who has broken the customary law of Baduy must undergo both a bodily and a spiritual cleansing. The purging demonstrates the responsibility that the individuals who committed the crimes bear. Cleansing on the outside in the form of holding perpetrators of crimes accountable to the victims of such crimes by the punishments that are meted out to them. The settlement of cases in the indigenous Baduy community is straightforward. The settlement prioritises forgiving one another (getting close to one another), as the primary goal of resolving cases is to create peace, restore balance to nature, and return the environment to how it was before. Regarding the legal culture, people's behaviours still respect and implement rulings given by customary courts. These decisions are made through traditional legal systems.

In the future, criminal law reform will be based on its logical substances to codify and unify restorative justice. This will be done based on the existence of general rules and guidelines on restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice, which are formed based on the principles of national legal system formation, as well as the existence of organisational structure implementing the restorative justice. In addition, the reform In the process of administering restorative justice, criminal justice mechanisms and public participation in the form of discussion and mediation are brought together in order to reach an agreement between the offender, the victim, the victim's family, the offender's family, and any other parties involved in the case. An all-

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encompassing and exhaustive comprehension ought to be culturally formed within the public legal education system by encouraging public participation in comprehending the numerous legal products on restorative justice, as the nation's personality reflections are based on Indonesian-based restorative justice characters. The future reconstruction of the indigenous peoples' justice mechanisms needs to be governed as a sub-system within the mechanism of Indonesia's criminal justice system so that it can be included in the renewal of the legal system for indigenous peoples. The results of research on the Baduy community in Lebak, Banten have regulated and recognized the existence of customary justice and implemented it as an effort to handle cases that occurred in their environment. In substance, customary law and its legal sanctions are still valid in indigenous peoples. In Baduy customary criminal law, a criminal must be cleansed physically and spiritually. The purge is a manifestation of the responsibility of the offenders of criminal acts. Cleansing outwardly in the form of accountability of offenders to victims that manifests in the sanctions they receive. Settlement of cases in the indigenous Baduy community is very simple and straightforward, the settlement prioritizes forgiving each other (close to each other) because the main purpose of resolving cases is to create peace, restore balance to nature and return to the atmosphere as before. In terms of legal culture, people's behaviour still respects and implement decisions given through customary courts.

In the future, the criminal law reform, based on its logical substances to codify and/or unify the restorative justice based on the existence of general rules and guidelines on the restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice which is formed based on the principles of national legal system formation, as well as the existence of organizational structure implementing the restorative justice system, a supervisory system for the offenders, appointed institutions and individuals, and understanding the imposition of sanctions which is not a retaliation possibly resulting in stigma, yet providing justice. Restorative justice is performed by combining criminal justice mechanisms with public participation within a discussion mediation to obtain an agreement between the victim, offender's, victim's family, offender's family, and parties related to the case. A comprehensive and complete understanding should be culturally formed in the public legal education by involving public active participation in understanding various legal products on restorative justice as the nation's personality reflections based on the Indonesian-based restorative justice characters. Future reconstruction in the renewal of the legal system of indigenous peoples' justice mechanisms needs to be regulated as a sub-system within the mechanism of the criminal justice system in Indonesia.

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A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices

Nur Rochaeti^{a*}, Mujiono Hafidh Prasetyo^a, Umi Rozah^a, and Jihyun Park^b

^{a*} Faculty of Law, Universitas Diponegoro, Indonesia. Corresponding author Nur Rochaeti, e-mail: etikfh@live.undip.ac.id

^b Faculty of Law, Youngsan University, Republic of Korea. E-mail: shabd@ysu.ac.kr

Article	Abstract
<p>Keywords:</p> <p>Baduy community; Indonesian Legal System Reform; Integrated Criminal Justice System; Restorative justice.</p> <p>Article History: Received: Jun 10, 2022; Reviewed: Dec 27, 2022; Accepted: Jan 24, 2023; Published: Jan 31, 2023.</p> <p>DOI: 10.28946/slrev.Vol7.Iss1.1919.pp87-104</p>	<p>The Indonesian crime rate until May 2020 increased due to public orders and crime disturbances in the last 22 weeks. Data from correctional institutions in February 2021 showed that some regional offices were over capacity while others were normal. The 1945 Indonesian Constitution recognises traditional institutions in the criminal justice system and requires judges to consider legal values and a sense of justice in society. This study aims to determine Indonesia's customary criminal justice system as a form of restorative justice. This research used a socio-legal approach and found that public participation in Indonesia, through customary groups, can help prevent crime and solve problems through discussion and following applicable customary law processes. As a result, Indonesian researchers have regulated and recognised customary justice's existence and implemented it to deal with cases in their environment. Restorative justice is a criminal mechanism that aims to restore the relationship of the conflicting parties to the state before the conflict and is carried out informally. This concept is also an acknowledgement of oriental legal philosophy which, in resolving any conflict, always seeks to restore relations; macro stability or society can even affect the stability of the universe. The practice of Restorative Justice occurs in customary law. As a legal philosophy, the legal policy of implementing Restorative justice should be interpreted mainly as revitalising customary law if conflicts occur between fellow supporters of the same customary law. The settlement of cases in the Baduy community is straightforward. The settlement prioritises forgiving each other. Restorative justice is performed by combining criminal justice mechanisms with public participation in a discussion mediation.</p>

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INTRODUCTION

Criminal law is identical to punishment, which is characterised by giving pain or torture. The purpose of criminal law is to protect individual, public, and state interests dealing with human

rights in a harmonious balance from crimes/wrong actions on the one hand and the despotic authorities on the other.¹ Criminal law is considered a law of sanctions (*bijzondere sanctierecht*) since relying on sanctions functioning to ensure security, order, and justice.²

In the basic principles developed, the Tokyo Rules (also known as the Standard Minimum Rules Jiff Non-custodial Measures, for non-custodial criminal measures in the form of providing social work to protect society and victims, UN General Assembly Resolution Number 45/110) have several objectives, including: Standard Minimum Rules (known as SMR) establish basic principles to develop the non-custodial measures and guarantees for persons subject to the alternative prison measures; SMR intends to promote greater public involvement/participation, especially in supervising the criminal offenders and increasing the criminal perpetrators' responsibility to the public; SMR must be implemented due to the political, economic, social, and cultural conditions and each country's criminal justice system objectives; In implementing this SMR, each country should ensure the balance between the criminal perpetrators' rights, victims' rights, and public interests in general security and crime prevention; and Member states should develop non-custodial measures in their legal systems concerning human rights, the need for social justice, and the need for rehabilitation for criminal perpetrators.

