

Reframing Penal Policy: Incorporating Community-Based Norms into Indonesia's National Legal Architecture

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ABSTRACT

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This article examines the urgency of integrating community-based norms into Indonesia's national penal policy as part of legal reform in the post-modern legal era. The current criminal justice system in Indonesia still largely reflects a centralized and positivistic legal tradition inherited from colonial structures, resulting in limited accommodation of local wisdom and restorative mechanisms that live within indigenous and local communities. This study addresses two primary research questions: first, how community-based norms function within Indonesia's socio-legal landscape; and second, how such norms may be incorporated into the national penal policy framework without undermining legal certainty and constitutional principles. This research employs a normative-juridical method with conceptual and comparative approaches, utilizing statutory regulations, legal doctrines, scholarly articles, and socio-legal perspectives as primary sources. The findings demonstrate that community-based norms, particularly those emphasizing restorative justice, social harmony, collective accountability, and consensus-based dispute resolution, possess significant potential to strengthen Indonesia's criminal law reform agenda. The novelty of this article lies in its proposal of a hybrid penal policy model that systematically integrates local customary mechanisms into formal criminal justice institutions through legal recognition, judicial discretion, and participatory governance. Academically, this study contributes to contemporary discourse on legal pluralism and penal reform by offering a contextual framework for harmonizing state law with indigenous normative systems in Indonesia.



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Introduction

Indonesia is recognized as one of the most pluralistic countries in the world, characterized by extensive ethnic, cultural, religious, and customary diversity. This plurality significantly influences the legal consciousness of society and shapes the mechanisms through which communities resolve disputes and maintain social order. Historically, Indonesian communities have long practiced customary justice systems rooted in local wisdom, consensus, reconciliation, and communal harmony. Such systems reflect the existence of *living law*, namely legal norms that actively operate within society despite not always being codified in formal legislation. Ehrlich emphasizes that the effectiveness of law largely depends on the social norms practiced by communities rather than solely on state regulations (Ehrlich 1936). In Indonesia, the existence of *adat* law demonstrates that social order is often maintained through community-based mechanisms emphasizing restorative values and collective responsibility (Bedner 2010). Nevertheless, Indonesia's national criminal law system has predominantly adopted centralized and state-oriented legal approaches inherited from European continental legal traditions during colonialism. The dominance of positivistic legal paradigms has encouraged criminal justice institutions to prioritize punitive sanctions and formal legal certainty over substantive justice and social reconciliation. As a consequence, Indonesia's penal

system currently faces numerous structural challenges, including prison overcrowding, lengthy judicial procedures, high recidivism rates, and limited restorative outcomes for victims and communities (Arief 2022). According to recent correctional data, most correctional institutions in Indonesia operate beyond their intended capacity, resulting in ineffective rehabilitation processes and increasing social stigmatization against offenders. This condition indicates that the conventional retributive model has not fully succeeded in addressing the complexity of social conflicts within multicultural societies (Prayitno 2022).

In addition, criminal justice mechanisms frequently marginalize victims and communities because conflicts are transferred entirely into the authority of the state. Christie famously describes this phenomenon as the “theft of conflict,” where communities lose the opportunity to participate directly in achieving justice and reconciliation (Christie 1977). Consequently, criminal proceedings often fail to restore social relationships damaged by criminal acts. Several empirical studies reveal that imprisonment-oriented approaches frequently produce stigmatization, social exclusion, and repeated criminal behavior rather than successful offender reintegration (Braithwaite 2002). In Indonesia's socio-cultural context, where communal relationships remain highly significant, purely punitive approaches are often incompatible with local values emphasizing harmony and collective balance (Salam 2021).

At the same time, community-based dispute resolution mechanisms continue functioning effectively in various Indonesian regions such as Aceh, Papua, Bali, and Minangkabau. These mechanisms prioritize mediation, deliberation (*musyawarah*), compensation, and reconciliation between victims, offenders, and communities. In Aceh, for example, customary institutions frequently resolve disputes through *musyawarah adat* involving village elders, religious leaders, and families of both parties. Similar practices are also implemented within Papuan customary councils and Balinese traditional institutions. These practices demonstrate that restorative justice principles have long existed within Indonesian local traditions and continue to possess strong social legitimacy (Djawas and Samad 2020). Moreover, several studies indicate that community-based justice mechanisms are often perceived as more accessible, culturally appropriate, and socially effective than formal criminal proceedings (Vel 2008).

