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*by* Dr Rifai

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## A Model of Implementing Restorative Justice Perspective of Trong Yowari Traditional Jurisdiction, Jayapura Regency

Arie Elvis Rahael<sup>1</sup> , Ahmad Rifai Rahawarin<sup>2</sup>, Ariyanto<sup>3</sup>, Muslim<sup>4</sup>, Farida Tuharea<sup>5</sup>, Zonita Zirhani Rumalean<sup>6</sup>, Wahyudi BR<sup>7</sup>, Desy Maryani<sup>8</sup>

<sup>1,2,3,4,5,6,7</sup>Yapis University, <sup>8</sup>Dehasen University Bengkulu

Email : [ari123@gmail.com](mailto:ari123@gmail.com), [ahmadrifairahawarin@gmail.com](mailto:ahmadrifairahawarin@gmail.com), [ariyanto@uniyap.ac.id](mailto:ariyanto@uniyap.ac.id), [muslimuniyap@gmail.com](mailto:muslimuniyap@gmail.com), [faridatuhare@auniyap.ac.id](mailto:faridatuhare@auniyap.ac.id), [alinedracantik@gmail.com](mailto:alinedracantik@gmail.com), [wahyudiburhan79@gmail.com](mailto:wahyudiburhan79@gmail.com), [desymaryani1985@gmail.com](mailto:desymaryani1985@gmail.com)\*

\*Corresponding Author: [desymaryani1985@gmail.com](mailto:desymaryani1985@gmail.com)

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**Abstract:** This study aims to know and understand the policy of implementing restorative Justice in the judiciary. As well as to know and understand the model of implementing restorative Justice from the perspective of the customary Justice of the Trong Yowari tribe, Jayapura Regency. The method used in this study is empirical juridical research that takes place in the Trong Yowari tribe, Jayapura Regency, with secondary data types with primary, secondary, and tertiary legal data sources, the population of the entire Trong Yowari tribe and samples in Yongsu Desoyo village, data collection techniques through literature study or documents with data analysis techniques using descriptive qualitative data analysis. The results of the study indicate that the policy of implementing restorative Justice in the prosecutor's office is the authority of the public prosecutor to stop prosecution if a case has been settled outside the court provided that: (a) for certain matters of crime, the maximum fine is paid voluntarily or (b) has recovery occurs back to its original state by using a Restorative Justice approach.

**Keywords:** *Restorative Justice, court, Custom Law, Trong Yowari tribe*

**Abstrak:** Kajian ini bertujuan untuk mengetahui dan memahami kebijakan penerapan restorative justice di lembaga peradilan. Serta untuk mengetahui dan memahami model penerapan restorative justice dari perspektif peradilan adat suku Trong Yowari Kabupaten Jayapura. Metode yang digunakan dalam penelitian ini adalah penelitian yuridis empiris yang bertempat di suku Trong Yowari Kabupaten Jayapura dengan jenis data sekunder dengan sumber data hukum primer, sekunder dan tersier, populasi seluruh suku Trong Yowari dan sampel di desa Yongsu Desoyo, teknik pengumpulan data melalui studi pustaka atau dokumen dengan teknik analisis data menggunakan analisis data deskriptif kualitatif. Hasil kajian menunjukkan bahwa kebijakan penerapan restorative justice pada lembaga kejaksaan merupakan kewenangan penuntut umum untuk menghentikan penuntutan dalam hal telah dilakukan penyelesaian perkara di luar pengadilan dengan ketentuan: (a) untuk hal-hal tertentu kejahatan, denda maksimum dibayar secara sukarela atau (b) telah terjadi pemulihan kembali ke keadaan semula dengan menggunakan pendekatan Keadilan Restoratif