Intensifying and making non-penal and non-custodial institutions as effective as possible is vital for several reasons, including the following: According to Rubin, punishment (whatever the reality, whether intended to punish or improve) has very little to no influence on societal issues about criminal behaviour; Schultz stated that the increasing and decreasing crime rates in a country are not related to changes in that country's laws or trends in court decisions, but rather are related to that country's operations or functions of significant cultural changes in social life; Johanes Andenaes stated that the operation of criminal law should always be seen from the perspective of the entire cultural context. There is a mutual influence between law and other factors shaping our attitudes and actions, and Donald R. Taft and Ralph W. England said that the effectiveness of criminal law could not be accurately measured. This is because there is a mutual influence between law and these other factors. The law is nothing more than a tool for maintaining social order. Legal punishments are only some of the effective methods for regulating human behaviour. Instead, social norms, religious beliefs, community approval and disapproval, suppression and group interest, and the impact of public opinion are all more effective.³

In addition, in the "International Penal Reform Conference" that was held at the Royal Holloway College of the University of London from April 13-17, 1999, it was stated that one key component of a new agenda was the necessity to enrich the formal criminal justice system with an informal system or mechanism for the resolution of disputes in order to meet human rights standards. This was stated in the conference's abstract. In addition, during this conference, nine development plans for carrying out criminal law (penal) reform were selected through constructing and building: Restorative justice, alternative dispute resolution, informal justice, alternatives to custody, alternative ways of dealing with juveniles and dealing with violent crime,

¹ E.Y. Kanter and S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Jakarta: Stora Grafika, 2022).

² M. Hamdan, *Politik Hukum Pidana* (Jakarta: Raja Grafindo Persada, 1997).

³ Barda Nawawi Arief, "Masalah Perlindungan Hukum Bagi Anak" (Seminar Nasional Peradilan Anak Fakultas Hukum Universitas Padjadjaran, Bandung, 1996).

reducing the prison population, the proper management of prisons, and the role of civil society in penal reform are all examples of areas that fall under the umbrella term "alternatives to custody." Alternatives to custody include restorative justice, alternative dispute resolution, and informal justice. These many reasons are a reaction to how difficult it is to declare that the criminal justice system, with its criminal consequences, is an effective tool to overcome crime. It is difficult to say this because it is difficult to say that the criminal justice system effectively overcomes crime (delinquency). However, the stigma attached to a person's previous status as an inmate or prisoner is not readily forgotten in the real world. The level of awareness and knowledge of the community as a whole, including members of law enforcement, is a significant factor in determining whether or not a restorative justice process exists as an alternative to the traditional methods of handling criminal cases. It is essential to realise that a judicial system that relies solely on the application of rules to identify wrongdoers and, after that, punishes those individuals will not accept this approach.⁴

Restorative justice is essential because it offers an alternative to criminal punishment for crime prevention and does not sidestep the obligation to provide justice for victims of crime. A doctrine known as restorative justice emphasises repairing the losses and broken relationships brought about or incurred as a result of criminal behaviour. It is possible to regain both these losses and these relationships through collaborative methods that involve all of the relevant stakeholders (interested parties).⁵ The primary goal of both restorative justice and the formal criminal justice system is to discourage criminal behaviour by allowing offenders to participate in alternative punishments that do not result in incarceration.⁶

Through the use of restitution and compensation, criminal matters can be resolved through the use of restorative justice. In the process of amicable case settlement, both victims and perpetrators participate in a dialogue to reach an agreement that benefits both parties. The goals of restorative justice are to reduce the complexity of the processes that must be followed, to protect the rights of both victims and perpetrators, to protect the rights of victims and perpetrators, to minimise the negative impacts on the processes of criminal justice that have been followed up to this point, and to increase public participation in law enforcement.⁷

The civil society movement is not meant to compete against the state or to fertilise power in directing all state policies. Based on the Government Regulation No. 68 of 1999 on "Procedures for Implementing the Public Participations in State Administration," it contains rights and obligations including: right to find, obtain, and provide information related to the state administration; right to receive equal and fair services from the state administration; right to responsibly convey suggestions and opinions on policies issued by the state administrators; right to obtain legal protection in terms of using their rights, and if requested to be present in the investi-

⁴ Edhei Sulistyono, Pujiyono Pujiyono, and Nur Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators," *International Journal of Criminology and Sociology* 10 (April 30, 2021): 595–602, <https://doi.org/10.6000/1929-4409.2021.10.69>.

⁵ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Badan Penerbit Universitas Diponegoro, 1995).

⁶ Pangestika Rizki Utami, "Konsep Diversi dan Restorative Justice sebagai Pergeseran Tanggung Jawab Pidana pada Sistem Peradilan Pidana Anak," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 1, no. 1 (June 19, 2018): 95–106, <https://doi.org/10.24090/volksgeist.v1i1.1691>.

