



# The Restorative Justice Approach in the *Tepung Tawar* Tradition: How Do Customary Rules Resolve Criminal Cases?

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## Keywords

*Criminal Offences; Legal Pluralisms; Restorative Justice; Comparative Law; Tepung Tawar.*

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## Abstract

*Restorative justice principles have been formally integrated into the Indonesian criminal justice system, including both the Indonesian Criminal Code and the Indonesian Criminal Procedure Code, that took effect on 2 January 2026. These principles have historically been applied within various customary communities to resolve legal issues as part of local wisdom. This study contends that the 'teping tawar' tradition in South Sumatra, Indonesia embodies restorative justice principles and may serve as a customary mechanism for resolving criminal cases outside the formal court system. Accordingly, this paper seeks to deepen the understanding of the tepung tawar tradition in the context of customary criminal cases from a restorative justice perspective. This doctrinal legal research employs statutory, conceptual, historical, and comparative approaches. The findings revealed that incorporating the 'teping tawar' tradition into the national legal system could help resolve social conflicts, particularly through restorative justice. However, a combination of these two methods is expected to produce better results. An important part of the mediation process is deliberation to reach an agreement before going to court. The paper concludes that customary law must be incorporated into the contemporary legal system voluntarily, proportionately, and with due regard for fundamental human rights, to prevent distortion or discrimination. Consequently, customary law and local traditions can effectively promote restorative justice and strengthen legal diversity in Indonesia.*

## 1. INTRODUCTION

Unlike modern, codified laws, customary law in Indonesia is a living legal system with minimal government intervention, forming the basis for the application of restorative justice.<sup>1</sup> Although it sometimes conflicts with national criminal law,<sup>2</sup> customary law emphasises compensation for victims

<sup>1</sup> Ashari Kurniawan, "Restorative Justice and Customary Law Studies in Juvenile Cases: Why Should Indonesia Learn from Various Countries?," *Lex Localis - Journal of Local Self-Government* 23, no. S5 (2025): 2848.

<sup>2</sup> Budi Suhariyanto et al, "Reconstruction of Intersection the Customary Court and State Criminal Court for Indigenous Communities in Papua," *Journal of Indonesian Legal Studies* 9, no. 2 (2024): 1121.

and the restoration of social relations in line with restorative principles.<sup>3</sup> In Indonesia, various ethnic groups have a peaceful tradition of resolving conflicts. i.e those who live in Java, Lampung, Bali, South Sumatra, Lombok, Papua, West Sulawesi and the people of South Sulawesi.<sup>4</sup>

In South Sumatra, the '*teping tawar*' tradition resolves conflicts through mediation, apology, and symbolic restoration, exemplifying restorative justice by prioritizing victim recovery, offender accountability, and social reconciliation.<sup>5</sup> The '*teping tawar*' approach, rooted in local culture, is a restorative method for addressing criminal disputes that prioritizes victims, families, and community, rather than serving as a formal legal mechanism.<sup>6</sup> Initially, *teping tawar* was used in community celebrations such as weddings, births and housewarmings. However, in some areas, this tradition has evolved into a symbolic practice used to facilitate mediation and reconciliation in criminal cases, while prioritising victim recovery, perpetrator accountability, and social harmony.

In Indonesia, the 1945 Constitution establishes the legal basis for restorative approaches by recognising communities based on shared ancestry, territory, institutions and customary laws.<sup>7</sup> Using customary law to solve criminal cases solves community conflicts while reducing court backlogs and overcrowding in prisons.<sup>8</sup> When applying national laws and regulations to relevant communities, it is important to consider their customs and customary laws.<sup>9</sup> By offering perpetrators alternative punishments that do not involve imprisonment, restorative justice and the formal criminal justice system aim to deter criminal behaviour.<sup>10</sup> The new Criminal Procedure Code formalises this approach and prioritises peace over punishment. It also raises expectations regarding the contributive role of customary mechanisms outside the court in promoting social justice.

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<sup>3</sup> Donna Asteria, et al, "Adat Law and Culture: The Local Authority Elements of Baduy Tribe on Environment Preservation," *IOP Conf. Series: Earth and Environmental Science* 716 (2021): 1.

<sup>4</sup> Serena Ghean Niagara and Candra Nur Hidayat, "Penyelesaian Sengketa Non-Litigasi ditinjau dari Undang Undang Nomor 10 Tahun 1998 Tentang Perbankan dan Undang Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 7, no. 1 (2020): 85.

<sup>5</sup> Clayton Littlejohn, "Truth, Knowledge, and The Standard of Proof in Criminal Law," *Synthese* 197, no. 12 (2020): 5256.

<sup>6</sup> Edwin Nurdiansyah, Bunyamin Maftuh and Elly Malihah, "*Teping tawar* Perdamaian: Resolusi Konflik Berlandaskan Nilai-Nilai Pancasila di Sumatera Selatan," *Satwika: Kajian Ilmu Budaya dan Perubahan Sosial* 7, no. 2 (2023): 286.

<sup>7</sup> Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 426.

<sup>8</sup> Erdianto Effendi and Setia Putra, "Customary Settlement of Certain Criminal Cases in The Indigenous Community of Kenegerian Benai, Kuantan Singingi," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no. 2 (2022): 155.

<sup>9</sup> Brian Z. Tamanaha, *Legal Pluralism Explained History, Theory, Consequences*, (UK: Oxford University Press, 2021), 84.

<sup>10</sup> Nur Rochaeti, et al, "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (2023): 89.

There have been many studies on the role of customary law in conflict resolution.<sup>11</sup> The application of "*tepung tawar*," has also been covered in earlier research. For instance, Nurdiansyah, Maftuh, and Malihah (2023) studied the practice of *tepung tawar* as a conflict resolution in South Sumatra which in line with the fundamentals value of Pancasila.<sup>12</sup> Andriyani and Dewi (2023) revealed that *tepung tawar* can be a means of resolving criminal cases of abuse.<sup>13</sup> Surahmi, Saputra and Aliyyu (2025) investigated the potential use of *tepung tawar* as a means of resolving criminal disputes from the perspective of penal mediation in Indonesia.<sup>14</sup> Afriansyah and Izzuddin (2025), related to the *tepung tawar* tradition and to analyze its relevance to the practice of *tepung tawar* in reconciling conflicts in modern society.<sup>15</sup>

The author has previously conducted extensive research on *tepung tawar*, specifically examining topics such as penal mediation,<sup>16</sup> natural resource management conflict resolution,<sup>17</sup> and medical malpractice resolution.<sup>18</sup> This study, however, examines the *tepung tawar* tradition in customary criminal cases in South Sumatra from a restorative justice perspective. It uses a normative legal approach to assess the tradition's relevance and potential integration within Indonesia's formal criminal justice system.<sup>19</sup>

## 2. RESULT AND ANALYSIS

### 2.1. Defining *Tepung tawar*

#### 2.1.1. Origin and Development

In Hindu-influenced rituals, *tepung tawar* is used alongside offerings and mantras to promote protection and prosperity. This reflects the mixture

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<sup>11</sup> Ardian Kurniawan, et al, "Hukum Adat dan Nilai Restoratif: Kontekstualisasi Penyelesaian Konflik *Sumbang Adat* di Jambi," *Jurnal Masalah-Masalah Hukum* 53, no. 2 (2024): 112.