**Kata kunci:** *Keadilan Restoratif, Kejaksaan, Hukum Adat, Suku Trong Yowari*

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## Introduction

The concept of criminal law enforcement, according to Gustav Radburch, must contain three elements, namely: legal certainty (*rechtsicherheit*), expediency (*zweckmassigkeit*), and Justice (*gerechtigkeit*). Legal certainty is a justifiable protection against arbitrary actions, meaning someone can get something expected in certain circumstances. The principle of legal certainty adheres to the principle of *fiat justitia et pereat mundus* (even though the world is collapsing, the law must be upheld).<sup>1</sup> On the other hand, the community expects benefits in implementing or enforcing the law. What is meant by a good law that does not benefit people's lives Likewise, Justice must be considered in law enforcement because the law is made to fulfill a sense of Justice for the community.<sup>2</sup>

The law enforcement phenomenon in Indonesia in the last decade has provided an overview of the law enforcement process, generating controversy, polemic, forms of resistance, protests, and sharp criticism from various groups. The opinions of various parties who disagree with this legal process are often based on the assumption that it harms the legal feelings of the community and harms the legal Justice of the people who no longer agree with the formal legal process through the criminal justice system.<sup>3</sup>

Several cases have attracted public attention, including the case of Minah's fifty-five-year-old grandmother, who was accused of stealing 3 cocoa pods where she worked at PT. The Sari Antan 4 family was later prosecuted at the Purwokerto District Court, Central Java, with a prison sentence of one month and fifteen days, in the case of the theft of Rp. 30,000 watermelon by Basar Suyanto and Kholil, the prosecutor demanded 2 months and 10 days in prison at the Kediri District Court, East Java, who were eventually sentenced to 15 days with one month's probation.<sup>4</sup>

In addition, in the case of stealing a shirt committed by Aspuri (19 years), the defendant was charged with stealing a shirt belonging to his neighbor Dewi. Aspuri was charged with Article 362 of the Criminal Code concerning theft with a maximum penalty of five years in prison. In the case of two junior high school students accused of committing theft, the two sides, namely the students and the victim, actually reconciled, but the police continued to proceed with the case to court. The case of Deli, the junior high school student accused of stealing vouchers, requires a formal criminal process in court.<sup>5</sup>

The current phenomenon of the penitentiary system provides a clear picture that it no longer creates a deterrent effect for perpetrators of criminal acts. Even detention centers and prisons are no longer effective social<sup>6</sup> institutions as places for the re-socialization of these convicts, but correctional institutions have shifted their function as crime academies where convicts are more "honed" in their ability to commit crimes.<sup>7</sup>

The restorative justice system approach is one of the right concepts to overcome various legal crises. The restorative justice approach in settlement of criminal cases is considered a new method, even though the patterns used are mostly rooted in the local wisdom values of primitive communities.<sup>8</sup> The concept of restorative justice approach is an approach that focuses more on conditions for creating Justice and balances for perpetrators of criminal acts and their victims.<sup>9</sup> Procedural and criminal justice mechanisms that focus on sentencing are transformed into dialogue and mediation processes to create agreements on the settlement of criminal cases that are more just and balanced for victims and perpetrators.

<sup>1</sup> Vincentius Setyawan, 'Pancasila As A Philosophical Basis Of Law Formation In Indonesia', *NUSANTARA: Journal Of Law Studies*, 2.1 (2023), 1–8 <<https://juna.nusantarajournal.com/index.php/juna/article/view/29>>.

<sup>2</sup> Mertokusumo, Sudikno. "Mengenal Hukum Suatu Pengantar", Yogyakarta: Liberty, 2019, p. 145-146.

<sup>3</sup> Hermann, D. H. J. "Restorative Justice and Retributive Justice and Retributive Justice: An Oppor e Justice: An Opportunity for tunity for Cooperation or an Occasion for Conflict in the Search for Justice". *Seattle Journal for Social Justice*, 16 (2017): 81 <https://doi.org/10.23917/jurisprudence.v10i2.12233> (accessed on January 5, 2023).

<sup>4</sup> Sawabi, I GN. "Pencuri Semangka Divonis 15 Hari Penjara", <http://regional.kompas.com/read/2009/12/16/> (accessed on November 25, 2023).