⁷ Daniel W van Ness and Pat Nolan, "Legislating for Restorative Justice," *Regent University Law Review* 10 (1998): 53–110.

gation, investigation, and at the court hearings as a reporting witness, witness, or expert witness, based on the provisions of the applicable laws and regulations; Those rights are used under the provisions of the applicable laws and regulations and by complying with religious norms and other social norms, and intended to avoid defamation and irresponsible reports; and public legal awareness and law enforcers in interactive spirits, between the legal awareness of the ruler's version on the one hand, and legal feelings, especially the spontaneous justice perceptions from the public on the other hand.⁸

Public participation in criminal justice is expected to realise favourable conditions for all interested parties to create a better future. The Kanayatn Dayak and Sanggau Dayak tribes in Pontianak, West Kalimantan, have a strong bond of values, morals, cultures, and local pearls of wisdom in solving the problems occurring in the society.⁹

Van Ness claims that the process of customary justice dramatically contributes to the formation of restorative justice in at least three different forms. The first is the modification of traditional traditions, such as the conference system and the circular system, which are both present in the traditional ways used by Maori people in New Zealand (practised by the first nation in America). Second, the judicial system works to repair the broken institutions associated with crime and makes information about restorative justice available to the public. Third, certain kinds of traditional justice are incorporated within the official procedures for dealing with criminal cases.¹⁰

In general, justice systems are seen to create justice by giving the right and just punishment to the offender.¹¹ This understanding is from the concept of retributive justice, correcting the offence with a penalty equal to the offence. Restorative justice systems focus on the damage the crime made and the responsible changes necessary to restore the damage and the broken relationship the crime caused instead of on forced punishment. Restorative justice systems define crime not as 'breaking the law' but as causing damage to individuals and the community (society). So restorative justice systems aim, in the end, to restore all damaged relationships, bringing peace to the whole community. Therefore, the people directly involved are encouraged to join the problem-solving process, especially the community's victim-focused effort, which

⁸ Putusan Peradilan Perdamiaan Adat Nagari Sulit Air No. 001/Pa/Kan-Sa/Xi-2006 [The Court Decision on Nagari Sulit Air Customary Settlement No. 001/Pa/Kan-Sa/Xi-2006] Untuk keadilan nan badasarkan "Adat Basandi Syarak, Syarak basandi Kitabullah [For Justice Based on "Adat basandi Syarak, Syarak basandi Kitabullah"]

Kerapatan Adat Nagari (KAN) institution of Kanagarian Sulit Air, in this case, "Nagari Customary Court Section", based on the duties given to make justice and decision through the Assembly Meeting of Nagari Customary Settlement with the Recommendation Letter No. 009/KAN-SA/VIII-2006 dated on August 29, 2006, and bapidoman pado KAN Decision No. 196/KAN-SA/XII-2001, KAN Decision No. 01/KAN-SA/XII-2005, sarato Solok Regency Regional Regulation No. 8 of 2004, Article 94, paragraph A, C, and E on Nagari Customary Justice.

⁹ Nur Rochaeti and Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia," *Masalah-Masalah Hukum* 47, no. 3 (2018): 198–214, <https://doi.org/10.14710/mmh.47.3.2018.198-214>.

¹⁰ Ness and Nolan, "Legislating for Restorative Justice."

¹¹ Barry C. Feld, "Juvenile and Criminal Justice Systems' Responses to Youth Violence," *Crime and Justice* 24 (January 1, 1998): 189–261, <https://doi.org/10.1086/449280>.

supports victims and helps offenders take responsibility, which is necessary for preventing recurrence.¹²

In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. The court filed a suit to challenge its constitutionality because it was an unlawful presumption of principle, the unjustified infringement of physical freedom, and a violation of equality rights. Nevertheless, it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable explanation for treating discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge that such a protective disposition deprives the physical liberty of the body, but to rationalise the discrimination against the protected juvenile by its aim is to rehabilitate the youth with anti-socialism and promote healthy development. Inhumane treatment is not tolerated because of more unfair laws than adults.

RESEARCH METHODS

Qualitative research methods, such as ethnography, case studies, and in-depth interviews, are well suited for studying complex social phenomena like developing a restorative justice system from the perspective of Indigenous peoples in Indonesia. These methods allow researchers to gather rich, detailed data on the beliefs, values, and practices of the people being studied. For example, an ethnographic study could involve researchers immersing themselves in the community and observing and participating in restorative justice practices. In-depth interviews could be conducted with community members to gather their perspectives on the current system and their vision for a more effective one. Through these methods, the researcher can gain an intimate and nuanced understanding of the local context and the specific challenges and opportunities for developing a restorative justice system responsive to the needs of Indigenous peoples in Indonesia.

This research utilised an approach method that was based on a socio-legal study that reviews law as a social fact which can be seen in experience as a behavioural pattern in the form of social institutions, legal studies conceptualising and theorising law as a positive and empirical social fact, and socio-legal studies reviewing law as a social fact that can be seen in experience as a behavioural pattern in the form of social institutions. In the field of study known as *normwissenschaft* or *sollenwissenschaft*, in-depth investigations and research on the contents or values of the laws that already exist in society have been done.¹³

The data collection method in this study used in-depth interviews with *Jaro Saija*, the Head of Outer Baduy Customs, and Focus Group Discussions with Lecturers in the Criminal Law

¹² John Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," *Crime and Justice* 25 (1999): 1–127.

¹³ JJ. H Bruggink, *Refleksi Tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum*, trans. Arief Sidharta (Bandung: Citra Aditya Bakti, 2015).

Department, Faculty of Law, Sultan Ageng Tirtayasa University. All legal sources obtained will then be analysed qualitatively.

ANALYSIS AND DISCUSSION

Restorative Justice Paradigm

Crime can result in decreasing self-restraint, stigmatising delinquent children, weakening conventional bonds and family relations in society, breaking the established relationships between peer groups, and encouraging the delinquent perpetrators to think about themselves more than the victim. Meanwhile, supervisory on perpetrators is considered a juvenile justice program oriented only to the perpetrators with a slight impression as an effort to communicate with a perpetrator that his actions have injured the other party. Therefore, he must heal the wound by accepting the "sanction" imposed on him.¹⁴

According to Gordon Bazemore,¹⁵ the primary schools of thought in the Restorative Juvenile Justice paradigm include the following: a. purposes of imposing sanctions: there is an assumption that by achieving the goal of imposing sanctions, the victim will have the right to be actively involved in the judicial process. This is one of the primary thought points in the Restorative Juvenile Justice paradigm. The indicators that determine whether or not the goals of imposing sanctions have been met include determining whether or not the victim has been restored, the victim's level of satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of repair agreements that have been made, as well as the quality of the working services and the overall processes that are occurring. Restitution, mediation between the offender and the victim, victim services, public restoration, direct assistance to victims, or restorative fines are all examples of the types of punishments that may be imposed. Participants in the imposed sanctions include those who committed the crime, victims of the crime, members of the public, and law enforcement. Offenders make a concerted effort to compensate victims for their losses and communicate with victims or representatives of victims. A victim should be active in all phases of the process and contribute to determining the sanctions imposed on an offender.

