MIKAILALSYS
Journal of Multidisciplinary Sciences

e-ISSN : 2987-2286
p-ISSN : 2987-3924
Index: Harvard, Boston, Sydney, Copernicus, Sinta 4, Scilit, Semantic, Google, etc

https://doi.org/10.58578/mikailalsys.v4i3.12515

The Resolution of Criminal Offenses through Customary Law from a Restorative Justice Perspective

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Submitted:	Revised:	Accepted:	Published:
Sep 24, 2026	Oct 23, 2026	Nov 3, 2026	Nov 8, 2026

Abstract

Customary settlement of criminal offenses is an established conflict resolution practice in Indonesian society that shares key features with restorative justice. This study examined its legal framework within the Indonesian legal system, its relationship with restorative justice principles, and the limits of its application concerning legal certainty and victims' rights. Normative legal research was conducted using statutory and conceptual approaches. Primary, secondary, and tertiary legal materials were collected through library research and analyzed qualitatively using a descriptive-analytical method. The analysis identifies a constitutional basis for recognizing customary law in Article 18B(2) of the 1945 Constitution of the Republic of Indonesia, alongside its recognition under Article 2 of Law Number 1 of 2023 concerning the Criminal Code. Customary settlement aligns with restorative justice insofar as it emphasizes deliberation, reparation for victims, offender accountability, and the restoration of social relationships. Its application must nevertheless comply with statutory limits and uphold legal certainty, victims' rights, and human rights. The study concludes that customary settlement may serve as a complementary mechanism for resolving criminal offenses with a restorative orientation where permitted by national law, provided that participation is voluntary and the process is non-discriminatory. These findings clarify the importance of aligning customary dispute resolution with legal safeguards to reconcile community-based restoration with the protection of individual rights.

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Keywords: Customary Law; Restorative Justice; Criminal Dispute Resolution; Legal Certainty; Victims' Rights

INTRODUCTION

Customary law is a body of law that grows and develops within society based on values, norms, and customs passed down from generation to generation (Ariyanto & Anwar, 2026). The existence of customary law reflects the identity of Indonesian society, which is characterized by cultural diversity and different approaches to problem-solving in each region. Customary law does not merely serve as a guideline but also functions as a means of resolving various problems, including conduct considered to violate social norms and public order (Fatmawati et al., 2023). Problem-solving through customary law generally prioritizes deliberation, the restoration of social relationships, offenders' responsibility, and the involvement of relevant parties.

Indonesia's legal system fundamentally recognizes the existence of customary law communities, provided that their existence remains consistent with the principles of the Unitary State of the Republic of Indonesia. Such recognition is constitutionally established under Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which explicitly acknowledges and respects customary law communities and their traditional rights, subject to constitutionally prescribed conditions (Arifin et al., 2025). This provision demonstrates that customary law occupies an important position within Indonesia's positive legal framework.

The resolution of criminal offenses through the formal judicial system has so far tended to emphasize the establishment of the offender's guilt and the imposition of criminal sanctions based on statutory regulations (Arief, 2022). This approach is intended to maintain public order and provide legal certainty. However, the imposition of criminal penalties does not necessarily guarantee the recovery of victims' losses or the restoration of social relationships among offenders, victims, and communities. This limitation highlights the importance of restorative justice, which emphasizes repairing harm, strengthening offender accountability, and addressing victims' needs beyond the conventional focus on punishment (Fulham et al., 2025). This condition demonstrates the importance of an approach to resolving criminal offenses that is not solely oriented toward sanctions but also considers the

restoration of losses, offenders' accountability, and the restoration of the social balance disrupted by the commission of criminal offenses.

One approach that emphasizes these restorative aspects is restorative justice. Restorative justice is an approach to case resolution that involves offenders, victims, the families of the parties involved, and relevant community members in seeking a fair resolution by focusing on restoring the conditions affected by criminal offenses (Jaelani, 2023). This approach gives attention to victims' needs, offenders' responsibility for their actions, and efforts to repair damaged social relationships.