<sup>12</sup> Nurdiansyah, Maftuh, and Malihah, *op.cit.*, 285-294.

<sup>13</sup> Andriyani and Rusmala Dewi, "Local Wisdom Becomes the Commander in Criminal Resolution," *Nurani: Jurnal Kajian syari'ah dan Masyarakat*, 23, no.2 (2023): 313-326.

<sup>14</sup> Mila Surahmi, Citra Dewi Saputra, and Nur Illnus Aliyyu, "*Tepung tawar* Sebagai Sarana Penyelesaian Sengketa Tindak Pidana: Perspektif Mediasi Penal di Indonesia," *Jurnal Review Pendidikan dan Pengajaran* 8, no. 1 (2025): 1619-1625.

<sup>15</sup> Syafran Afriansyah and Muhammad Haidar Izzuddin, "*Tepung tawar* sebagai Modal Sosial dalam Mendamaikan Sengketa: Kearifan Lokal dalam Naskah Ulu dan Keberlangungannya," *Jumantara: Jurnal Manuskrip Nusantara* 16, no. 1 (2025): 99-114.

<sup>16</sup> Junaidi Junaidi, "Implementation of Penal Mediation '*Tepung tawar*' as Criminal Case Settlement in Palembang, South Sumatra," *Teumulong: Journal of Community Service* 2, no. 2 (2024): 79-84.

<sup>17</sup> Junaidi Junaidi, "Model Tradisi Adat '*Tepung tawar*' dalam Penyelesaian Konflik Pengelolaan Sumber Daya Alam," *Zaaken: Journal of Civil and Bussiness Law* 5, no. 2 (2024): 265-276.

<sup>18</sup> Junaidi Junaidi, "Penal Mediation Through the Customary *Tepung tawar* Tradition in Medical Malpractice Resolution," *Journal Cepalo* 9, no. 1 (2025): 1-12.

<sup>19</sup> Muhaimin, *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020), 29.

of Malay animistic beliefs with Hindu-Buddhist traditions.<sup>20</sup> After Islam entered Indonesia and was accepted by the Malay community, the purpose and meaning of this *tepung tawar* tradition were adapted to Islamic teachings. Consequently, the tools and materials used in this tradition were examined and studied in accordance with their meaning and purpose.<sup>21</sup> The tradition of *tepung tawar* in Palembang during the Palembang Sultanate is regulated by the *Simbur Cahaya* Law.<sup>22</sup> In the *tepung tawar* tradition, turmeric rice and flowers are placed in water and rubbed onto the head. This process is witnessed by two people.<sup>23</sup> The sticky texture of the turmeric rice symbolises the bond of relationships. Turmeric also symbolises success.<sup>24</sup> Afterwards, a communal meal is held to prevent danger and express gratitude.<sup>25</sup>

One of the magical beliefs associated with customary law is the *tepung tawar* ritual, which is based on the teachings of God Almighty. This process involves prayers in accordance with the Qur'an.<sup>26</sup> The tradition of *tepung tawar* has strong connections between spiritual, natural and social elements. Spiritual values stem from prayer, while social values are reflected in respect and appreciation for others.<sup>27</sup> Additionally, the *tepung tawar* tradition makes use of a form of biodiversity that cannot be replicated artificially.<sup>28</sup> Given that a region's legal system develops from the reciprocal relationship between the law itself and the culture of its people, legislation must take into account local customs and conditions.

The South Sumatra region is famous for its large Malay population and its tradition of *tepung tawar*. However, unlike the *tepung tawar* tradition in other Malay regions, such as Riau and Pontianak, this tradition involves food such as turmeric, sticky rice, grilled chicken and traditional cakes.<sup>29</sup> The tradition of *tepung tawar* is very common in the Malay Archipelago, starting from the Karimun Islands,<sup>30</sup> Riau,<sup>31</sup> South Sumatra,<sup>32</sup> Sambas,<sup>33</sup> and Sarawak.<sup>34</sup>

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<sup>20</sup> Syarifuddin, Wanada Rezeki, and Umy Kalsum, "Eksistensi Tradisi *Tepung tawar* Sebagai Warisan Budaya Lokal Palembang", *Sejarah dan Budaya* 16, no. 1 (2022): 47.

<sup>21</sup> Nuraini Pangaribuan, "Tradisi *Tepung tawar*: Akulturasi Islam dan Budaya Melayu dalam Prosesi Pernikahan Masyarakat Melayu di Kota Tanjung Balai", *Tamaddun: Jurnal Kebudayaan dan Sastra Islam* 23, no. 2 (2023): 101.

<sup>22</sup> Dwi Anggi Wulandari and Marzuki, "Undang-Undang Simbur Cahaya dalam Mengatur Hukum Perkawinan di Kesultanan Palembang. *Jurnal Antropologi: Isu-isu Sosial Budaya* 22, no. 2 (2020): 191.

<sup>23</sup> Afriansyah and Izzuddin, *op.cit.*, 108.

<sup>24</sup> Syarifuddin, Rezeki, and Kalsum, *op.cit.*, 51.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, 50.

<sup>27</sup> Husnah, Irlina Dewi and Eva Fajaruna, "Tradisi Tepuk *Tepung tawar* dalam Perspektif Hukum Islam (Studi Kasus di Kecamatan Bengkalis)", *Comparativa* 4, no. 1 (2023): 23.

<sup>28</sup> Afriansyah and Izzuddin, *op.cit.*, 105

<sup>29</sup> Nurdiansyah, Maftuh and Malihah, *op.cit.*, 288.

<sup>30</sup> Doni Febri Hendra and Amelia Ariani, "Tepuk *Tepung tawar* sebagai Simbol Ritual Budaya Melayu Kabupaten Karimun," *Dance & Theater Review: Jurnal Tari, Teater dan Wayang* 5, no. 1 (2022): 3.

<sup>31</sup> Husnah, Dewi and Fajaruna, *op.cit.*, 20.

<sup>32</sup> Nurdiansyah, Maftuh and Malihah, *op.cit.*, 286.