Family conferences are not used in Singapore as a substitute for formal criminal procedures to redirect juvenile offenders away from the criminal justice system. This is in contrast to the practices followed in Australia and New Zealand.¹⁶ It provides services to chosen juvenile offenders who have either been found guilty of the charges levied against them or have pleaded guilty to those charges. According to (Subordinate Courts of Singapore 1998a), the following are the goals that should be accomplished by family conferencing: to ensure that the juvenile understands the seriousness of the offending behaviour; to minimise the likelihood of the juvenile committing additional offences; to allow the juvenile to accept responsibility for the of-

¹⁴ Constance L. Chapple, "Self-Control, Peer Relations, and Delinquency," *Justice Quarterly* 22, no. 1 (March 1, 2005): 89–106, <https://doi.org/10.1080/0741882042000333654>.

¹⁵ Gordon Bazemore and Leslie Leip, "Victim Participation in the New Juvenile Court: Tracking Judicial Attitudes Toward Restorative Justice Reforms," *The Justice System Journal* 21, no. 2 (2000): 199–226.

¹⁶ Susan Young, Ben Greer, and Richard Church, "Juvenile Delinquency, Welfare, Justice and Therapeutic Interventions: A Global Perspective," *BJPsych Bulletin* 41, no. 1 (2017): 21–29, <https://doi.org/10.1192/pb.bp.115.052274>.

fending behaviour; to address the issue of family and community accountability; and to give the victim(s), when this is possible, the opportunity to contribute to the cautioning process.¹⁷

The general public acts as a mediator, assisting victims while supporting and fulfilling obligations imposed on criminals. Mediation is made more accessible by those who uphold the law. Children and families are the key sources of information for perpetrators' rehabilitation because the primary focus of restorative justice is on the benefit and positive development of those affected by the crime. It is generally agreed that children are capable, and it is widely acknowledged that they possess both preventative and proactive talents. To rehabilitate the perpetrators, it is required to change the attitudes held by social institutions and the actions taken by adults. Rehabilitating perpetrators requires the active participation of the perpetrators and typically involves learning by doing, counselling, and therapy to encourage the associated parties' participation. Aspects relating to attaining public protection through the efforts of the court system partnered with the public to promote prevention are critical tenets of restorative justice. The confinement period only applies to the most recent attempt. The participation and support of the general public are essential to the success of the restoration project. People feel safe and confident about the role of the juvenile justice system, schools are involved, families and public institutions can prevent crime, and there has been an increase in social bonding and reintegration. These are the achievement indicators for the restoration of public protection. If the number of recidivists has decreased and the perpetrators are under general supervision, then the restoration of public protection has been successful.¹⁸

Howard Zehr, a pioneer of restorative justice in the United States, introduced the “restorative lens,” in which crime is seen as a violation of individuals and relationships between individuals. Justice is interpreted as a joint search for solutions through healing and reconciliation. In other words, the paradigm of restorative justice has shifted the conventional view of crime from violating norms that cause losses to individuals who are highly affected by crime; to sentencing and imposing misery, moving on to loss repair. A key element in the restorative justice paradigm is loss restoration.¹⁹

Zehr further reminded us that restorative justice is more precisely defined in contrast to the “adversarial system” in the conventional justice in Western countries where both parties (state/prosecutors face the defender/defendant) “fight each other” in front of “referee,” where the judge leads the trial. Crimes in restorative justice are understood as losses imposed on victims and their communities, while in the adversarial system, it is understood as a violation of the state. The public actively performs restorative justice, where victims are assisted in explaining how losses should be remedied, and perpetrators are encouraged to be responsible. At the same time, the adversarial system is organised and controlled by professionals, where victims are generally prevented from explaining their losses.

Some scholars believe the criminal justice system's real purpose is to promote public peace as a peace promoter, not punishment. This vision is known as restorative justice. The guidelines

¹⁷ Suriakumari Sidambaram, “The Role of Police, Prosecution and the Judiciary in the Changing Society—the Singapore Approach,” *Resource Material Series*, no. 55 (2000): 303–35.

¹⁸ David B Wilson, Ajima Olaghere, and Catherine S Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis* (Inter-university Consortium for Political and Social Research, 2018).

¹⁹ Anna Nylund, Kaijus Ervasti, and Lin Adrian, eds., *Nordic Mediation Research* (Cham: Springer International Publishing, 2018), <https://doi.org/10.1007/978-3-319-73019-6>.

in restorative justice have three critical principles: groups "owning" the conflicts (including crime), the existence of materials and symbolic remedies for the crime victims, and social reintegration for the perpetrators.²⁰

The conventional criminal justice system generally focuses on three questions. First, what laws have been broken?; the second, who did it?; and the third, what do the perpetrators deserve? Furthermore, in the perspective of restorative justice, the questions are entirely different: who has been hurt; what are their needs; and whose obligations are these?²¹

The variety of values directing people to play their role and participate in the restorative justice process of the juvenile criminal justice system in Indonesia can be found in the country's many different cultures, as well as the diversity of behavioural habits that exist within the society. The culture and system of Indonesia interact with one another and colour each other, much as the legal system in Indonesia is tinted by a cultural system, which together produces a legal culture within the Indonesian legal system.²²

According to Menski²³, all of the community's values are gathered from a variety of sources, each of which must be acknowledged and comprehended as values that have the potential to serve as the source of law within the community. According to Menski's interpretation, this means that Legal Pluralism has the potential to resolve the scenario and conflict that results from the rigorous application of each distinct source of law. In his words, Menski explains that "Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law-making sources rules roots absolutely."²⁴ In other words, Legal Pluralism fills the space in the middle of the triangle because it refers to all of those scenarios. It would appear that "perfect" justice can be found at the centre of this triangle, where all the conflicting forces have been brought to a state of equilibrium.