These characteristics of restorative justice are closely related to several problem-solving practices based on customary law (Suryanto, 2023). Violations are resolved through deliberation, negotiation, the imposition of customary sanctions, compensation payments, apologies, and the fulfillment of certain obligations to restore relationships between offenders, victims, and communities (Mamahit et al., 2026). These approaches essentially position restoration as one of the objectives of dispute resolution. Customary law can be examined as an approach to resolving criminal offenses that embodies values consistent with restorative justice, particularly in terms of offender accountability, victim restoration, and the reconstruction of social relationships. Nevertheless, customary law and restorative justice cannot be considered entirely equivalent, as they differ in their normative foundations, sources of authority, procedural mechanisms, and scopes of application (Widjajanto et al., 2025).

Article 2 paragraphs (1), (2), and (3) of Law Number 1 of 2023 concerning the Criminal Code stipulate that:

"Laws prevailing within society remain applicable and may determine an act as a criminal offense even though it is not regulated under the Criminal Code. Such laws apply only within the territorial jurisdiction where those laws exist, insofar as the matter is not regulated under the Criminal Code, and must be consistent with Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the community of nations. The procedures and criteria for determining laws prevailing within society shall be further regulated through a Government Regulation."

The explanation of Article 2 indicates that the Law recognizes the existence of customary law as law prevailing within society; however, its application remains subject to limitations and must satisfy the requirements of applicable law (Fatmawati et al., 2023). This

demonstrates that laws prevailing within society are granted recognition within the national criminal law framework, but their application cannot be separated from the principles of legality, Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and the applicable legal principles and limitations.

The application of customary law in resolving criminal offenses faces several challenges, including differences in norms and forms of sanctions among customary law communities (Ariyanto & Anwar, 2026). Furthermore, issues arise concerning the legal status of customary decisions, the protection of victims' rights, the voluntary nature of the parties' participation, and their compatibility with statutory regulations and human rights.

Not all criminal offenses can be resolved through customary law with identical legal consequences, as the settlement of criminal cases and the termination of criminal proceedings must remain subject to applicable statutory provisions. Although customary justice mechanisms may provide an alternative means of resolving criminal disputes, customary decisions do not automatically extinguish the state's authority to prosecute. Their legal effects must therefore be assessed in accordance with the applicable criminal law framework and procedural requirements (Hardinanto et al., 2026). Customary law-based dispute resolution aimed at restoring social relationships needs to be distinguished from resolution mechanisms that directly affect criminal proceedings. Accordingly, customary law can continue to be recognized without disregarding national law, legal certainty, utility, and the protection of the rights of all parties involved (Suryanto, 2023).

Based on the foregoing discussion, the resolution of criminal offenses through customary law from a restorative justice perspective constitutes an important issue for further investigation. This research is necessary to analyze the position of customary law in resolving criminal offenses, identify the restorative justice values embedded in customary resolution procedures, and examine the compatibility of their implementation with Indonesia's criminal justice system.

This study aims to analyze the legal framework governing the settlement of criminal offenses through customary law in the Indonesian legal system, examine its relationship with restorative justice principles, and identify the limits of its application in terms of legal certainty and the protection of victims' rights

METHODS

This study employs normative legal research, namely research conducted by examining legal norms, legal principles, and statutory regulations related to the resolution of criminal offenses through customary law from a restorative justice perspective (Ahmad et al., 2024). The approaches employed include the statutory approach and the conceptual approach to analyze the regulation of customary law within Indonesia's criminal law system and its relationship with the principles of restorative justice (Muhaimin, 2020).

The data sources used consist of secondary data comprising three types of legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Criminal Code, Government Regulation Number 55 of 2025 concerning Procedures and Criteria for Determining Laws Prevailing within Society, Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice, Regulation of the Indonesian Prosecutor's Office Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. These regulations are used to examine the recognition of customary law and the implementation of restorative justice at various stages of criminal law enforcement. The relevance of customary institutions in supporting restorative justice is also reflected in the customary deliberation mechanisms, the imposition of customary sanctions, and efforts to restore social harmony within indigenous communities (Siregar et al., 2026). Secondary legal materials include law books, scientific journals, research articles, previous research findings, and expert opinions discussing customary law, criminal law, and restorative justice. Meanwhile, tertiary legal materials include legal dictionaries, the Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia), and encyclopedias, which are used to clarify terms relevant to the research (Ramadhanti, 2022).