### 2.1.2. Variety Purposes: Rituals for Wedding, Greeting the guests, and Settling Disputes

The tepung tawar tradition has various forms. For example, it is used by the Malay people of Kalimantan to protect themselves from evil spirits. It is also performed at weddings, circumcision ceremonies, and house moves in the Langkat Malay community.<sup>35</sup> In Palembang, *tepung tawar* is used in wedding blessings and to protect against harm and conflict. Reconciliation is symbolised by former adversaries becoming foster siblings.<sup>36</sup>

Led by elders and community leaders, the Tepung Tawar ritual is used to resolve disputes through the exchange of symbolic offerings. It concludes with a handshake and a communal feast, which signify peace and unity.<sup>37</sup> Similarly, in parts of South Sumatra and Jambi regions, *tepung tawar* is used to resolve social conflicts and address criminal or legal violations. It is also used in wedding traditions, to entertain guests, to say goodbye, for circumcision ceremonies, and to welcome newborn babies.<sup>38</sup>

*Tepung Tawar* is a tradition from the Palembang Malay community in South Sumatra. It embodies restorative justice through a culturally based approach to dispute resolution, led by religious and community leaders.<sup>39</sup> The *tepung tawar* ritual uses symbolic actions and communal reconciliation to restore harmony and reintegrate individuals. This reflects the principles of restorative justice: participation, reconciliation and repairing relationships.<sup>40</sup>

Several regional governments in Indonesia have formally recognized tepung tawar in their respective regional regulations. The Government of Langkat Regency, North Sumatra Province, classifies Tepung Tawar as a rite.<sup>41</sup> Similarly, the Government of West Kutai Regency, East Kalimantan Province, recognizes Tepung Tawar as a traditional ceremony as part of the *Dahau* Celebration.<sup>42</sup> The Government of Bangka Regency, Bangka Belitung Province, designates *Mandi Tepung Tawar* as a mandatory ceremony for the bride and groom, conducted three days after the wedding ceremony (*akad*

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<sup>33</sup> Hemafitria Hemafitria, "Nilai Karakter Berbasis Kearifan Lokal Tradisi *Tepung tawar* Pada Etnis Melayu Sambas," *Jurnal Pendidikan Kewarganegaraan* 3, no. 2 (2019): 123.

<sup>34</sup> Sarra Jastika Bohari and Mohamad Maulana Magiman, "Simbol dan Pemaknaan Ritual Adat *Tepung tawar* dalam Perkahwinan Masyarakat Melayu Sarawak," *Jurnal Komunikasi Borneo* 8 (2020): 23.

<sup>35</sup> Hemafitria Hemafitria, *op.cit.*, 123.

<sup>36</sup> Syarifuddin, Rezeki, and Kalsum, *op.cit.*, 48.

<sup>37</sup> *Ibid.*

<sup>38</sup> Erdianto Effendi, *Hukum Pidana Adat: Gagasan Pluralisme dalam Hukum Pidana dan Penerapan Hukum Menurut Keyakinan Hukum* (Bandung : Refika Aditama, 2018), 63.

<sup>39</sup> See Nurdiansyah, Maftuh, and Malihah, *op.cit* 288 and see Benny Elfian Syah and Didik Endro Purwoleksono, "Ius Constituendum Restorative Justice in Indonesia," *Media Iuris*, 6, no. 3 (2023): 373.

<sup>40</sup> Nur Rochaeti, et.al, *op.cit.*, 89.

<sup>41</sup> Langkat Regency Regional Regulation No. 4 of 2024 concerning the Advancement of Regional Culture, Explanation of Art. 7 (d).

<sup>42</sup> West Kutai Regent Regulation No. 1 of 2017 Concerning Dahau Celebrations, Art. 5 and Annex, A.4.



*nikah*).<sup>43</sup> Additionally, the Government of Dumai City, Riau Province, authorizes Riau Malay Traditional Institutions to conduct the *Tepuk Tepung Tawar* ceremony to inaugurate regional officials.<sup>44</sup>

### 2.1.3. Local Wisdom and Social Values of *Tepung tawar*

The *tepong tawar* tradition embodies local values such as cooperation, spirituality, harmony with nature and wisdom. It involves many people and connects humans with God and nature. Furthermore, it teaches us to live wisely and responsibly, maintaining the balance of ecosystems and social relationships.<sup>45</sup> In South Sumatra, the *tepong tawar* tradition is a means of resolving conflicts through love and effective communication, drawing on local wisdom. Traditional and religious leaders play an important role in achieving peace and mutual understanding.<sup>46</sup> In the *tepong tawar* peace ceremony, the principle of unity emphasises strengthening brotherhood (*angkan-angkanan*) in order to reunite disputing parties and foster stronger relationships between them.<sup>47</sup> *Tepung tawar* embodies local wisdom as a practical approach to conflict resolution. Its values align with the core principles of Indonesia's Pancasila-humanity, unity, and deliberative consensus.<sup>48</sup> *Tepung tawar* also mirrors social cohesion and compassion, traits often attributed to Indonesian society.<sup>49</sup>

The *tepong tawar* tradition in South Sumatra is an example of a culturally rooted restorative justice model that operationalises local values such as cooperation, spirituality, social harmony and wisdom to resolve conflicts in a non-punitive way.<sup>50</sup> The *tepong tawar* ritual is a community-led mediation process that restores relationships through reconciliation, brotherhood and the values of restorative justice. It effectively resolves social disputes and minor offences in line with the principles of the Indonesian philosophy of Pancasila.<sup>51</sup>

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<sup>43</sup> Bangka Regent Regulation No. 36 of 2022 Concerning Traditional Clothing and Bride's Makeup and Traditional Wedding Ceremonies of Bangka Regency, Annex, C.20.

<sup>44</sup> Dumai City Regional Regulation No. 3 of 2017 Concerning Riau Malay Customary Institutions of Dumai City, Explanation of Art. 15.

<sup>45</sup> See Findi Septiani, "Integrasi Kajian Etnopedagogi dalam Pendidikan Biologi Melalui Kearifan Lokal Suku Melayu pada Tradisi *Tepung tawar*," *Edukasia: Jurnal Pendidikan* 1, no. 3 (2025): 85; and Melin, Wasis Suprpto and Sri Mulyani, "Nilai-Nilai Tradisi *Tepung tawar* sebagai Sumber Belajar IPS di SD," *Jurnal Pendidikan Dasar Indonesia* 8, no. 3 (2023): 93.

<sup>46</sup> Leigh H. Grant, Ifat Maoz, and Boaz Keysar, "Lingua Franca as a Hidden Barrier to Conflict Resolution," *Journal of Conflict Resolution* 67, no. 5 (2022): 980.

<sup>47</sup> Junaidi Junaidi, "Penal Mediation Through the Customary ....., *op.cit*, 8.

<sup>48</sup> Nurdiansyah, Maftuh, and Malihah, *op.cit*, 291

<sup>49</sup> See Hemafitria Hemafitria, *op. cit*, 122

<sup>50</sup> Nurdiansyah, Maftuh, and Malihah, *loc.cit*.

<sup>51</sup> Nur Rochaeti, et.al, *op.cit*, 90.