Restorative Justice System in Indonesia

Plurality, also known as *Bhinneka*, is characteristic of Indonesia due to the country's many different languages, cultures, and ethnic groups. Indonesia's long-term goal is to build a secure, forward-thinking nation and closely knit together. Therefore, avoiding Pluralism is equivalent to avoiding diverse realities of the various perspectives and views within the Indonesian community.²⁵ Different legal systems or cultures coexisting inside a single political community are examples of legal Pluralism. There are many different manifestations of Pluralism. Vertical or hierarchical Pluralism is characterised by the existence of a "higher" and "lower" legal system

²⁰ Joseph Robinson and Jennifer Hudson, "Restorative Justice," *Willamette Journal of International Law and Dispute Resolution* 23, no. 2 (2016): 335–66.

²¹ Mark S Umbreit and Marilyn Peterson Armour, "Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community," *Washington University Journal of Law & Policy* 36 (2011): 65–89.

²² Brian Septiadi Daud and Irma Cahyaningtyas, "Criminal Justice System Toward Children With Legal Conflict Seen In Justice Restorative Perspective," *Jurnal Hukum Prasada* 7, no. 1 (April 7, 2020): 14–26, <https://doi.org/10.22225/jhp.7.1.1223.14-26>.

²³ W. Menski, "Remembering and Applying Legal Pluralism: Law as Kite Flying," January 1, 2014, 91–108.

²⁴ Samuel Hamonangan Simanjuntak and FX Joko Priyono, "Legal Pluralism as Pancasila's Reflection to Realise Substantive Justice in Law Enforcement and Law-Making," *Pancasila: Jurnal Keindonesiaan* 3, no. 1 (April 25, 2022): 37–48, <https://doi.org/10.52738/pjk.v2i1.88>.

²⁵ Reimar Schefold, "The Domestication of Culture: Nation-Building and Ethnic Diversity in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 154, no. 2 (1998): 259–80.

or culture. On the other hand, horizontal Pluralism refers to a situation in which all sub-cultures or sub-systems are accorded the same level of legitimacy.²⁶

The principles of restorative justice are supported across Indonesia by the aspects of customary law common to each country's region.²⁷ The violation of custom or activities performed by custom is viewed as a problem for which customary law provides a solution. In some areas, customary law and justice are still considered, and the idea of restorative justice is not novel.²⁸

Indigenous Peoples' Practices

Community involvement in the law enforcement process is expected to be a form of control and empathy in the sense of sensitivity to the problems faced by the community, social changes, public necessities, and the state of the community's real responsibility in the field of law. Theoretically, the community is defined as a form of life setting that is more or less independent, an orderly relationship pattern between people who live together with unavoidable independent reality and objectivity vis a vis members of the concerned group.²⁹ Besides, social problem-solving by the community in many things can also serve to fill and complete the act of handling by the government (state) institution. Administratively, Baduy Community is in Kanekes Village, Leuwidamar District, Lebak Regency, Banten Province. Lebak Regency is located in the southern part of Banten; thus, it is also called Southern Banten. The reason given by Jaro Saija for the emergence of Inner Baduy and Outer Baduy is like the formation of heaven and earth, the appearance of men and women, the appearance of paradise and hell, etc. Outer Baduy consists of a Jaro, that is, Jaro Saija, and a village secretary originating from out of the Baduy tribe having a civil servant status. There is a monthly meeting in the outer Baduy community; thus, Jaro Saija is invited like other Village Heads. Inner Baduy is led by Puun, comprised of three Puun since there are three areas.

Some violations have occurred in the Baduy Tribe (a native Sundanese tribe of Banten who still maintains anti-modernisation traditions, both in how they dress and other lifestyles. The Baduy-Rawayan tribe lives in the Kendeng Mountains Cultural Heritage area of 5,101.85 hectares in the Kanekes area, Leuwidamar District, Lebak Regency), i.e., murder, theft, and adultery. In case of violation in the Baduy community, those who violate will usually confess their action, followed by a customary ceremony called *ngabokoran*, by making available *keris*, mori cloth, ringgit money, incense, betel, uncaria, *tumpeng*, 40 later followed with *tangkesan* by par-anormal.

The problem-solving mechanism includes the early stage with confessing to *akhlak* (morality), followed by *silih ngahampura* (forgive each other) for the act witnessed by *Jaro* (head of a hamlet or village), if deemed necessary, taking an oath, in case of murder, the sanction: besides

²⁶ L.M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

²⁷ Virginia Garcia, "The Enforcement of Restorative Justice in Indonesian Criminal Law," *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (April 10, 2020): 22–35, <https://doi.org/10.22219/ljih.v28i1.10680>.

²⁸ Simon Butt and Tim Lindsey, "Traditional and Customary Law: Adat," in *Indonesian law*, ed. Tim Lindsey and Simon Butt (Oxford University Press, 2018), 0, <https://doi.org/10.1093/oso/9780199677740.003.0007>; Nur Rochaeti and Rahmi Dwi Sutanti, "Revitalisation of Customary Court in the Juvenile Criminal Justice System in Indonesia," in *SHS Web of Conferences*, ed. A. Raharjo and T. Sudrajat, vol. 54, 2018, 07011, <https://doi.org/10.1051/shsconf/20185407011>.

²⁹ Theodore M Steeman, "Religious Pluralism and National Integration" (Dissertation, Cambridge, Harvard University, 1973).

the previous, also 40 change clothes, 40 *tumpeng*, imprisonment in Dangka (a term for Baduy people who live outside the traditional area) for 40 days. Serious crimes: adultery, murder, *san-tet* (witchcraft), injuring but not causing death (slash). Light violations: riding vehicle. Jaro (village head) is appointed through descent choice and determined by the paranormal. Children in Baduy Tribe are circumcised at odd ages: five and seven years old, while for marital age: 15-16 years old, aiming at reducing adultery risk. (Non-formal) Education in Baduy Tribe is hunting. The sanction shall be social work in case of violation. The most serious customary violation is principally honesty and righteousness in implementing customary law.

Inner Baduy has some different characteristics and rules from those of Outer Baduy. Principally, however, their difference is the strictness and looseness of customary regulations they must enforce. Inner Baduy Community has stricter customary rules than Outer Baduy Community. However, in the case of the concept of Baduy customary law, the two have their respective role. According to Jaro Saija, Inner Baduy Community is required to go into seclusion. Seclusion here is not defined as meditation but as strengthening/conserving Baduy practice, confirming *sunda wiwitan* religion. Outer Baduy Community, meanwhile, is assigned to be pan-amping, to guard Inner Baduy Community that is in seclusion; thus, they also contribute to strengthening the custom. Based on the principle differences, Inner Baduy has a stricter rule in implementing customary law and conserving Baduy's custom.