Legal materials are collected through library research by identifying and inventorying relevant statutory regulations and literature. Subsequently, the legal materials are analyzed qualitatively using a descriptive-analytical method to explain and analyze the position of customary law in the resolution of criminal offenses, its compatibility with the principles of restorative justice, and the limitations of its application within Indonesia's criminal law system (Gunardi, 2022).

RESULTS

Legal Regulations Governing the Resolution of Criminal Offenses through Customary Law within the Indonesian Legal System

The research findings indicate that the resolution of criminal offenses through customary law within the Indonesian legal system has received constitutional recognition and has been accommodated within statutory regulations. Such recognition demonstrates that customary law constitutes part of the national legal system and that its existence must be respected as long as it remains applicable, develops within society, and does not conflict with the principles of the Unitary State of the Republic of Indonesia. The regulation of customary law within the national criminal justice system also demonstrates recognition of laws prevailing within society, providing opportunities for the application of customary legal norms subject to established requirements and limitations. Further regulations concerning the procedures and criteria for determining laws prevailing within society demonstrate efforts to clarify the position of customary law within the national legal system. The research also reveals that restorative justice has been accommodated across various stages of law enforcement, including the police, prosecution service, and judicial institutions, particularly in relation to restoring victims' losses, ensuring offenders' accountability, and rebuilding social relationships. Nevertheless, peace agreements reached through customary institutions do not automatically terminate investigations, prosecutions, or court proceedings, as their legal consequences remain subject to applicable statutory provisions and the authority of law enforcement institutions. Furthermore, a distinction must be made between the recognition of customary law as law prevailing within society and the use of customary reconciliation mechanisms to resolve conflicts arising from criminal offenses. The former concerns the applicability of customary norms within the criminal law framework, whereas the latter emphasizes deliberation, restoration of losses, and the improvement of social relationships. Therefore, customary law can serve as a mechanism supporting conflict resolution within the national legal system, provided that its application remains consistent with applicable legal provisions and institutional authorities.

The Relationship between Mechanisms for Resolving Criminal Offenses through Customary Law and the Principles of Restorative Justice

The research findings indicate that mechanisms for resolving criminal offenses through customary law are closely related to the principles of restorative justice, particularly in their orientation toward restoring victims' losses, ensuring offenders' accountability, resolving conflicts, and improving social relationships within communities. This relationship is reflected in customary resolution practices involving deliberation among victims, offenders, families, and customary leaders to reach mutually acceptable agreements. The forms of resolution include apologies, compensation payments, fulfillment of customary obligations, and other agreements intended to restore the consequences of criminal offenses. Through these mechanisms, offenders are expected not only to acknowledge their wrongdoing but also to assume responsibility for repairing the harm they have caused, while victims are given opportunities to express their interests, needs, and expectations regarding appropriate forms of restoration. The involvement of customary leaders and community members also plays an important role in facilitating communication, reducing tensions, and restoring relationships disrupted by criminal offenses. However, the findings demonstrate that not all forms of customary resolution automatically reflect restorative justice, as their implementation must ensure that victims' interests are fulfilled, offenders accept responsibility, and all parties participate voluntarily without coercion or pressure. Furthermore, customary resolution must consider the type of criminal offense and the stage of case handling, particularly because juvenile diversion and restorative justice mechanisms at the investigation, prosecution, and judicial stages have different legal requirements and institutional authorities. Accordingly, customary law can support the implementation of restorative justice through its community-based resolution mechanisms, provided that the process guarantees meaningful participation, voluntary agreement, offender accountability, victim protection, and compliance with applicable legal procedures.

Limitations on the Application of Criminal Offense Resolution through Customary Law from the Perspective of Legal Certainty and Victim Protection

The research findings indicate that the application of criminal offense resolution through customary law continues to face several limitations, particularly concerning legal certainty, victim protection, equality, and the legal consequences of customary agreements.