## 2.2. Restorative Justice in Indonesian Legal System

### 2.2.1. Restorative Justice in Indonesian Criminal Code

It is generally understood that restorative justice engages victims and offenders in dialogue and accountability, unlike punitive systems that prioritise rules over victim participation.<sup>52</sup> In Indonesia, Law No. 1 of 2023 concerning Criminal Code (Law 1/2023) is a new Criminal Code which retains provisions on traditional crimes, criminal acts that have long been recognised under the criminal law and imposes criminal sanctions on those who commit them.<sup>53</sup> Recently, several provisions of Law 1/2023 were amended by Law No. 1 of 2026 concerning Criminal Adjustment. This amendment seeks to harmonize the criminal provisions in Law 1/2023 and related legislation to prevent disparities in law enforcement, duplication of criminal regulations, and adverse effects on legal certainty and societal perceptions of justice.<sup>54</sup>

Law 1/2023, which took effect on 2 January 2026,<sup>55</sup> reflects the broader adoption of, and strengthens, restorative justice principles. It considers the perpetrator's attitude and actions after the crime, the victim's or the victim's family's forgiveness, and legal and justice values that live in society.<sup>56</sup> Law 1/2023, promoting resolution of certain minor cases outside formal court proceedings with victim involvement and community participation.<sup>57</sup> The provisions encourage perpetrators, victims and communities to work together to find humane solutions, reflecting a shift towards fairness and the common good rather than punishment.<sup>58</sup> It also emphasizes that settlement of cases out of court (*afdoening buiten proces*) may lead to termination of prosecution in specified circumstances.<sup>59</sup>

### 2.2.2. Restorative Justice under Law on Criminal Procedures

For more than 40 years, the Indonesian criminal justice system has operated under Law No. 8 of 1981 concerning Criminal Procedure (Law 8/1981). This law reflects legalistic and retributive paradigm, viewed crime as an act that violated state order, with the solution lying in the imposition

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<sup>52</sup> Britannica, "Restorative Justice", Encyclopaedia Britannica, January 27, 2026, <https://www.britannica.com/topic/restorative-justice>

<sup>53</sup> See Rizaldy Purnomo Pedju, "Progressive Law Perspective: Analysis of Restorative Justice in National Criminal Code," *Amsir Law Journal* 6, no. 2 (2025): 73.

<sup>54</sup> Law No. 1 of 2026 concerning Criminal Adjustment, *Considerans*, Letter c.

<sup>55</sup> Law No. 1 of 2023 concerning Criminal Code, Art. 624.

<sup>56</sup> *Ibid.*, Art. 54 (f),(j), and (h) See also Marsudin Nainggolan, "Transformasi Penegakan Hukum Pidana dalam KUHP Baru," Dandapala, [https://dandapala.com/opini/detail/transformasi-penegakan-hukum-pidana-dalam-kuhp-baru#:~:text=Transformasi%20Penegakan%20Hukum%20Berbasis%20Restorative%20Justice&text=Dalam%20Pasal%2054%20huruf%20\(f,dan/atau%20keluarga%20Koban%E2%80%9D9D](https://dandapala.com/opini/detail/transformasi-penegakan-hukum-pidana-dalam-kuhp-baru#:~:text=Transformasi%20Penegakan%20Hukum%20Berbasis%20Restorative%20Justice&text=Dalam%20Pasal%2054%20huruf%20(f,dan/atau%20keluarga%20Koban%E2%80%9D9D).

<sup>57</sup> Indonesian Criminal Code, Art. 54

<sup>58</sup> See Pedju, *op.cit.*, 74.

<sup>59</sup> Law No 1 of 2026 concerning Criminal Adjustment, Art.132 (1) (g). See also Priyo Handoko, "Pembaharuan Hukum Acara Pidana Melalui Mekanisme Afdoening Buiten Process," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 2 (2020): 333.

of sanctions through formal legal proceedings.<sup>60</sup> This model aligns with a crime control approach that prioritises legal certainty and effective law enforcement, while paying less attention to social relations and the detrimental effects of crime on society.<sup>61</sup>

While Law 8/1981 does not explicitly mention restorative justice, several provisions implicitly allow law enforcement agencies to adopt measures consistent with restorative justice principles.<sup>62</sup> In 2020, the Attorney General issued a regulation enabling the termination of prosecution based on restorative justice under specific conditions, such as when the suspect is a first-time offender, and the crime is punishable only by a fine or by imprisonment of no more than five years.<sup>63</sup> In 2021, the Chief of National Police issued a regulation permitting Community Development and Samapta officers to implement restorative justice-based criminal handling, thereby facilitating the resolution of minor crimes.<sup>64</sup> Additionally, restorative justice-based criminal handling may be applied by investigators during the inquiry and investigation stages, allowing for the termination of these processes.<sup>65</sup> In 2024, the Supreme Court issued a regulation enabling judges to adjudicate criminal cases using restorative justice by upholding principles of restoration of the situation; strengthening the rights, needs, and interests of the victim; responsibility of the defendant; punishment as a last resort; consensualism; and transparency and accountability.<sup>66</sup>

In 2025, Law 8/1981 was amended by Law No.20 of 2025 concerning the Criminal Code (Law 20/2025) to realize an integrated criminal justice system by adjusting the functions, duties, and authorities of law enforcement officers to align with state developments, advances in science and technology, and international conventions that have been ratified by the Indonesian Government (i.e. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights and the United Nations Convention Against Corruption).<sup>67</sup> One of the main contents of the Law is the regulation regarding the restorative justice mechanism which is carried out to restore the original condition of the victim which is carried out at the stages of investigation, inquiry, prosecution, and examination in court.<sup>68</sup> On 2 January 2026, the Supreme Court issued Guidelines for Implementation of

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<sup>60</sup> Faisal Faisal, "Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (2024): 6.

<sup>61</sup> Hajairin Hajairin, Muhammad Mustofa, and Tofik Yanuar Chandra, "Criminal Justice Reform: From Due Process Model to Reintegrative Model as an Alternative to Criminal Case Resolution. *Asian Journal of Social and Humanities* 1, no. 10 (2023): 604.

<sup>62</sup> See Law No. 8 of 1981 concerning Criminal Procedure, explanations of Art. 5 (1) (a) and Art. 7 (1)(j)

<sup>63</sup> Regulation of the Prosecutor of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Art. 5.

<sup>64</sup> The Regulation of the Police of the Republic of Indonesia No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, Art. 2(2) and (4).

<sup>65</sup> *Ibid.*, Art. 2(3) and (5).

<sup>66</sup> The Regulation of Supreme Court the Republic of Indonesia No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, Art. 2.

<sup>67</sup> Law No.20 of 2025 concerning the Criminal Code, Explanation, Section I, p.1.

<sup>68</sup> *Ibid.*, p.2



the 2023 Criminal Code and Law 20/2025, which determines the restorative justice mechanism before the court.<sup>69</sup>

### 2.2.3. Case Law on Restorative Justice

To strengthen the legal basis for restorative justice in Indonesia, the Constitutional Court reviewed Article 99 of Law No. 11 of 2012 concerning the criminal justice system for children. The Court ruled that imprisonment could only be imposed as a last resort after diversion or restorative justice measures had been tried and found to be ineffective.<sup>70</sup> This decision highlights the importance of creating specific restorative justice legislation to ensure the consistent application of the law in line with Indonesian cultural values and the principles of Pancasila, while also providing clarity and redress, particularly for victims.<sup>71</sup>

On 26 August 2025, the Kayu Agung District Court ruled in favour of applying the principle of restorative justice, in line with the ratified peace agreement between the perpetrator and the injured party.<sup>72</sup> Restorative justice can reduce the severity of punishment while ensuring that perpetrators are held accountable. It guarantees that prison sentences are proportionate to the crime and provides efficient, affordable and fair solutions that align with the principles of social justice and legal certainty.<sup>73</sup> In 2025, the prosecutor's offices have resolved several criminal cases through a restorative justice approach in South Sumatra, among others, traffic violations in Prabumulih,<sup>74</sup> drug abuse in Ogan Ilir,<sup>75</sup> and the initial handling of accident in Pali.<sup>76</sup>

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<sup>69</sup> Supreme Court Circular No.1 of 2026 concerning Guidelines for Implementation of the 2023 Criminal Code and the 2025 Criminal Procedures Code, Annex, p. 10.