<sup>5</sup> Tengens, Jecky. "Pendekatan Restorative Justice dalam Sistem Pidana Indonesia", <http://hukumonline.com/berita/baca/lt4e25360a422c2/pendekatan-restorative-justice-dalam-sistem-pidana-indonesia> (accessed on November 25 2021).

<sup>6</sup> Sinarman Jaya and Ferri Susanto, 'Social Dimension of Taboo Language as Knowledge Power Analysis for Identifying Transferable Saying English Taboo in Internet', *Nusantara Education*, 1.1 SE-Articles (2022), 29–80 <<https://juna.nusantarajournal.com/index.php/nula/article/view/26>>.

<sup>7</sup> Saladin Ayyubi/Global/fit, "Judges Weep In Tears Reading the Decision of Grandmother Thief for 3 Chocolate Fruits", <http://news.okezone.com/read/2009/11/20/340/277729/340/judge-shed-tears-read-verdict-grandmother-thief-3-chocolate-fruit-seeds> (accessed on November 25 2021).

<sup>8</sup> Pelikan, C. "Balancing the Debate: on the Professionalisation and Victim Orientation in Restorative Justice". *The International Journal of Restorative Justice*, 3 No. 2 (2020): 282-298. <https://doi.org/10.5553/IJRJ.000040> (accessed on January 5, 2023).

<sup>9</sup> Koto, Z. "Prospektif Penegakan hukum Berdasarkan Pendekatan Keadilan Restoratif dengan Indikator yang dapat Terukur Manfaatnya Bagi Masyarakat (Penerapan dan Pengembangannya di Lingkungan Polri)", [https://www.bphn.go.id/data/documents/paparan\\_rj\\_bphn\\_01-12-16\\_rev.pdf](https://www.bphn.go.id/data/documents/paparan_rj_bphn_01-12-16_rev.pdf) (accessed on December 29, 2022).

Restorative Justice is one manifestation of the goal of punishment to achieve the goal of enforcing criminal law.<sup>10</sup> According to Tony F. Marshall, Restorative Justice is a process in which all parties involved in a particular crime jointly solve the problem of dealing with the consequences in the future. The main purpose of Restorative Justice itself is to provide recovery to repair the impact caused by a crime.<sup>11</sup>

Settlement of cases through restorative Justice has been carried out with the issuance of Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System. In the provisions of Article 1 point 6, it is stated that restorative Justice is the settlement of criminal cases involving the perpetrator, the victim, the perpetrator/victim's family, and other related parties to jointly seek a fair solution by prioritizing restoration to its original state, and not revenge. In principle, Restorative Justice is an effort to divert from the criminal justice process to settlement through penal mediation, but it cannot be applied to all types or levels of crime. Restorative Justice can be applied to minor crimes.<sup>12</sup> Restorative Justice is felt to be more capable of realizing the principle of simple, fast, and cheap Justice, which is very important for protecting the rights of victims and perpetrators.<sup>13</sup>

The application of restorative Justice in law enforcement in Indonesia is the original value of the Indonesian nation, which must be a source in resolving legal problems in society. The original values of the Indonesian people contained in customary law are by the spirit of the nation, Pancasila, and the 1945 Constitution of the Republic of Indonesia. So what the prosecutor's office is doing is an effort to realize substantive Justice for society.<sup>14</sup>

Customary law as a source of original unwritten law for a pluralistic Indonesian nation can contribute to national law, both material law and ceremonial law. Customary law values are still growing and developing and being used by the community as long as they do not conflict with Pancasila, the 1945 Constitution of the Republic of Indonesia. General law principles can then become a reference in local community legal settlements.

Juridically, customary law is recognized for its existence in national law as in Law Number 48 of 2009 concerning the Judiciary and Law Number 2 of 2021 regarding the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (after this abbreviated as UU Special Autonomy) in Article 50 paragraph (2) states "In addition to the judicial powers referred to in paragraph (1) there is recognized customary justice in certain customary law communities".