Differences in customary norms, resolution procedures, and forms of sanctions across customary law communities may create inconsistencies in their implementation, particularly when the existence, scope, and applicability of customary rules are not clearly established. Another significant limitation concerns the potential for pressure on victims during customary deliberations, especially when inequalities exist in social status, economic position, or family relationships between victims and offenders. Such conditions may undermine victims' freedom to accept or reject reconciliation and may result in their interests being subordinated to family harmony or community reputation. These concerns are particularly important in cases involving sexual violence, domestic violence, and criminal offenses against children, where resolution mechanisms must prioritize victims' circumstances, prevent intimidation, and comply with applicable legal provisions. The findings also demonstrate that customary sanctions must not result in discriminatory treatment based on gender, social status, family background, or an individual's position within the community, nor may they violate human rights or human dignity. In addition, customary agreements do not automatically eliminate criminal liability or terminate judicial proceedings, as their legal consequences remain subject to statutory provisions and the authority of law enforcement institutions. An example of the integration of customary law and formal legal mechanisms can be observed in Case Number 6/Pid.Sus-Anak/2026/PN Sml at the Saumlaki District Court, in which the diversion process involved the child, the victim, their respective families, legal counsel, the public prosecutor, the community counselor, and social workers. The agreement included an apology, payment of medical expenses, compensation amounting to IDR 1,000,000, and the fulfillment of customary obligations in the form of one pig and five liters of sopi. The diversion process was declared successful on September 29, 2026, demonstrating that customary obligations can be integrated into formal legal proceedings through an applicable diversion mechanism. Nevertheless, this case cannot be generalized to all criminal offenses because juvenile diversion is subject to specific legal requirements. Overall, the findings demonstrate that customary law has the potential to complement the national criminal justice system by supporting conflict restoration and community participation; however, its implementation requires clear customary norms, appropriate procedures, institutional coordination, legal certainty, voluntary participation, equality, and effective protection of victims' rights.

DISCUSSION

Legal Regulations Governing the Resolution of Criminal Offenses through Customary Law within the Indonesian Legal System

Customary law is a form of legal system that emerges, develops, and operates within the social life of Indonesian communities. It reflects the values, norms, and traditions maintained by local communities and constitutes an important component of Indonesia's pluralistic legal system (Ramadhan & Syahfrudin, 2023). Its existence is closely related to the values, customs, norms, and ways of life that communities preserve and maintain from generation to generation. Customary law focuses on restoration, conflict resolution, and the fulfillment of offenders' obligations toward victims or the community (Taqiuddin & Risdiana, 2022). These objectives can be realized through deliberation, apologies, compensation, or the implementation of customary sanctions within the community.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads as follows:

"The State recognizes and respects customary law communities and their traditional rights as long as they remain in existence and are consistent with societal developments and the principles of the Unitary State of the Republic of Indonesia, as regulated by law."

The meaning of the above article is that the state recognizes and respects the existence of customary law communities and their traditional rights, provided that such customary law communities remain in existence, are consistent with societal developments, and do not conflict with the principles of the Unitary State of the Republic of Indonesia and statutory provisions.

Furthermore, Article 28I paragraph (3) of the 1945 Constitution stipulates:

"Cultural identities and the rights of traditional communities shall be respected in accordance with the development of the times and civilization."

The meaning of the above article is to affirm that cultural identities and the rights of traditional communities are respected in accordance with the development of the times and civilization. These two provisions constitute the constitutional basis for respecting customary law communities and their legal values and practices.

The above constitutional recognition cannot be interpreted as granting unlimited authority to customary communities to determine the resolution of every criminal offense.

Recognition of customary law must continue to take into account applicable legal requirements, including the protection of human rights and legal certainty (Ariyanto & Anwar, 2026). Accordingly, customary law has a place within the national legal system, but its application must remain within the framework of the Constitution and statutory regulations.

Law Number 1 of 2023 concerning the Criminal Code (KUHP), in Article 2 paragraph (1), stipulates that the provisions of the legality principle under Article 1 paragraph (1) do not preclude the application of laws prevailing within society that determine an individual to be subject to criminal punishment even though the conduct is not regulated by statute. Furthermore, Article 2 paragraph (2) stipulates that such laws prevailing within society apply in the territory where those laws exist, insofar as the matter is not regulated under this Law and remains consistent with the values of Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the community of nations. Meanwhile, Article 2 paragraph (3) provides the basis for further regulation concerning the procedures and criteria for determining laws prevailing within society through a government regulation (Wijaya, 2022).