<sup>70</sup> Decision of the Constitutional Court of the Republic of Indonesia No. 68/PUU-XV/2017, p. 96. See also Lutfia Nazla, "Implikasi Putusan MK Nomor 68/PUU-XV/2017 terhadap Masa Penahanan Anak dalam Sistem Peradilan Pidana Anak," *Media Iuris* 2, no. 1 (2019): 98.

<sup>71</sup> Khalisa Hayatuddin, et al, "Legal Implications of the Constitutional Court Decision on the Application of Restorative Justice Concept in Indonesia," *Jurnal Hukum dan Peradilan* 11, no. 2 (2022): 308.

<sup>72</sup> Decision of Kayu Agung District Court No. 338/Pid.B/2025/PN Kag

<sup>73</sup> Teuku Rahman, "Restorative Justice as an Approach to Settlement of Criminal Cases by The Indonesian Prosecution," *Al-Jinayah: Jurnal Hukum Pidana Islam* 1, no. 3 (2023): 34.

<sup>74</sup> Palembang Ekspres, "Ini Kasus Penghentian Penuntutan Berdasarkan RJ Oleh Kejari Prabumulih," <https://palpres.bacakoran.co/read/49479/ini-kasus-penghentian-penuntutan-berdasarkan-rj-oleh-kejari-prabumulih>

<sup>75</sup> Haluan Berita Rakyat, "JAM-Pidum Setujui Restorative Justice untuk Kasus Narkotika di Sumatera Selatan: Pendekatan Keadilan yang Menyembuhkan, Bukan Sekadar Menghukum," <https://haluanberitarakyat.com/hukum/jam-pidum-setujui-restorative-justice-untuk-kasus-narkotika-di-sumatera-selatan-pendekatan-keadilan-yang-menyembuhkan-bukan-sekadar-menghukum/>

<sup>76</sup> Kejaksaan Negeri Pali, "Pra Ekspos Restorative Justice Kejaksaan Negeri Pali dengan Kejaksaan Tinggi Sumatera Selatan," <https://kejari-pali.kejaksaan.go.id/pra-ekspos-restoratif-justice-rj0-kejaksaan-negeri-pali-dengan-kejaksaan-tinggi-sumatera-selatan/>

### **2.3. Restorative Justice and Legal Pluralism in Indonesia**

Traditional regulations in Indonesia have been officially recognised since the Dutch colonial era, representing the nation's culture and historical journey.<sup>77</sup> Article 18B of the 1945 Constitution acknowledges customary society' rights as part of Indonesia's legal system, which incorporates elements of Islam, tradition, and state law. However, these rights must not conflict with existing legislation or threaten national unity and integrity.<sup>78</sup>

Customary institutions are respected in Indonesia because they prioritise reconciliation and compensation in order to preserve social harmony and unity, aligning cultural and religious principles.<sup>79</sup> According to McKerracher, recognising the different legal systems is vital for improving communication between them, as well as strengthening the legitimacy and respect of customary law.<sup>80</sup> To realise an inclusive framework, the protection of fundamental human rights must be in line with national, international and customary law.<sup>81</sup>

#### **2.3.1. Customary Law**

Customary law in Indonesia is deeply rooted in cultural traditions passed down through generations, reflecting the nation's cultural values based on the principle of '*Bhinneka Tunggal Ika*' (Unity in Diversity).<sup>82</sup> Al-Hakim argues that legal syncretism and robust legal oversight are vital for achieving social justice in multicultural societies, given the uncertain effectiveness of legal pluralism in Indonesia.<sup>83</sup> Customary law arises from social interactions, creating values and norms. Violations of these norms are increasingly sanctioned until they become binding<sup>84</sup>. It also functions as a

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<sup>77</sup> Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 335.

<sup>78</sup> Keebet von Benda-Beckmann, "Trajectories of Legal Entanglement Examples from Indonesia, Nepal, and Thailand," *Legal Pluralism and Critical Social Analysis* 54, no. 1 (2022): 24.

<sup>79</sup> Romi Adetio Setiawan, "Impact of Islamic Jurisprudential on Traditional Financial Customs and Legal Integration in Indonesia," *Journal of Islamic Thought and Civilization* 13, no. 2 (2023): 202.

<sup>80</sup> Keltly McKerracher, "Relational Legal Pluralism and Indigenous Legal Orders in Canada," *Global Constitutionalism* 12, no. 1 (2022): 140.

<sup>81</sup> Juan Jose Cantillo Pushaina, "Legal Pluralism: Opportunities for Development From a Constitutional Perspective in Latin America," *International Journal of Law and Society* 5, no. 1 (2022): 95.

<sup>82</sup> Sri Warjiyati et al, "The Legalization and Application of Using Indigenous People's Customary Law Model in the Legal System," *Lex Localis - Journal of Local Self-Government* 21, no. 4 (2023): 860.

<sup>83</sup> Ali Al-Hakim, "Navigating Legal Pluralism: A Socio-Anthropological Analysis of Governance and Law in Multicultural Societies," *Journal of Judikultura* 1, no. 2 (2023): 24.

<sup>84</sup> Yeni Febrianty, Hasliza Ghapa and Asmida Ahmad, "Integration of Customary Law in the National Legal System Comparative Study of Malaysia and Indonesia," *Jurnal SASI* 30, no. 4 (2024): 385.

social bond that fosters a sense of shame and togetherness,<sup>85</sup> and as a regulator of life that governs social interaction, resource utilisation and the preservation of traditional rituals. Its values are more in line with local cultural norms than national law.<sup>86</sup>

In Indonesia, customary law supplements national law. The 1945 Constitution recognises both customary practices and community rights.<sup>87</sup> This is reflected in legal resolutions that are reached through deliberation and peaceful efforts, in line with the social and cultural conditions of Indonesian society.

### 2.3.2 Islamic Law

The *Qur'an*, *Sunnah*, *Ijma'* and *Qiyas* form the core principles of Islamic law, encompassing all areas of *fiqh* (the interpretation and application of law), *qadha* (court rulings), and *fatwa* (scholarly opinions on legal or religious matters).<sup>88</sup> The process of legalising Islamic law consists of three phases: planting ideas to create social acceptance and a philosophical basis; acquiring political approval through executive and legislative support, as well as the involvement of the Islamic community; and dissemination.<sup>89</sup>

In Indonesia's plural society, national law may accommodate Islamic legal principles such as *ṣulḥ* (peace), *'afw* (forgiveness), and *maṣlaḥah* (social justice) which are compatible with restorative justice approaches and can contribute to fair conflict resolution.<sup>90</sup> The diversity of customary, Islamic, and national laws in Indonesia supports restorative justice practices that emphasize deliberation, reconciliation, and peaceful resolution through mechanisms rooted in legal pluralism.<sup>91</sup>

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<sup>85</sup> Vicki Dwi Purnomo, Bambang Joyo Supeno, Edy Lisdiyono, "The Role of Customary Law in the Development of National Law in the Modern Era," *Formosa Journal of Sustainable Research* 3, no. 10 (2024): 2150.