Recent legal developments in Indonesia demonstrate increasing recognition of restorative justice and community participation in criminal justice processes. The enactment of Law Number 1 of 2023 concerning the National Criminal Code (*KUHP Nasional*), together with restorative justice regulations issued by the Attorney General's Office and the Indonesian National Police, reflects a paradigm shift toward more humanistic and contextual approaches to criminal law. Restorative justice is increasingly recognized as an important mechanism capable of balancing legal certainty with substantive justice and social restoration (Marlina 2020). However, the incorporation of community-based norms into formal penal policy remains fragmented and insufficiently institutionalized. Existing restorative justice policies generally function only as discretionary alternatives for minor criminal cases and have not yet comprehensively integrated indigenous legal values into the national penal architecture (Fitriani 2023).

Several previous studies have examined restorative justice and customary law within Indonesian legal discourse. However, most studies discuss restorative justice merely as an alternative dispute resolution mechanism or examine customary law independently from state criminal law systems. Limited scholarly attention has been given to developing a comprehensive framework capable of integrating community-based norms into Indonesia's national penal policy while simultaneously maintaining constitutional principles, human rights protections, and legal certainty. This condition reveals a significant research gap concerning how local wisdom and indigenous justice systems can systematically contribute to national criminal law reform in Indonesia (Bedner and Arizona 2019).

The novelty of this article lies in proposing a hybrid penal policy model that systematically integrates community-based norms and restorative justice principles into Indonesia's formal criminal justice system through constitutional recognition, judicial discretion, institutional collaboration, and participatory governance. Unlike previous studies that position customary justice merely as an informal alternative mechanism, this article argues that community-based norms should become foundational elements in reconstructing Indonesia's penal policy. This approach is expected to produce a more contextual, culturally responsive, and socially legitimate criminal justice system capable of balancing legal certainty with substantive justice and communal harmony.

Based on the background above, this article addresses two primary research questions. First, how do community-based norms operate within Indonesia's socio-legal framework? Second, how can such norms be integrated into Indonesia's national penal policy without undermining constitutional principles, human

rights standards, and legal certainty? Accordingly, this study aims to analyze the role of community-based norms within Indonesian society and formulate a conceptual framework for integrating such norms into national penal policy. The study argues that sustainable criminal law reform in Indonesia requires a balanced synthesis between formal legal institutions and the *living law* existing within society.

Method

This research employs a normative-juridical method combined with conceptual and comparative approaches. The normative approach is used to examine statutory regulations, legal doctrines, and principles related to penal policy, customary law, restorative justice, and legal pluralism in Indonesia. The conceptual approach is utilized to analyze theoretical frameworks regarding community-based justice, legal pluralism, and criminal law reform. Primary legal materials consist of the Indonesian Constitution of 1945, the Indonesian Criminal Code, Law Number 1 of 2023 concerning the National Criminal Code, Law Number 48 of 2009 concerning Judicial Power, and regulations related to restorative justice issued by relevant institutions. Secondary legal materials include academic journals, books, conference papers, and scholarly commentaries discussing penal policy, customary law, restorative justice, and socio-legal studies.

The comparative approach is applied by examining restorative and community-based justice models implemented in several countries, including New Zealand, Canada, and South Africa. These comparative perspectives are utilized to identify institutional strategies that may be adapted within the Indonesian legal context. Data analysis is conducted qualitatively through interpretation, classification, and synthesis of legal materials. The analysis emphasizes identifying legal gaps, normative inconsistencies, and opportunities for integrating community-based norms into formal penal policy structures.

Results and Discussion

1. Community-Based Norms in Indonesia's Legal Culture

Indonesia's legal culture is inseparable from the existence of customary norms and communal traditions. Long before the establishment of the modern nation-state, indigenous communities had developed mechanisms for dispute resolution emphasizing deliberation, reconciliation, compensation, and social harmony. Such practices remain prevalent in various regions, including Aceh, Papua, Bali, Minangkabau, and several Dayak communities.

Community-based norms generally prioritize restoring social relationships rather than imposing punitive sanctions. In many indigenous communities, criminal acts are perceived not merely as violations against the state but also as disruptions of communal equilibrium. Therefore, the resolution process focuses on repairing damaged relationships among perpetrators, victims, families, and the wider community.

This perspective contrasts significantly with modern penal systems emphasizing imprisonment and state-centered punishment. Contemporary criminal law often marginalizes victims and communities by transferring conflict ownership entirely to state institutions. Consequently, formal criminal justice processes may fail to produce social reconciliation.