The existence of a case settlement institution outside the court through traditional institutions has received recognition from the Supreme Court as the highest judicial institution in Indonesia. The Supreme Court recognizes the existence of customary Justice, which is realized in settlement of customary violations through the customary head.<sup>15</sup> Thus, criminal cases among indigenous and tribal peoples can be resolved through customary and national courts, including the customary law of the Trong Yowari tribe, Jayapura Regency, Papua Province. Laws that grow and develop together with the community have a source of wealth that can be used as a reference in developing national criminal law. Because one source of national criminal law wealth is customary criminal law, both material law and ceremonial law. So from the description above, the authors conducted further research and studies on the Implementation of Restorative Justice at the Attorney General's Office from the Perspective of the Customary Law of the Trong Yowari Tribe, Jayapura Regency.

## Literature Review

As a primitive concept that will be reconstructed into a new concept in the criminal law enforcement process, it is necessary to conduct a conceptual study<sup>16</sup> by looking at it from various perspectives. Specifically, this research

<sup>10</sup> Kristanto, Andi. "Kajian Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif", DO - 10.20885/JLR.vol17.iss1.art14UR - <https://journal.uui.ac.id/Lex-Renaissance/article/view/22710> SP (accessed on January 5, 2021).

<sup>11</sup> Waluyo, Bambang. "Law Enforcement in Indonesia", Jakarta: Sinar Grafika, 2016, p.109.

<sup>12</sup> Shapland, Joanna, E. "From victimisation to restorative justice: developing the offer of restorative justice". The International Journal of Restorative Justice, 3 (2), (2020). 176-195 <https://www.semanticscholar.org/paper/From-victimisation-to-restorative-justice%3A-the-of-Shapland-Burn/5d9ffa22fcb41078a02bc8c1b53d07c35401fdfa> (accessed on January 5, 2022).

<sup>13</sup> Nensi, Elvia. "Penerapan Keadilan Restoratif dalam Menyelesaikan Tindak Pidana Kekerasan dalam Rumah Tangga : Studi Polresta Padang", Padang: Universitas Negeri Andalas, 2020, p. 137.

<sup>14</sup> John, Braithwaite. "Restorative Justice, dalam Michael Tonry, The Handbook of Crime and Punishment", New York: Oxford University Press, 2018, p. 111-123.

<sup>15</sup> Masril, M., & Kosasih, A. "Keberlakuan Asas Ne Bis In Idem Terhadap Putusan Pengadilan Adat Dalam Tata Hukum Indonesia. Al Imarah: Jurnal Pemerintahan dan Politik Islam, 4 (1), (2019): 49-56. <https://ejournal.iainbengkulu.ac.id/index.php/alimarah/article/viewFile/2167/1817> (accessed January 23, 2023).

<sup>16</sup> Faiz Zainuddin and Imam Syafi'i, 'Environmental Jurisprudence; Environmental Preservation Efforts In Islam', NUSANTARA: Journal Of Law Studies, 2.1 SE-Articles (2023), 23-30 <<https://juna.nusantarajournal.com/index.php/juna/article/view/31>>.



will be studied from the modern legal theory and traditional law viewpoint.

Restorative Justice which will be applied in the criminal law enforcement process, is a concept that is abstracted from the values of *the living law* in a cross-cultural society. The results of the research conducted by Braithwaite<sup>17</sup> concluded that the concept of *restorative Justice* already exists in cross-cultural cultural values, so even this concept of *restorative Justice* can be said to be an old concept or a primitive concept in problem-solving, even before the application of the concept of *restitutive Justice*.

Modern law, according to Guenther Tubner's theory with a reflexive legal view, explains that in overcoming social conflict, it is not enough to establish general norms because the process of conflict resolution produces norms that cannot be generalized adequately because functional differentiation in social stratification gives rise to differences in the perspective of Justice. The role of legal reflection is to reconcile inherent conflicts or tensions between functions and practices by imposing internal constraints on the legal system's capacity.<sup>18</sup>

Usually, this mediation effort is taken for a settlement because the Indonesian nation is a nation that prefers deliberative methods to disputes.<sup>19</sup> The basic principles of the concept of restorative Justice are directed as a reflexive legal model that does not arbitrarily determine the social functions of other external subsystems, including regulating the implementation of inputs and outputs. This concept is built dynamically to maintain structural stability through a systematic mechanism.