<sup>86</sup> Surjanti et al, "Customary Law In Indonesia: A Legacy for a Sustainable Future," *Journal Evidence of Law* 4, no. 1 (2024): 312.

<sup>87</sup> The 1945 Constitution of the Republic of Indonesia, Art. 18B, (2)

<sup>88</sup> Hafiz Falak Shair Faiz and Hafiz Sfarish Ali, "The Core Principles of Islamic Jurisprudence within Legal Theory: A Comprehensive Analysis," *Journal of Research in Islamic Studies* 11, no. 2 (2024): 64-65.

<sup>89</sup> Suci Ramadhan, "Islamic Law, Politics and Legislation: Development of Islamic Law Reform in Political Legislation of Indonesia," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 73.

<sup>90</sup> Suparno, Rusli and Ia Hidarya, "A New Restorative Justice Paradigm in the Sociology of Islamic Law in Indonesia: Nahdlatul Ulama and Muhammadiyah's Responses to Corruption Cases," *SYARIAH : Jurnal Hukum dan Pemikiran* 24, no. 2 (2024): 498.

<sup>91</sup> Darius Halawa, "Hukum Adat sebagai Instrumen Restorative Justice dalam Penyelesaian Sengketa di Masyarakat sebagai Pembaharuan Hukum Nasional," *Rio Law Jurnal* 6, no. 2 (2025): 974.

## **2.4. Tepung Tawar as a Customary Means to Settling Criminal Case**

### **2.4.1. Customary Criminal Law and Liability: Is Criminal Offense Regulated under Customary Law?**

Customary criminal law have been existed in various customary societies in Indonesia.<sup>92</sup> Offences of customary criminal law may include violations of the social order and actions that harm life, property, or community groups.<sup>93</sup> Violations that disrupt social harmony, such as adultery in Lolotuaru or deviations from ownership norms in Bali, are resolved through Indonesian customary criminal law by paying fines, imposing corporal punishment or performing religious rituals in an attempt to restore balance,<sup>94</sup> such offences include violations of the social order and actions that harm life, property, or community groups.<sup>95</sup> The customary justice process is based on the principle of restorative justice, combining law, tradition, moral values and religion to resolve disputes through dialogue and mutual agreement.<sup>96</sup>

The Dutch East Indies government recognised the existence of customary courts in areas outside Java and Madura. This included the Swapraja and Customary Courts, which dealt with criminal cases based on the customary laws applicable in certain regions, such as Bengkulu, Palembang, West Kalimantan, Nias, Padang, Gorontalo and Lombok. These courts had greater autonomy than village courts in Java and Madura.<sup>97</sup> The 1947 National Law abolished the Royal Courts in Java and Sumatra,<sup>98</sup> transferring criminal jurisdiction to the Republic Courts.<sup>99</sup> Additionally, the 1951 Emergency Law stipulated that the previous criminal law would

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<sup>92</sup> See for example Anna Maria Salamor et al, "Application of Restorative Justice in The Settlement of Customary Criminal Cases," *Jurnal SASI* 29, no. 2 (2023): 228.

<sup>93</sup> See Hyginus Obinna Ogbonna et al, "Examining the Traditional Methods of Crime Control in an Identified Traditional Community: An Invitation to the Socio-Anthropological Jurisprudence of Mpam Community of Ahiazu Mbaise, Imo State", *Mediterranean Journal of Social Sciences* 14, no. 3 (2023): 48-49 and Maulana Halim Putra, Rizanizarli Rizanizarli, and Sulaiman Sulaiman, "The Position of Customary Criminal Law in Law No. 1 of 2023 on the Criminal Code," *International Journal of Law and Society* 2, no. 3 (2025): 176.

<sup>94</sup> Hadibah Zachra Wadjo et al, "Penyelesaian Kasus Perselingkuhan Menurut Hukum Adat di Desa Lolotuaru Kecamatan Pulau Lakor Kabupaten Maluku Barat Daya," *Lutur Law Journal* 5, no.1 (2024): 4. see Dewa Made Rasta, "Tindak Pidana Adat di Bali dan Sanksi Adatnya", *Yustitia* 13, no. 2 (2019): 40.

<sup>95</sup> See Hyginus Obinna Ogbonna, et al, "Examining the Traditional Methods of Crime Control in an Identified Traditional Community: An Invitation to the Socio-Anthropological Jurisprudence of Mpam Community of Ahiazu Mbaise, Imo State," *Mediterranean Journal of Social Sciences* 14, no. 3 (2023): 48-49 and Halim, Rizanizarli, and Sulaiman, *loc.cit.*

<sup>96</sup> Dhini Hendria Restuti, "Renewal of Criminal Law in the Customary Law," *Indonesian Journal of Criminal Law Studies* 3, no.1 (2018): 67.

<sup>97</sup> See Wiratman, *op.cit.*, 47.

<sup>98</sup> Law No.23 of 1947 concerning the Abolition of the King's Court in Java and Sumatra, Art 1(1).

<sup>99</sup> *Ibid.*, Art. 1(2) and Art. 2.

remain in force for the subjects of the Swapraja and the Customary Courts.<sup>100</sup>

The principle of strict formal legality, whereby only written laws could be used as a basis for determining whether an act constituted a criminal offence, was applied in the old Criminal Code, which was based on the *Wetboek van Strafvordering Nederlandsch-Indië* (WvSvNI). Consequently, the Indonesian criminal justice system did not recognise or apply living law, including customary law.<sup>101</sup> The Supreme Court in Decision No. 1644 K/Pid/1988, however, dismissed a case because the defendant had already been punished according to custom.<sup>102</sup>

Law No. 1 of 2023 Criminal Code, the new Criminal Code which reflects a legal politics that draws on the history of customary criminal law, clarifies that the principle of legality does not undermine the validity of living law in society, which allows punishment even for acts not explicitly regulated, provided they align with Pancasila, the 1945 Constitution, human rights, and general legal principles recognized internationally.<sup>103</sup> Article 2 of this law explicitly incorporates customary criminal law into the Criminal Code, recognising it as a distinct legal system despite past conflicts with formal law and obstacles under the principle of legality.<sup>104</sup>

To operationalise this, guidelines for applying customary criminal law in sentencing could provide judges with a clear framework to adjust punishment severity, thereby fostering cooperation and mutual respect between customary and national criminal law.<sup>105</sup> To reflect this situation, developing guidelines for handling cases involving customary criminal law would enhance the consistency of sentencing decisions, including considerations for increasing or reducing punishment severity. Such guidelines would offer judges a structured framework for applying customary law, thereby fostering cooperation and mutual respect between customary and national criminal law.<sup>106</sup>

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<sup>100</sup> Emergency Law No 1 of 1951 concerning Temporary Measures to Organize Unity in the Structure of Power and Procedures of Civil Courts, Art. 5(3)(b).