The concept of "living law," introduced by Eugen Ehrlich and further developed within socio-legal scholarship, becomes highly relevant in understanding Indonesia's legal reality. Living law refers to normative systems actively practiced and obeyed within society regardless of formal codification. In Indonesia, customary norms continue functioning as living law influencing social behavior and conflict resolution.

The constitutional recognition of customary communities under Article 18B paragraph (2) of the 1945 Constitution provides legal legitimacy for integrating local norms into national legal policy. Nevertheless, the operationalization of such constitutional recognition remains limited in the criminal law sector.

2. Limitations of the Conventional Penal System

The Indonesian penal system currently faces serious institutional and philosophical limitations. One of the most critical issues is prison overcrowding. Correctional institutions across Indonesia continue operating beyond their capacity, causing ineffective rehabilitation, increased violence, and limited reintegration opportunities for inmates. Moreover, conventional criminal justice procedures often require lengthy processes and substantial financial resources. Victims frequently experience secondary victimization due to procedural rigidity and limited participation in decision-making processes. The focus on punishment

rather than restoration also contributes to high recidivism rates. The positivistic orientation of criminal law creates a rigid legal framework emphasizing formal legality over substantive justice. Judges and prosecutors frequently possess limited discretion to accommodate socio-cultural considerations or local wisdom within criminal proceedings.

Another challenge concerns the imbalance between legal certainty and social justice. Although legal certainty remains a fundamental principle in modern legal systems, excessive formalism may disconnect law from social realities. In culturally diverse societies like Indonesia, uniform penal policies may inadequately address localized social conflicts. These limitations indicate the necessity for alternative approaches capable of balancing legal certainty, human rights protection, social harmony, and restorative outcomes.

3. Restorative Justice as a Transformative Paradigm

Restorative justice has emerged globally as an alternative paradigm emphasizing healing, reconciliation, accountability, and community participation. Unlike retributive justice focusing on punishment, restorative justice seeks to restore relationships damaged by criminal acts. In Indonesia, restorative justice has gained increasing institutional support. The Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Police Regulation Number 8 of 2021 concerning Restorative Justice provide formal recognition of non-punitive approaches in specific criminal cases.

Nevertheless, current restorative justice implementation remains procedural and limited to minor offenses. Its application largely depends on institutional discretion rather than comprehensive penal policy transformation. Furthermore, restorative justice mechanisms often operate independently from indigenous and community-based systems. Integrating community-based norms into restorative justice frameworks may strengthen the legitimacy and effectiveness of criminal justice processes. Indigenous communities possess social authority, moral legitimacy, and culturally embedded mechanisms that can support conflict resolution and offender reintegration.

For example, Acehnese adat institutions commonly resolve disputes through mediation and communal deliberation involving religious leaders, village elders, and families. Similar mechanisms also exist within Papuan customary councils and Balinese traditional institutions. Such mechanisms demonstrate that restorative principles have long existed within Indonesian local traditions. Therefore, penal reform should not merely import foreign restorative models but rather revitalize indigenous legal traditions already embedded within societal structures.

4. Comparative Perspectives on Community-Based Penal Models

Several countries provide valuable lessons regarding the integration of community-based norms into formal criminal justice systems.

a. New Zealand

New Zealand incorporates Maori traditions into juvenile justice through Family Group Conferences (FGC). The system allows offenders, victims, families, and community representatives to participate collectively in determining restorative outcomes. This approach significantly reduces incarceration rates among juvenile offenders and strengthens community accountability.

b. Canada

Canada recognizes indigenous sentencing circles and healing circles within criminal proceedings involving indigenous communities. Courts may consider customary perspectives and communal resolutions when determining appropriate sanctions.

c. South Africa

Post-apartheid South Africa integrates Ubuntu philosophy into constitutional and criminal justice discourse. Ubuntu emphasizes humanity, interconnectedness, reconciliation, and collective responsibility. Restorative approaches influenced by Ubuntu have contributed to transitional justice and community reconciliation.

These comparative experiences demonstrate that integrating community-based norms into formal legal systems is possible without undermining legal certainty. Successful integration requires institutional frameworks, judicial recognition, procedural safeguards, and constitutional compatibility.