The above provisions demonstrate that national criminal law recognizes laws prevailing within society, including customary criminal law. However, it is important to distinguish between the recognition of customary law as a substantive legal basis for identifying conduct that may be subject to criminal sanctions and the resolution of criminal cases through customary reconciliation procedures. These two aspects have different legal implications, particularly regarding the determination of customary offenses, the imposition of sanctions, and the procedural authority to resolve criminal cases within the national criminal justice system (Faisal & Anwar, 2024). Article 2 of the Criminal Code regulates the applicability of laws prevailing within society within the context of criminal law, rather than establishing a general provision that automatically grants customary institutions the authority to terminate criminal justice proceedings. Therefore, an analysis of the resolution of criminal offenses through customary law must also consider regulations governing case resolution mechanisms and the authority of law enforcement officials.

Government Regulation Number 55 of 2025 concerning Procedures and Criteria for Determining Laws Prevailing within Society, which came into force on January 3, 2026, provides guidelines for local governments to establish customary criminal offenses that are

not regulated under the Criminal Code through regional regulations. The regulation also stipulates that if the elements of customary criminal conduct are identical or can be equated with criminal offenses already regulated under the Criminal Code, the provisions of the Criminal Code shall apply.

Regulation of the Indonesian National Police Number 8 of 2021 governs the handling of criminal offenses based on restorative justice at the police level. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 regulates the termination of prosecution based on restorative justice at the prosecution stage. Meanwhile, Supreme Court Regulation Number 1 of 2024 establishes guidelines for judges in adjudicating criminal cases based on restorative justice. These regulations demonstrate that the implementation of restorative justice in Indonesia is accommodated through different institutional mechanisms within the criminal justice system (Danial et al., 2022). These three regulations demonstrate that the restorative approach has been incorporated into the regulatory framework governing several stages of law enforcement, although each has its own requirements, scope, and implementation procedures (Jaelani, 2023).

Problem resolution based on customary law is not necessarily identical to the termination of investigations, the termination of prosecutions, or the discontinuation of proceedings before the court (Taqiuddin & Risdiana, 2022). A peace agreement reached through customary institutions does not automatically eliminate the authority of law enforcement officials to process a criminal offense. The legal consequences of reconciliation must be determined in accordance with the regulations applicable at the relevant stage of case handling (Halawa, 2025). Therefore, customary law procedures should be positioned as a form of resolution that can support social restoration while continuing to respect the authority of law enforcement institutions and the provisions of national criminal law.

The Relationship between Mechanisms for Resolving Criminal Offenses through Customary Law and the Principles of Restorative Justice

Restorative justice is an approach to resolving criminal offenses that emphasizes restoring the consequences arising from criminal acts, fulfilling victims' interests, and ensuring offenders' accountability (Fatmawati et al., 2023). This approach is not solely oriented toward the imposition of punishment but also considers the impact of criminal offenses on relationships between offenders, victims, families, and communities (Jaelani,

2023). Resolution through customary law is related to this approach because several customary mechanisms prioritize deliberation, reconciliation, restoration, and compensation for losses within community life (Halawa, 2025).

Regulation of the Indonesian Prosecutor's Office Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice defines restorative justice as the resolution of criminal cases involving offenders, victims, the families of offenders or victims, and other relevant parties in jointly seeking a fair resolution by emphasizing restoration to the original condition rather than retaliation (Jaelani, 2023). This definition demonstrates that the involvement of the parties and restoration constitute essential elements of the restorative approach.

Conflict resolution can be conducted through deliberative forums involving relevant parties and customary leaders. The forms of resolution may include apologies, compensation payments, the fulfillment of customary obligations, or other agreements accepted by the parties in accordance with the norms prevailing within the local community (Halawa, 2025). Such mechanisms intersect with restorative justice when the resolution is genuinely directed toward restoring losses, ensuring offenders' accountability, and improving social relationships (Sumaya, 2024). However, not all customary sanctions automatically reflect restorative justice. Sanctions that are solely oriented toward punishment, disregard victims' interests, or are imposed through coercion must be critically assessed based on the principles of restorative justice.