The concept of Indonesian customary law as a container for the customary justice system<sup>20</sup> has a concept that can be described as the root of the concept of Restorative Justice. The characteristics of customary law in each region in Indonesia strongly support the application of the concept of Restorative Justice.<sup>21</sup> Every individual or community in a certain society must have special values that are believed to be true, which are held differently so that it will also be different in viewing the reality of social life.<sup>22</sup>

The substance of Restorative Justice is to urge all parties directly related to the conflict to play an active role so that Justice is achieved based on the will of the parties. According to Bagir Manan in the R. Wiyono, the principles of restorative Justice include:<sup>23</sup>

- a. Building joint participation between perpetrators, victims, and community groups to resolve an event or crime. Placing perpetrators, victims, and community stakeholders who work together and immediately try to find a solution that is considered fair for all parties (win-win solution).
  - b. It encouraged perpetrators to take responsibility for victims or events or criminal acts that have caused injuries or losses to victims. Furthermore, build responsibility not to repeat the criminal acts that have been committed.
  - c. Placing events or criminal acts primarily as a form of violation of the law, but as a violation by someone (a group of people) against someone (a group of people). Thus, the perpetrators should be directed towards accountability to the victim, not prioritizing legal responsibility.
  - d. Encourage the resolution of an incident or crime in a more informal and personal way rather than solving it in a formal and impersonal way.
- In addition, there are several other principles contained in the application of restorative Justice, including:<sup>24</sup>
- a. They viewed violations as "accused" actions but not the perpetrators. Restorative Justice sees that people who commit criminal acts can still be changed and corrected with appropriate guidance and coaching.
  - b. Keeping criminals away from being stigmatized by implementing Restorative Justice will prevent criminals from being imprisoned, which will give a criminal stigma to the perpetrators. The goal is to distance criminals from stigmatizing criminals so that they can transform morally and psychologically.

<sup>17</sup> Braithwaite, J. "*Restorative Justice and Responsive Regulation*", New York: Oxford University Press, (2002): p. 1. See also Margarita Zernova, 2007, *Restorative Justice, Ideals and Realities*, Ashgate Publishing Limited, (2007): p. 7 . <http://dx.doi.org/13.990506/imr.v7i8.2346> (accessed January 23, 2023).

<sup>18</sup> Syahrin, Alvi, "*Hukum Lingkungan*", 11 November 2010. <<https://usu.ac.id/>>

<sup>19</sup> Kosasih, Ade, and A. Majid Ali. "*Analisis Kritis Kewenangan Kementerian Hukum dan Hak Asasi Manusia dalam Penyelesaian Sengketa Perundang-Undangan Melalui Mediasi*." *Al Imarah: Jurnal Pemerintahan dan Politik Islam* 6.1 (2021): 116. <http://dx.doi.org/10.29300/imr.v6i1.4160> (accessed January 23, 2023).

<sup>20</sup> wahyuziaulaq wahyu and Ahmad Azmi Perkasa Alam, 'Interfaith Marriage Perspective of Fiqh Law and Positive Law', *NUSANTARA: Journal of Law Studies*, 1.1, 33–39 <<https://juna.nusantarajournal.com/index.php/juna/article/view/3>>.

<sup>21</sup> Sulfa, Eva Achjani. "*Keadilan Restoratif Di Indonesia (Studi tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana)*", Disertasi Doktor Ilmu Hukum, Universitas Indonesia, Depok, 2009, p. 4 .

<sup>22</sup> Mahdi, Imam, Ade Kosasih, Etry Mike. "*Model Resolusi Konflik Hak Ulayat dalam Pendekatan Restorative Justice, (Studi Kasus Konflik Tanah Ulayat Suku Semende di Kawasan Taman Nasional Bukit Barisan Selatan Kabupaten Kaur)*", Bengkulu: Zara Abadi, 2022, p. 47.