<sup>101</sup> Itok Dwi Kurniawan, "The Existence of Living Law in Criminal Law Reform: Expansion of the Principle of Legality," *Justitia Et Pax* 40, no. 2 (2024): 244.

<sup>102</sup> Decision of Suka Makmue District Court No.63/Pid/.B/2021/PN Skm, 27.

<sup>103</sup> Law No. 1 of 2023 concerning the Criminal Code, Art. 2(1) and Art. 2(2).

<sup>104</sup> See Yoghi Arief Susanto, Riski Dysas Prabawani, and Naili Aulia Najah, "Customary Law in the New Indonesian Criminal Code: Recognition or Reduction?," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 19, no. 1 (2025): 84; Lisnawaty W. Badu and Julisa Aprilia Kaluku, "Restorative Justice in the Perspective of Customary Law: A Solution to The Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review* 4, no. 2 (2022): 315; and Orien Effendi, "The Challenge of Indonesian Customary Law Enforcement in the Coexistence of State Law," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 56, no. 1 (2022): 185.

<sup>105</sup> *Ibid.*, Art. 12(2). See also the academic review on this new Criminal Code in Putra, Rizanizarli, and Sulaiman, *loc.cit* and Muhammad Junaidi and Yoghi Arief Susanto, "Reformulation of Customary Criminal Law in the National Criminal Code Based on the Formation of Legislation," *Jurnal Pembangunan Hukum Indonesia* 7, no. 1 (2025): 54.

<sup>106</sup> Budi Suhariyanto, *op. cit.*, 1121.



#### **2.4.2. The Practice of Tepung Tawar Tradition in Settling Criminal Case in the Malay Community in South Sumatra**

*Tepung tawar* emphasizes the importance of peace and familial harmony in resolving community conflicts. In this process, disputing parties engage in religious activities intended to strengthen family bonds and promote forgiveness. This approach is applicable to a wide range of conflicts, from minor disagreements to more complex issues.

In Ilir Timur II in Palembang, disputes such as murder or property damage are settled through *teping tawar* ceremonies. These ceremonies involve offerings and costs provided by the perpetrators, and the peace is ratified by community leaders.<sup>107</sup> Another example also reflects such an approach. In February 2023, two residents of Muara Gula Baru Village, Muara Enim Regency, experienced a dispute resulting from a misunderstanding. Although the Criminal Code defines fighting as a punishable offense, the case was not addressed through formal law enforcement. Instead, the village government organized discussions that led to a peace agreement among the individuals involved. All parties ultimately agreed to resolve the matter through the *teping tawar* tradition. One party provided IDR 300,000 (USD 15) in compensation and agreed not to repeat the action.<sup>108</sup> Another situation occurred in Muara Enim Regency, precisely situated in Ibul Village, Belida Darat subregency, there was acts of violence between residents resolved through the *teping tawar*. During this process, both parties meet with traditional leaders and participate in a ritual that symbolizes forgiveness. The parties provide minor material compensation, such as rice or symbolic money, along with social compensation, including an apology and cooperation with the aggrieved party. This approach is intended to prevent lingering resentment and to maintain community harmony. The practice is recognized as *al-'urf al-shahihah* (valid custom).<sup>109</sup>

In order to achieve reconciliation *teping tawar*, it is important that both parties are sincere and earnest in carrying out the tradition, and that this sincerity and earnestness are balanced. During this process, people vow to forgive each other and forget any past differences.<sup>110</sup> The *teping tawar* ceremony plays a key role in resolving disputes and maintaining harmony, particularly by strengthening family bonds. It is believed that this tradition can bring about unity, calm anger and heal emotional and physical wounds caused by conflict.<sup>111</sup>

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<sup>107</sup> Effendi, Erdianto. *Hukum Pidana Adat.... op.cit.*, 4

<sup>108</sup> Afriansyah and Izzuddin, *op.cit.*, 109.

<sup>109</sup> Andriyani Andriyani and Rusmala Dewi, *op.cit.*, 318

<sup>110</sup> Adi Inggit Handoko et al, "Culture and Indigenous Knowledge: *Teping Tawar* Bedami as Conflict Resolution in the Malay Community of Palembang." in *the 8<sup>th</sup> International Conference on Social Sciences and Humanities*, KnE Social Sciences, (2025): 342.

<sup>111</sup> Nurdiansyah, Maftuh, and Malihah, *op. cit.*, 290.

### 2.4.3. Restorative Justice Principles behind the *Tepung Tawar* Tradition in Settling Criminal Case

In South Sumatra, the *tepung tawar* tradition of the Palembang Malay community is an example of restorative justice, using cultural norms and community leaders to help people reach a mutual agreement and forgive one another.<sup>112</sup> This process reflects the core principles of restorative justice: repairing harm, involving stakeholders, and transforming relationships.<sup>113</sup> By prioritizing reconciliation over punitive measures, *tepung tawar* represents a culturally grounded and participatory approach to resolving minor criminal acts and social disputes, consistent with restorative justice frameworks.

An analysis of customary practices and relevant concepts reveals six principles of restorative justice that underlie the *tepung tawar* tradition for settling criminal cases in South Sumatra, as follows:

- a. Admission of fault and responsibility. These activities encourage people to realise the consequences of their actions, take responsibility for them, actively participate in repairing any damage caused and express remorse. This process does not merely induce feelings of guilt.<sup>114</sup>
- b. The focus is on the needs of victims. Victim Impact Statements (VIS) are used to achieve victim-centred justice. This provides restitution and recognition from the victim's perspective during the legal process. Victims' recovery and sense of closure depend on this empowerment.<sup>115</sup>
- c. Resolving issues through cooperation. A trained, impartial facilitator helps those involved to communicate directly or indirectly in order to reach an agreement on how to address the loss, rather than taking an aggressive approach.<sup>116</sup>
- d. Creating a Remediation Plan. Each participant will work together to create a plan explaining how the perpetrator will remedy the harm caused. Affected parties may be compensated through monetary restitution, social services, an apology or other means.<sup>117</sup>
- e. The reintegration process aims to return perpetrators and victims to society. It focuses on restoring relationships and isolating

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<sup>112</sup> *Ibid.*, 288. See also Syah and Purwoleksono, *op.cit.*, 373.

<sup>113</sup> Rochaeti et al, *op.cit.*, 89.

<sup>114</sup> Adebobola Omowon and Alaba Samson Kunlere, "Restorative Justice Practices: Bridging the Gap Between Offenders and Victims Effectively," *World Journal of Advanced Research and Reviews* 24, no. 03 (2024): 2768.

<sup>115</sup> Anang Riyan Ramadianto, Milda Istiqomah, and Nurini Aprilianda, "Victim Impact Statement as a Model of Victim-Centered Justice in Child Sexual Abuse Cases," *Jurnal Hukum Ius Quia Iustum* 32, no. 2 (2025): 337.