Every case resolution mechanism must be examined based on the type of criminal offense, applicable legal provisions, the authority of the institution handling the case, and the rights of victims and offenders (Mamahit et al., 2026). Accordingly, customary values can be utilized to enrich the restorative approach without disregarding the limitations established by positive law.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains diversion as the transfer of the resolution of juvenile cases from the criminal justice process to proceedings outside the criminal justice system. Article 5 emphasizes that the juvenile criminal justice system must prioritize the restorative justice approach, while Article 7 regulates the obligation to pursue diversion at the investigation, prosecution, and trial stages before the district court, subject to the requirements stipulated by law. This provision demonstrates that resolution mechanisms emphasizing restoration have been accommodated

within the national legal system, particularly in juvenile cases (Fatmawati et al., 2023). However, diversion under the Juvenile Criminal Justice System Law has its own requirements and cannot simply be equated with reconciliation conducted through customary institutions.

Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice provides a basis for assessing whether case resolution genuinely reflects restorative principles (Ramadhanti, 2022). Article 2 of the regulation establishes six principles, namely restoration of conditions, strengthening rights, victims' needs and interests, defendants' accountability, punishment as a last resort, consensual agreement, and transparency and accountability. Furthermore, Article 3 stipulates that the objectives of restorative justice include restoring victims, restoring relationships between defendants, victims, and/or communities, and encouraging defendants' accountability (Sumaya, 2024). This regulation also emphasizes that the implementation of restorative justice is not intended to eliminate criminal liability.

Based on these provisions, mechanisms for resolving criminal offenses through customary law can be analyzed using several indicators (Jaelani, 2023):

1. Victim restoration, namely whether the resolution addresses the physical, psychological, material, or social losses experienced by the victim.
2. Offender accountability, namely whether the offender acknowledges and assumes responsibility for the consequences of their actions through appropriate restorative measures.
3. Voluntariness and participation of the parties, namely whether victims and offenders participate in the resolution process without coercion or pressure from customary leaders, families, or communities.
4. Restoration of social relationships, namely whether the resolution helps reduce conflict and repair disrupted relationships.
5. Compliance with statutory regulations and human rights.

The use of these indicators is important because the success of customary resolution cannot be assessed solely based on whether reconciliation has been achieved or customary sanctions have been implemented (Fatmawati et al., 2023). Reconciliation achieved through pressure or coercion against victims does not necessarily fulfill the principles of restorative justice. Similarly, the provision of compensation alone does not automatically demonstrate

that victims' interests have been adequately restored. Genuine restorative justice requires voluntary and meaningful victim participation, appropriate restoration of harm, and substantive accountability on the part of offenders. Therefore, the success of restorative mechanisms should be assessed based on the actual fulfillment of victims' needs rather than merely the existence of formal reconciliation agreements (Siregar et al., 2026). Therefore, the assessment of customary mechanisms must consider the procedures followed, the position of the parties, the forms of offender accountability, and the outcomes achieved.

The restorative justice approach must provide victims with the opportunity to express their needs and interests (Ramadhanti, 2022). Customary mechanisms involving community leaders can help facilitate communication and conflict resolution, but the involvement of customary leaders must not replace victims' rights to express their consent or refusal. In unequal relationships, such as situations in which victims face social pressure or economic dependence on offenders, the deliberation process must be assessed more carefully (Sumaya, 2024). The principle of consensual agreement under Article 2 of Supreme Court Regulation Number 1 of 2024 is relevant to ensuring that reconciliation is not merely the result of a formal agreement but arises from the genuine will of the parties involved.

Resolution based on customary law must be distinguished from the formal criminal case resolution process regulated by the state (Hamzah, 2008). Regulation of the Indonesian National Police Number 8 of 2021 governs the handling of criminal offenses based on restorative justice within the scope of the police, whereas Regulation of the Indonesian Prosecutor's Office Number 15 of 2020 governs the termination of prosecution based on restorative justice. At the judicial level, Supreme Court Regulation Number 1 of 2024 provides guidelines for judges in adjudicating criminal cases through this approach. Each regulation has its own scope and requirements (Sumartono & Tanjung, 2026). Therefore, customary resolution does not automatically replace or terminate criminal proceedings without an appropriate legal basis.