Outer Baduy has a looser rule but helps Inner Baduy to conserve the custom. Prohibitions in Baduy Community are based on Baduy's basic philosophy, *lojor teu meunang dipotong*, *pondok teu meunang disambung* (if it is too long, it should not be cut, if it is too short, it should not be spliced). According to Jaro Saija, the basic concept of teaching in Baduy is nature balance and conservation. Thus, the Baduy community should conserve nature and not be against the laws of nature (see figure 1).

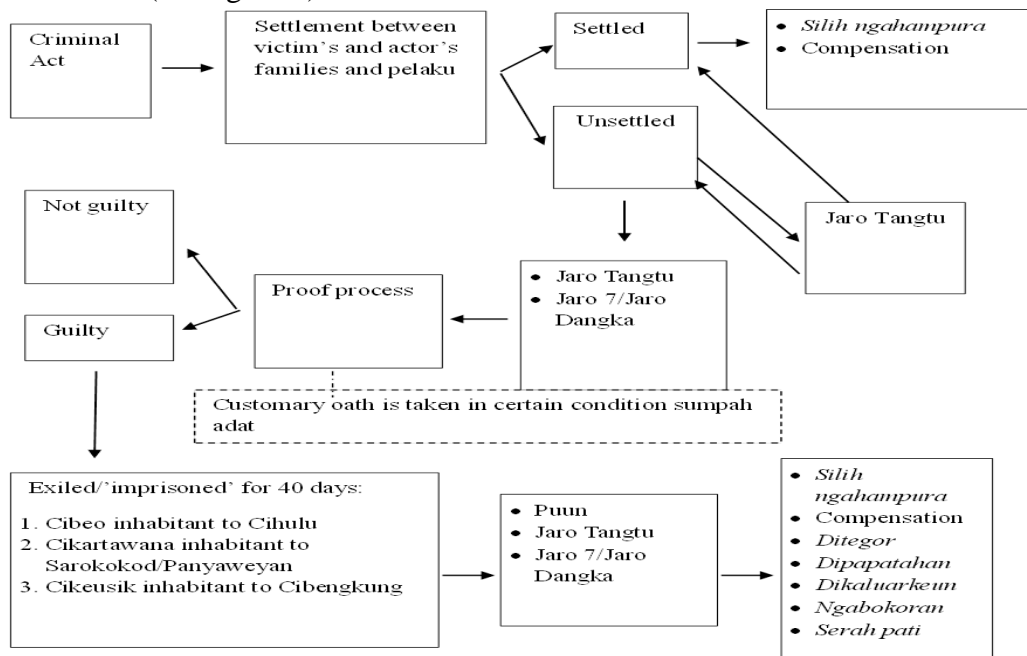


Figure 1. A criminal act settlement procedure in the customary criminal law of Baduy³⁰

³⁰ Ferry Faturrahman, "Hukum Pidana Adat Baduy Dan Relevansinya Dalam Pembaharuan Hukum Pidana," *Law Reform* 5, no. 2 (October 2, 2010): 1–38, <https://doi.org/10.14710/lr.v5i2.12493>.

The explanation in figure 1 namely: *Pelaku* = offender; *Silih ngahampura* = forgive each other; *Dikualuarkeun* = kicked out from Inner Baduy to Outer Baduy, or banished from Outer Baduy to outside Baduy (for Outer Baduy members); *Ditegor* = warned; *Dipapatahan* = being advised; *Jaro Tangtu* is a jaro (village head) in Inner Baduy; *Jaro 7/Jaro Dangka* is part of the customary structure assigned to enforce the (criminal) law of Baduy custom, comprised of seven people and is in Outer Baduy; *Puun* is the highest figure in each of Inner Baduy, sacred in spirituality; *Ngabokoran* is a spiritual cleaning ceremony for a not serious criminal act committed in Cihulu, Sarokokod/Panyaweyan, Cibengkung (depending on where the actor originated from).

Figure 1 depicts that Anything needed for *bokor* is provided by the actor, consisting of *sereh*/betel, *uncaria*, apu, incense, *boeh*/shroud, *keris*. *Sereh* is then *didahar*/eaten by customary figures: *Puun*, girang serat, baresan salapan, jaro tangtu. The one to decide the actor is *Jaro Tangtu* and *Puun*, *Puun* then continues the process with the ancestors; *Serah pati* is a spiritual cleaning ceremony similar to *bokor* (a large wide-brimmed dish (usually made of metal))³¹ but for a serious criminal act (causing death). The customary criminal law of Baduy is not codified in a book. The customary criminal law of Baduy is not written. According to *Jaro Saija*³², to conserve the knowledge of the customary criminal law of Baduy, once every two months, all people gather in the court of each Inner Baduy village (Cibeo, Cikartawana, Cikeusik). In the forum, any prohibitions in Baduy and sanctions are announced. Besides the platform, the knowledge of the customary criminal law of Baduy is acquired through oral culture in daily life; thus, every generation in Baduy is aware of the law.

In the customary criminal law of Baduy, an individual who commits a criminal act must be cleaned physically and spiritually. Such cleaning is a form of criminal actors' accountability. Physical cleaning is the actor's accountability to a victim through the sanction received. The sanctions include *ditegor*/warned, *dipapatahan*/advised, *silih ngahampura*, compensation, through kicked out from Inner Baduy to Outer Baduy.

The traditional judicial system cannot replace restorative justice in Austria, New Zealand, and Norway.³³ It is all part of the system. It is the standard, and going to court is only done as a last resort if restorative justice cannot be carried out or is unsuccessful. Because of the new laws passed, restorative practices are now at the centre of the juvenile justice system in Northern Ireland. In the circumstances like this, it is essential to ensure that victims are not coerced into participating in the proceedings against their will. It is very feasible to implement safeguards to ensure this does not occur.³⁴

Customary Law Characteristics in Indonesia

Indonesian legal system demonstrates that the structure of Indonesian society possesses two unique characteristics: horizontal and vertical. In a horizontal sense, it is characterised by social units differentiated by differences in factors such as ethnicity, religion, customs, and ge-

³¹ Dody Kristianto and Nur Seha, "Nilai Moral Dalam Tanda Basa Baduy," *Kandai* 12, no. 2 (2018): 269–82.