<sup>116</sup> Principles of Restorative Justice – Department Justice of Canada, 2021-12-13, accessed November 22, 2025 <https://www.justice.gc.ca/eng/rp-pr/cj-ij/victim/rest.html#:~:text=Victims%20have%20the%20principal%20role,responses%20to%20crime%20and%20victimization.>

<sup>117</sup> *Ibid*

perpetrators from society ultimately reduces the likelihood of further offences.<sup>118</sup>

- f. Community participation. In this process, affected communities play a key role in establishing behavioural norms, holding perpetrators accountable and offering assistance to all parties involved. This approach promotes social recovery and unity, and fosters a collective sense of responsibility in the fight against crime.<sup>119</sup>

The *tepung tawar* ceremony in South Sumatra is an example of restorative justice and the values of the Indonesian philosophy of Pancasila, resolving conflicts through compassion, social care and reconciliation.<sup>120</sup> It promotes conflict avoidance, deliberation and mediation by religious and traditional leaders, helping them to reach fair agreements.<sup>121</sup> The peace begins with communication and unity and is achieved by restoring and strengthening relationships through the *angkan-akanan* brotherhood ritual.<sup>122</sup>

## 2.5. Reflection and The Possible Scenario

Sections 2.1 and 2.4 examine the role of Malay traditions in addressing social issues, including criminal acts, and explore the philosophical values inherent in the tepung tawar tradition. Meanwhile, Section 2.2 examines the integration of restorative justice into the official Indonesian legal framework, covering legal substance and procedure. Section 2.3 further discusses the application of restorative justice from the perspective of legal pluralism, which has strong historical roots and involves conflict resolution at the community level.<sup>123</sup> The management of legal plurality requires both negotiation and adaptation. On the one hand, individuals and groups frequently engage in negotiations to resolve disputes and identify culturally appropriate solutions, and must navigate multiple legal systems while adjusting their approaches to specific circumstance.<sup>124</sup> On the other hand, community leaders and legal experts play a crucial role in facilitating these discussions and resolving conflicts.<sup>125</sup>

In order to respect human rights, *tepung tawar* ritual must be voluntary to ensure the safety and justice of all individuals involved. Traditional reconciliation should also not be exploited by perpetrators to evade criminal responsibility with the support of influential leaders. Further, law enforcement must ensure that customary practices do not undermine justice, and that they are applied appropriately while protecting victims' rights. When conducted properly, *tepung tawar* can complement or serve as an alternative to legal dispute resolution.

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<sup>118</sup> *Ibid*

<sup>119</sup> *Ibid*

<sup>120</sup> Hemafitria Hemafitria, *op.cit.*, 122.

<sup>121</sup> Leigh H. Grant, Ifat Maoz, and Boaz Keysar, *op.cit.*, 988.

<sup>122</sup> Nurdiansyah, Maftuh, and Malihah, *op.cit.*, 291.

<sup>123</sup> Hamida, *loc.cit.*

<sup>124</sup> Al-Hakim, *op.cit.*, 25.

<sup>125</sup> *Ibid*.

With regards to the topic discussed in this paper, there might be two possible interpretations regarding the customary practice of *tepung tawar* in settling criminal cases based on restorative justice in South Sumatra, particularly in the context of criminal justice legal framework. The first scenario supports the potential integration of customary restorative practices into Indonesia's formal legal system where the practice of *tepung tawar* may be used to resolve criminal cases in South Sumatra in accordance with the 2023 Criminal Code and the 2025 Criminal Procedure Code. In this scenario, law enforcement agencies could officially recognize and permit the application of *tepung tawar* at all stages of the legal proceedings i.e. inquiry, investigation, prosecution, and trial before the court.<sup>126</sup> According to Article 81 (1) of the 2025 Criminal Procedure Code, the restorative justice mechanism may be carried out either through an application submitted by the perpetrator of a crime, suspect, defendant, or their family, and/or the victim of a crime or their family; or an offer from an investigator, public prosecutor, or judge to the victim, perpetrator of a crime, suspect, or defendant. From the perspective of legal pluralism, this arrangement illustrates how customary law and national law can mutually reinforce each other.

The second scenario is that the customary practice of *tepung tawar* in South Sumatra has adopted only the principles of restorative justice, without directly referring to national law. The consequence is that law enforcement agencies will not mention *Tepung tawar* as a means of settling criminal cases in South Sumatra, based on restorative justice, according to the The 2023 Criminal Code and the 2025 Criminal Procedure Code. It means that *tepung tawar* is a settlement of criminal cases outside the court,<sup>127</sup> without the involvement of any law enforcement agencies, and can only be settled by the perpetrator, the victim, the victim's family, and relevant customary leaders according to customary and Islamic laws. Under the legal pluralism approach, this situation can be described as dualism, where the existence of customary law does not intersect with norms stipulated in national law.

According to the author, the *tepung tawar* ritual in South Sumatra is a form of restorative justice, resolving minor criminal cases through reconciliation and the restoration of social relations. While this practice reflects legal pluralism, its effectiveness hinges on voluntary participation, respect for victims' rights, and alignment with human rights principles. Without oversight, however, there is a risk that this ritual could be misused to avoid criminal responsibility, so integrating it with formal legal mechanisms could strengthen its legitimacy and fairness.

It might be argued that applying reconciliation within the official legal framework in the first scenario is considered more feasible and desirable, as it legalises the recovery process, protects victims, and prevents misuse of

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<sup>126</sup> The 2025 Criminal Procedure Code 2025, Art. 79 (8)

<sup>127</sup> Article 132 (1)(g) of Law No. 1 of 2026 concerning Criminal Adjustment, determines that the authority to prosecute is declared to have lapsed if there has been a settlement outside the judicial process as regulated in the Law.

customs to evade criminal charges. This approach is consistent with Article 81 (1) of the 2025 Criminal Procedure Code, which regulates restorative justice at various stages of the criminal justice process. Consequently, customary and national laws can complement each other while ensuring that justice is served.<sup>128</sup>

### 3. CONCLUSION

Indonesian legal pluralism acknowledges the coexistence of state, customary, and religious laws to achieve justice and social harmony. Customary punishment, grounded in local principles and traditions, facilitates peace, dialogue, and the restoration of social relationships. For instance, the Malay community in South Sumatra practices '*tepung tawar*', a ritual embodying restorative justice principles that may be applied to resolve minor criminal cases through reconciliation, the restoration of social relations, and the reintegration of perpetrators into the community. The process emphasizes the perpetrator's acknowledgment of wrongdoing, the victim's healing, and the offender's reintegration. Although this practice exemplifies Indonesia's legal pluralism, its effectiveness depends on voluntary participation, respect for victims' rights, and compliance with human rights standards. Inadequate oversight may result in misuse to avoid criminal liability. Local traditions and customs are essential for fostering unity, resolving disputes peacefully, and promoting collective responsibility. To prevent distortion or discrimination, the integration of customary law into the modern legal system must be voluntary, proportionate, and attentive to fundamental human rights. Therefore, customary law and local traditions can advance restorative justice and reinforce legal diversity in Indonesia. With the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code, which incorporate restorative justice principles and mechanisms, the formal integration of customary practices such as *tepung tawar* is increasingly relevant. This development enhances the harmonization of national and customary law and supports the pursuit of contextual and sustainable justice.

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<sup>128</sup> Yuli Handayani, "The Concept and Implementation of Customary Law in Indonesian Society", *Rechtsvinding* 3, no. 2 (2025): 95.



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