The relationship between customary law and restorative justice lies in their shared orientation toward conflict resolution, offender accountability, victim restoration, and the improvement of social relationships (Halawa, 2025). Customary law can provide resolution mechanisms that are closely connected to the values and social life of local communities, while the principles of restorative justice provide a framework for assessing whether such processes are genuinely oriented toward restoration and justice for all parties (Sumartono &

Tanjung, 2026). The two can support one another provided that customary mechanisms are implemented voluntarily, without discrimination, with respect for victims' rights, and in accordance with national legal provisions.

Customary law cannot be considered restorative merely because it prioritizes deliberation or reconciliation (Jaelani, 2023). Its assessment must be based on the resolution process and outcomes, including the restoration of victims' losses, offender accountability, the voluntariness of the parties, and compliance with applicable law (Fatmawati et al., 2023). This perspective makes it possible to understand customary law not merely as a cultural heritage but also as a potential conflict resolution mechanism that supports restorative justice while continuing to consider legal certainty and the protection of human rights.

Limitations on the Application of Criminal Offense Resolution through Customary Law from the Perspective of Legal Certainty and Victim Protection

The resolution of criminal offenses through customary law has the potential to realize justice that is more closely aligned with the values of community life (Sumaya, 2024). Through deliberation and the involvement of customary leaders, conflict resolution can be directed toward restoring losses, ensuring offender accountability, and improving social relationships. However, the implementation of customary mechanisms cannot be separated from the principles of legal certainty and victim protection. These two principles are important to ensure that the resolution process does not merely produce reconciliation but also provides substantive justice for parties affected by criminal offenses.

Legal certainty requires customary norms to be applied clearly and consistently. Differences in rules, resolution procedures, and sanctions among customary law communities need to be regulated to prevent uncertainty or arbitrariness. Therefore, the application of customary law must consider the existence of norms that remain in force, their scope of application, and their compatibility with national law.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia recognizes and respects customary law communities and their traditional rights subject to certain requirements. This provision must be read together with Article 28D paragraph (1) of the 1945 Constitution, which guarantees recognition, protection, legal certainty, fair treatment, and equality before the law. These two provisions demonstrate that respect for

customary law must go hand in hand with the state's obligation to guarantee legal certainty and fair treatment.

Article 2 of Law Number 1 of 2023 concerning the Criminal Code also provides room for the applicability of laws prevailing within society, subject to the requirements and limitations established by law. Its provisions must be read together with Government Regulation Number 55 of 2025 concerning Procedures and Criteria for Determining Laws Prevailing within Society. These two legal instruments constitute an important basis for assessing the recognition of customary criminal law within the national legal system. However, it must be emphasized that recognition of laws prevailing within society as a basis for criminal punishment is different from the authority to resolve criminal cases through customary reconciliation. The two involve legal issues and consequences that are not necessarily identical.

Limitations on the application of customary law are also related to the protection of victims' rights. Resolution through family-based reconciliation can indeed provide victims with opportunities to obtain apologies, compensation, and the restoration of social relationships (Halawa, 2025). However, victims' interests must not be sacrificed merely to preserve family reputations or community harmony. Victims must be given the opportunity to express their losses and needs and determine their positions without pressure. If a customary agreement is reached through threats, intimidation, or power imbalances, the outcome of such a resolution should be questioned from the perspective of justice (Ramadhanti, 2022).

This principle is consistent with Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, which emphasizes the restoration of victims' conditions, the protection of their rights and interests, the accountability of offenders, and the restoration of relationships between offenders, victims, and communities (Supreme Court of the Republic of Indonesia, 2024). Article 2 establishes the restoration of conditions, strengthening of rights, victims' needs and interests, defendants' accountability, consensual agreement, and transparency and accountability as relevant principles in the implementation of restorative justice (Sumaya, 2024). Furthermore, Article 3 emphasizes that restorative justice aims to restore victims, restore relationships between defendants, victims, and/or communities, and encourage defendants' accountability. These provisions can serve as benchmarks for evaluating case resolution

through customary law, although their application must continue to consider the scope of the Supreme Court Regulation.