<sup>23</sup> Wiyono, R., "*Children Court System of Indonesian*", Jakarta: Sinar Grafika, 2016, p. 41.

<sup>24</sup> Susetyo, Heru. *Sistem Pembinaan Narapidana Berdasarkan Prinsip Restoratif Justice*, Jakarta: Law and Human Right Ministry of Indonesian Republic, 2013, p. 11.

- c. Do not equate crimes and perpetrators. Not equating crime and crime will lead to the assumption that the person who committed the violation is not absolutely guilty. If I equate my behavior with his actions, it will lead to the thought that the perpetrator of the act must be guilty.
- d. Accepting the perpetrators of these crimes back into the community because existing problem solving involves the local community who feel disadvantaged because of this action. With the participation of the community in solving existing problems, a good relationship will be built between the perpetrator and the community by carrying out compensation or social punishment given by the community, in contrast to the pattern of retributive punishment, which will distance the perpetrators of crimes from society, because there is a stamp on them as criminals.
- e. Prioritizing victim support and healing. Currently, Indonesia's positive law in terms of sentencing has not fully looked at the victim, only focused on the perpetrator. In contrast to Restorative Justice, in resolving existing problems, it prioritizes victims because those who feel and are harmed directly by these actions are victims, so victims must receive maximum support and healing.
- f. There is an attempt to place the losses incurred properly. Losses due to criminal acts must receive special attention, but in positive Indonesian law, it is felt that they cannot guarantee losses arising from these disputes. This is inversely proportional if a problem is resolved using Restorative Justice. In restorative Justice, the losses that arise will be discussed together so that victims who experience losses can directly ask for compensation in proportion to the losses they have suffered.

Offenders must be aware of how to prevent future crimes. Restorative Justice solves problems, imposes sanctions on those who are guilty, and educates perpetrators on how to avoid crime and prevent crimes from happening again. In restorative Justice, the perpetrator is made aware that the actions he committed were wrong so, which indirectly provides education<sup>25</sup> to the perpetrator so that he does not repeat his actions again

## Methods

This type of research is normative<sup>26</sup> or doctrinal legal<sup>27</sup> research.<sup>28</sup> Normative legal research<sup>29</sup> examines and evaluates legal concepts, principles, and positive legal norms<sup>30</sup>. Normative research<sup>31</sup> includes research on laws<sup>32</sup> and regulations<sup>33</sup>, jurisprudence<sup>34</sup> (case law), contracts, and legal values that live in society<sup>35</sup>. Although the type of research chosen is normative research, this research process also uses primary data<sup>36</sup> in the form of data

<sup>25</sup> Yusi Tasika and Giyarsi, 'The Effectiveness of the Discussion Method to Increase Students' Understanding and Activeness in Islamic Religious Education Subjects', *Nusantara Education*, 1.1 SE-Articles (2022), 81–93 <<https://juna.nusantarajournal.com/index.php/nula/article/view/27>>.

<sup>26</sup> Musda Asmara and Lilis Sahara, 'Problems with Choosing a Mate in Islam for People Who Choose a Mate through Social Media', *NUSANTARA: Journal Of Law Studies*, 1.1 SE-Articles (2022), 40–49 <<https://juna.nusantarajournal.com/index.php/juna/article/view/12>>.

<sup>27</sup> Khairudin, 'The Practice of Buying and Selling Black Market Goods on The Perspective of Islamic Economic Law', *NUSANTARA: Journal Of Law Studies*, 1.1 SE-Articles (2023), 77–85 <<https://juna.nusantarajournal.com/index.php/juna/article/view/40>>.

<sup>28</sup> Soekanto, Soerjono, dan Sri Mamudji "Penelitian Hukum Normatif Suatu Refleksi Singkat", Jakarta: CV. Rajawali, 2015, p. 15.