³² Interview, Jaro Saija, Baduy, Thursday, September 8 2021.

³³ Tony F. Marshall, *Restorative Justice: An Overview* (London: Home Office, Research Development and Statistics Directorate, 1999).

³⁴ Marian Liebmann, *Restorative Justice: How It Works.*, Restorative Justice: How It Works. (London, England: Jessica Kingsley Publishers, 2007).

ographic location. According to Furnivall, the society that exists in Indonesia is referred to as a plural society.³⁵ In the meantime, the structure of Indonesian society may be vertically characterised by vertical disparities. These vertical differences can be seen in upper- and lower-layer levels and rural and industrial-layer levels. It contributes to development inequality since some people continue to engage in agricultural activities. On the other hand, specific individuals are required to advance into the world of industry and even the world of information to participate in what Fred W. Riggs refers to as the prismatic society.³⁶

The customary law characteristics in Indonesia show that each region supports the implementation of restorative justice. Due to the customary violations or customary offences, and settlement mechanisms, the customary law has its views. The existence of customary justice in some areas is still considered, while restorative justice, which has been introduced previously, is not a new concept. Marc Levin stated that once considered obsolete, ancient, and traditional, the restorative justice approach is now recognised as a progressive approach.³⁷

Restorative justice is based on *Pancasila* (the ideological pillar of the Indonesian state) as a vehicle to overcome children's delinquency in the future and is based on the substantive and structural aspects. Based on this, *Pancasila* is the source of all sources in Indonesian law; the ambience of philosophical basis provides the grounds for a philosophical justification so that the reform of legal structure for law in the execution of criminal sanctions based on *Pancasila* should be carried out accordingly. A philosophical basis is a justification that bases its legitimacy upon considering value aspects and legal principles. Indonesia has a value system based on the state philosophical foundation called *Pancasila* as the philosophical values.³⁸ Substantially, it is the idea to codify and/or unify the legal formation of the restorative justice system in Indonesia based on legal politics, which has a unified legal system between substantial and formal criminal law. Restorative justice is performed through an amicable discussion with the mechanisms involving the religious leaders and community leaders without involving the law enforcement officers to avoid psychological pressures on children. Furthermore, it is necessary to regulate the provisions on the types of actions to perform the settlement processes through an amicable discussion (restorative justice). The law provides general criteria related to the therapeutic restorative justice processes. The victim's position is to provide an agreement or convey his opinions to reach a consensus so that no party will experience losses or be pressured to express their views. The offender is allowed to express his opinion and the ability to respond to the victim's request. As a significant matter of fact, the practice of restorative justice offers legal certainty, justice, and benefits for all parties to overcome the delinquency of children in the interest of promoting the general welfare of the community. The reform of criminal law is connected to many facets of policy, such as social policy, criminal policy, and law enforcement

³⁵ Nasikun, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia* (Yogyakarta: Fakultas Ilmu Sosial dan Politik UGM, 1974).

³⁶ Ronny Hanitijo Soemitro, *Studi Hukum Dan Masyarakat* (Bandung: Alumni, 1985).; Fred Warren Riggs, *Administration in Developing Countries: The Theory of Prismatic Society*, ed. Dayton David MacKean (Boston: Houghton Mifflin, 1964).

³⁷ Eva Achjani Zulfa, "Keadilan Restoratif Indonesia, Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana" (Dissertation, Jakarta, Universitas Indonesia, 2009).

³⁸ Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 327–58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

policy. It is influenced by many facets, such as the sociopolitical, socio-philosophical, and sociocultural underpinnings, and it will provide the norm contents and criminal law substances of the future.³⁹

Restorative justice is a reconstruction of an integrated criminal justice system as part of the Indonesian legal system reform. Structurally, in the restorative justice process, the judicial process involves the public in the discussion mediation to obtain an agreement between the victim, the perpetrator, the victim's family, the perpetrator's family, and the involved parties directly related to the case.⁴⁰ Therefore, in its relationship with public participation in efforts to prevent crime, the institutions that make up the village structure should, in this particular instance, provide facilities for mediating all interested parties in the discussion to reach an agreement between victims and their families, perpetrators and their families, and the public by involving the religious leaders, community leaders, and teachers. This should be done to bring about reconciliation between the parties involved.

Performing an education in society so that the law can be developed and accepted as a manifestation of a nation's self-image is what we mean when we talk about legal culture. People get enlightenment when they become aware that there is more than one legal way to approach a situation in this world due to the presence of legal culture and the discourse surrounding it. The law is functional and is ingrained in a sociocultural matrix in a culture where it is practised. The power of the public or the community will direct, limit, and decide how far and how the law will run and how it will operate and apply in society. The ideals upheld by the people in charge of a particular legal system will affect the attitudes and behaviours of those living in that nation. *Pancasila* is the name given to these principles by the people of Indonesia. For it to function on the practical level, its execution requires a specific quantity and quality of human resources.⁴¹

Human involvement in law enforcement shows the relationship between culture and law. Legal culture determines people's attitudes, ideas, and values toward laws. Friedman stated that differences in education, gender, ethnicity, nationality, income, and others could influence someone's legal culture. Legal culture is key to understanding the differences between one legal system and others. In the restorative justice system, the role of the community is greatly important, starting from understanding to implementing the justice system. Even the restorative justice system will fail if the community does not participate in the implementation of processes.⁴² When a sentence is finally handed down, a scientific classification review is used to determine the right level of treatment for the offender. They are then moved to an appropriate correctional institution by an individualised treatment plan. Inmates participate in various pro-

³⁹ William R. Wood, Masahiro Suzuki, and Hennessey Hayes, "Restorative Justice in Youth and Adult Criminal Justice," September 15, 2022, <https://doi.org/10.1093/acrefore/9780190264079.013.658>.