Victim protection must be prioritized, particularly in cases involving sexual violence, domestic violence, and criminal offenses involving children. Customary reconciliation does not automatically guarantee justice because it must take into account the victim's circumstances, the possibility of pressure, the type of criminal offense, and applicable legal provisions. In juvenile cases, diversion can only be implemented in accordance with the requirements of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, whereas the implementation of restorative justice in other cases must comply with the applicable regulations (Jaelani, 2023).

These limitations can be observed through the case resolution practices at the Saumlaki District Court. In Case Number 6/Pid.Sus-Anak/2026/PN Sml, as reported by the Supreme Court on October 4, 2026, the diversion process involved the child, the victim, their respective families, legal counsel, the public prosecutor, the community counselor, and social workers. The agreement reached included an apology, payment of medical expenses, material compensation amounting to IDR 1 million, and the implementation of customary resolution in the form of the provision of one pig and five liters of sopi. The diversion process was declared successful on September 29, 2026.

The above case demonstrates that customary resolution can be integrated with formal legal mechanisms to pursue victim restoration and provide children with opportunities to improve their behavior. The involvement of victims and their families in deliberations, accompanied by the fulfillment of compensation obligations, demonstrates attention to the consequences arising from criminal offenses. However, the successful implementation of diversion in one case cannot serve as a basis for concluding that all criminal offenses are suitable for resolution through customary law. The case involved a juvenile offense that employed the diversion mechanism under the Juvenile Criminal Justice System Law, meaning that its legal basis and requirements differ from those applicable to the resolution of general criminal offenses through other mechanisms.

Legal certainty also requires clarity regarding the legal consequences of customary agreements. Agreements reached through customary deliberations may serve to restore social relationships, but their effects on criminal proceedings are determined by the applicable statutory regulations. Regulation of the Indonesian National Police Number 8 of 2021

governs the handling of criminal offenses based on restorative justice at the police stage. Regulation of the Indonesian Prosecutor's Office Number 15 of 2020 governs the termination of prosecution based on restorative justice, whereas Supreme Court Regulation Number 1 of 2024 establishes guidelines for judges in adjudicating criminal cases based on restorative justice. Each regulation has its own provisions and requirements.

The application of customary law must consider equality and the prohibition of discrimination. Customary norms must not result in victims or offenders being treated unfairly on the basis of gender, social status, family background, or position within the community (Halawa, 2025). If a customary sanction contradicts human rights or results in treatment that degrades an individual's dignity, its existence cannot be justified merely on the grounds that the sanction constitutes a long-standing tradition. Recognition of customary law must be understood as respect for the values prevailing within society, rather than as justification for every practice carried out in the name of custom.

Research implications, customary law can serve as an alternative mechanism for resolving criminal offenses through restorative justice, provided that legal certainty and victims' rights are protected.

Research limitations, this study is limited to normative legal analysis and does not examine the empirical implementation of customary law in indigenous communities.

CONCLUSION

The resolution of criminal offenses through customary law represents a form of conflict resolution that is relevant to the principles of restorative justice within the Indonesian legal system. Recognition of customary law is constitutionally grounded in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and the provisions concerning laws prevailing within society under Article 2 of Law Number 1 of 2023 concerning the Criminal Code. The relationship between customary law and restorative justice is reflected in deliberative mechanisms, the restoration of victims' losses, offenders' accountability, and the restoration of social relationships. Nevertheless, the application of customary law is subject to limitations that must consider legal certainty, the protection of victims' rights, human rights, and applicable statutory provisions. Therefore, the resolution of criminal offenses through customary law can support the realization of restorative justice, provided that it is conducted voluntarily, without discrimination, and in accordance with

national law. Accordingly, customary law can become part of efforts to establish a criminal justice resolution mechanism that is oriented not only toward punishment but also toward restoring conditions and achieving balanced justice for victims, offenders, and society.

This study contributes to criminal law scholarship by examining the integration of customary law and restorative justice within Indonesia's national legal system.

Suggestions for future research should explore the practical implementation of customary law, particularly its effectiveness in protecting victims' rights and restoring social relationships.

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