5. Proposed Hybrid Penal Policy Model for Indonesia

This article proposes a hybrid penal policy model integrating community-based norms into Indonesia's national legal architecture through five strategic dimensions.

a. Constitutional and Legislative Recognition

The state should provide explicit recognition of community-based justice mechanisms within criminal law legislation. Such recognition must define the scope, limitations, and procedural safeguards ensuring compatibility with constitutional principles and human rights standards.

b. Judicial Discretion and Diversion Mechanisms

Judges, prosecutors, and law enforcement officers should possess broader discretion to divert eligible cases toward community-based restorative mechanisms. Diversion should prioritize minor offenses, juvenile cases, family disputes, and culturally sensitive conflicts.

c. Institutional Collaboration

Formal criminal justice institutions should collaborate with customary leaders, religious authorities, and local mediators. Such collaboration may enhance public trust, reduce institutional burdens, and improve restorative outcomes.

d. Human Rights Safeguards

Although community-based norms provide cultural legitimacy, the state must ensure compliance with constitutional rights, gender equality, and non-discrimination principles. Certain customary practices potentially conflicting with human rights standards should not receive formal recognition.

e. Participatory Governance

Communities should actively participate in designing local justice mechanisms. Penal reform must not impose uniform models but rather facilitate contextual adaptation based on local socio-cultural conditions.

6. Novelty and Academic Contribution

The novelty of this article lies in conceptualizing a hybrid penal policy framework combining restorative justice, legal pluralism, and community-based governance within Indonesia's criminal law reform agenda. Previous studies generally treat customary law and restorative justice as separate domains. In contrast, this study positions community-based norms as central components of national penal architecture. The proposed framework emphasizes institutional integration rather than merely informal accommodation. Academically, this article contributes to contemporary debates regarding post-colonial legal reform, legal pluralism, and socio-cultural constitutionalism. The study also offers practical implications for policymakers seeking sustainable and culturally responsive criminal justice reforms.

Table 1. Comparative Characteristics of Penal Paradigms

Aspect	Retributive Justice	Restorative Justice	Community-Based Justice
Main Orientation	Punishment	Restoration	Social Harmony
Conflict Ownership	State	Victim and Offender	Community
Resolution Mechanism	Court Adjudication	Mediation and Dialogue	Consensus and Deliberation
Victim Participation	Limited	Active	Collective
Outcome	Sanction	Reconciliation	Communal Balance
Social Impact	Stigmatization	Reintegration	Collective Responsibility

7. Challenges and Future Directions

Despite its potential benefits, integrating community-based norms into penal policy presents several challenges. One challenge concerns the diversity of customary practices across Indonesia. Different regions possess distinct legal traditions, making standardization difficult. Another challenge relates to potential conflicts between customary practices and universal human rights principles. Certain discriminatory traditions may contradict constitutional protections and international legal obligations. Institutional resistance also constitutes a significant barrier. Formal legal institutions accustomed to centralized legal approaches may hesitate to recognize community-based mechanisms.

To address these challenges, Indonesia requires gradual and carefully designed reforms involving academic institutions, civil society organizations, customary communities, and state institutions. Legal education should also incorporate legal pluralism and restorative justice perspectives to cultivate more contextual legal consciousness among future practitioners.

Conclusion

This study concludes that community-based norms possess significant potential to strengthen Indonesia's penal policy reform by promoting restorative justice, communal harmony, and participatory conflict resolution. Indonesia's current criminal justice system continues facing structural and philosophical limitations due to excessive reliance on punitive and centralized legal approaches. The integration of community-based norms into national penal policy may provide more contextual, effective, and socially legitimate forms of justice. Through constitutional recognition, judicial discretion, institutional collaboration, human rights safeguards, and participatory governance, Indonesia can develop a hybrid penal policy balancing legal certainty with socio-cultural realities.

The main contribution of this article lies in proposing a conceptual framework for integrating community-based norms into formal criminal justice structures. The study also contributes to broader academic discourse on legal pluralism and post-colonial legal reform. Nevertheless, this research remains limited to normative and conceptual analysis. Future studies should conduct empirical investigations examining the implementation of community-based justice mechanisms in specific regions and evaluating their effectiveness within Indonesia's evolving legal system.

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Author Contributions Statement

FA contributed to conceptualization, methodology, analysis, and manuscript drafting. SA contributed to literature review, data analysis, and theoretical framework development. TA contributed to editing, validation, and final manuscript preparation.

AI Usage Statement

The authors declare that the use of Artificial Intelligence (AI) tools in this work was strictly limited to supportive functions, including language editing, grammar checking, and improving clarity and readability. AI was not used to generate original scholarly arguments, conduct substantive legal analysis, interpret legal data, or formulate conclusions. The authors retain full responsibility for the originality, accuracy, and academic integrity of this manuscript.

Conflict of Interest

The authors declare that there is no conflict of interest regarding the publication of this article.

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