⁴⁰ Sri Hartanto, Indah Sri Utari, and Ridwan Arifin, "Implementation of Penal Mediation in the Perspective of Progressive Law (Study at the Semarang City Police Department)," *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): 161–88.

⁴¹ Jagad Aditya Dewantara et al., "Pancasila as Ideology and Characteristics Civic Education in Indonesia," *International Journal for Educational and Vocational Studies* 1, no. 5 (July 20, 2019): 400–405, <https://doi.org/10.29103/ijevs.v1i5.1617>.

⁴² William R. Wood and Masahiro Suzuki, "Four Challenges in the Future of Restorative Justice," *Victims & Offenders* 11, no. 1 (January 2, 2016): 149–72, <https://doi.org/10.1080/15564886.2016.1145610>.

grammes designed to help them adjust to life outside of prison in preparation for their eventual release, which may come in the form of parole or the natural expiration of their sentence.⁴³

The classification review consists of two parts: classification research, which investigates the inmate's personal information, and classification examination, which examines the inmate's IQ, personality, and aptitude. Different facilities, types of detention, and employment are assigned to different treatment levels for inmates. In addition, during their sentences, routine and ad hoc evaluations are conducted to modify the offenders' treatment levels by the extent to which they have progressed.⁴⁴

An innovative punishment model known as the "Accommodation System Classifying Convicts by Security Level" was recently implemented and is currently in use with the goals of reducing the rate of recidivism and improving the efficiency with which inmates are housed. Additionally, it developed a Correctional Recidivism Prediction Index (CO-REPI) that categorised inmates into five levels to analyse the possibility of subsequent convictions at an early stage based on the results of 23 evaluation tests. This index categorises inmates based on their likelihood of committing additional crimes in the future.

Even throughout the time spent adjusting, students continue to gain knowledge. Education in the classroom can help inmates expand their knowledge, and intensive personality education can help them acquire a social consciousness and a spirit of law-abiding behaviour. In addition, to promote offenders' successful reintegration into society, programmes specifically tailored to the inmates' characteristics, such as education for the rehabilitation of the disabled, are provided.

To provide inmates with intensive personality education, their educational requirements are categorised as either primary education or re-education, depending on the stage of their sentences. Changes in inmates can be attributed to the introduction of various programmes, including those dealing with constitutional value and the humanities, communication, and group counselling. Inmates who are required to have an education are allowed to participate in a school qualification examination class. Additionally, opportunities to earn a degree, such as classes offered by the Korea National Open University and commissioned education classes offered by community colleges, have been made available to these inmates to encourage them to work toward a more positive future. To aid inmates with disabilities in becoming self-sufficient members of society, specialised programming has been developed and implemented. These programmes are exemplified by the Comprehensive Rehabilitation Center for the Disabled, run at the Yeosu Correctional Institution, and the Braille Training Program, run at the Cheongju Correctional Institution.

By capitalising on the offenders' interest in various subjects, we are discovering new ways to effect change in them. Inmates are encouraged to discover emotional stability through participation in artistic and religious activities, and they are allowed to reconnect with society through viewing various reformation programming programmes. The availability of various cultural and artistic programmes has increased the number of opportunities for inmates to enjoy

⁴³ Derita Prapti Rahayu et al., "Law Enforcement in the Context of Legal Culture in Society," *Law Reform* 16, no. 2 (September 27, 2020): 276–89, <https://doi.org/10.14710/lr.v16i2.33780>.

⁴⁴ Tim Brennan, "Classification for Control in Jails and Prisons," *Crime and Justice* 9 (January 1, 1987): 323–66, <https://doi.org/10.1086/449139>.

art. In conjunction with the Korea Arts & Culture Education Service, there are currently experience-based cultural and artistic performances taking place in 52 different correctional institutions. These performances include art, theatre, and music. These activities heighten the convicts' awareness of and receptivity to change. In order to help offenders establish mental stability through ongoing religious practises, religious rallies and rituals have been initiated, and counselling sessions with prominent religious people are made available. Programs such as education, liberal arts, dramas, sports, entertainment, and movies are broadcast on the general education and radio channels that make up Reformation Broadcasting. These programmes are tailored to the preferences of the convicts in Reformation Broadcasting's facilities. This type of programming not only acts as a link between inmates and society but also helps inmates acquire cultural understanding and emotional connections to that culture.

CONCLUSION

The findings of a study conducted on the Baduy community in Lebak, Banten, have resulted in the regulation and recognition of the presence of customary justice, as well as the implementation of this system to deal with issues that arose in their surroundings. To a significant extent, indigenous peoples are still subject to the legal punishments associated with customary law. A person who has broken the customary law of Baduy must undergo both a bodily and a spiritual cleansing. The purging demonstrates the responsibility that the individuals who committed the crimes bear. Cleansing on the outside in the form of holding perpetrators of crimes accountable to the victims of such crimes by the punishments that are meted out to them. The settlement of cases in the indigenous Baduy community is straightforward. The settlement prioritises forgiving one another (getting close to one another), as the primary goal of resolving cases is to create peace, restore balance to nature, and return the environment to how it was before. Regarding the legal culture, people's behaviours still respect and implement rulings given by customary courts. These decisions are made through traditional legal systems.

In the future, criminal law reform will be based on its logical substances to codify and unify restorative justice. This will be done based on the existence of general rules and guidelines on restorative justice in the criminal justice system, as well as the existence of legal principles for the implementation of restorative justice, which are formed based on the principles of national legal system formation, as well as the existence of organisational structure implementing the restorative justice. In addition, the reform in the process of administering restorative justice, criminal justice mechanisms and public participation in the form of discussion and mediation are brought together in order to reach an agreement between the offender, the victim, the victim's family, the offender's family, and any other parties involved in the case. An all-encompassing and exhaustive comprehension ought to be culturally formed within the public legal education system by encouraging public participation in comprehending the numerous legal products on restorative justice, as the nation's personality reflections are based on Indonesian-based restorative justice characters. The future reconstruction of the indigenous peoples' justice mechanisms needs to be governed as a sub-system within the mechanism of Indonesia's criminal justice system so that it can be included in the renewal of the legal system for indigenous peoples.

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