<sup>29</sup> Maulana Iqbalwa, 'Practice Brokerage Services for the Sale and Purchase of Coffee from the Perspective of Syari'ah Economics', *NUSANTARA: Journal Of Law Studies*, 1.1 SE-Articles (2022), 65–76 <<https://juna.nusantarajournal.com/index.php/juna/article/view/15>>.

<sup>30</sup> Robi Musthofa Al Ghazali, 'Boarding House Rent Refunds During Covid 19 Based On Sharia Economic Law', *Journal of Nusantara Economy*, 1.1 SE-Articles (2022), 38–47 <<https://juna.nusantarajournal.com/index.php/numy/article/view/25>>.

<sup>31</sup> Wahyu Ziaulhaq, 'Buying and Selling Used Clothing: An Islamic Economy Law Perspective', *Journal of Nusantara Economy*, 1.1 SE-Articles (2022), 29–37 <<https://juna.nusantarajournal.com/index.php/numy/article/view/23>>.

<sup>32</sup> Abdul Hakim, 'Maxim Law Fiqh And Its Application During The Covid-19 Pandemic', *NUSANTARA: Journal Of Law Studies*, 1.1, 1–8 <<https://juna.nusantarajournal.com/index.php/juna/article/view/11>>.

<sup>33</sup> Dwi Astuti Wahyu Nurhayati and Novi Tri Oktavia, 'Relevance Of Al Mawardi's Reflection In The Development Of Islamic Economic Activities', *Journal of Nusantara Economy*, 1.1 SE-Articles (2022), 48–58 <<https://juna.nusantarajournal.com/index.php/numy/article/view/24>>.

<sup>34</sup> Muhammad Fitri Adi, 'Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act', *NUSANTARA: Journal Of Law Studies*, 2.1 SE-Articles (2023), 9–22 <<https://juna.nusantarajournal.com/index.php/juna/article/view/30>>.

<sup>35</sup> Muhamad Imam Muddin, 'Inheritance System Mayorat on the Komerig Tribe in Urf Perspective', *NUSANTARA: Journal Of Law Studies*, 1.1, 21–32 <<https://juna.nusantarajournal.com/index.php/juna/article/view/14>>.

<sup>36</sup> Arif Samsurrijal, 'Permainan Tradisional Indonesia Sebagai Media Penanaman Nilai Moral Pada Siswa: Sebuah Studi Literatur', *Nusantara Education*, 1.1 SE-Articles (2022), 10–19

obtained directly from sources in the field,<sup>37</sup> as well as using observation<sup>38</sup> and interview<sup>39</sup> methods which are the methods used in empirical research<sup>40</sup>

## Result and Discussion

Crime prevention can be done in a penal or non-penal way.<sup>41</sup> Penal means in efforts to deal with the crime are more retaliatory and preventive to prevent crimes from occurring. Penal means that proceeding through the criminal justice system sometimes does not provide Justice for society, especially victims. Then the non-penalty target is an alternative. Non-penal means for dealing with conducive factors, among others, are centered on social problems or conditions that can directly or indirectly lead to or foster crime. Thus, at the macro level, criminal politics and non-penal efforts occupy a key and strategic position in all criminal political efforts.<sup>42</sup>

The role of law enforcement officials is very important in tackling crime. Sometimes law enforcement officials seem too rigid. This is understandable because bureaucrats are very obedient to the rules. The police, as one of the elements of law enforcement, play a very important role as the first gate to the successful settlement of cases. The police is an institution in the subsystem of the criminal justice system which occupies the first and foremost position.<sup>43</sup>

Considering that the concept of restorative Justice is a concept that has been embedded in the cultural values of primitive society, it is necessary to study more deeply how the concept of restorative Justice relates to customary law and its application in criminal law enforcement—process from a customary law perspective.

The concept of restorative Justice has been practiced by Indonesian indigenous peoples, such as in Papua, Bali, Toraja, Minangkabau, and other traditional societies that still adhere to their culture. This dispute resolution form is resolved internally within the indigenous peoples' environment without involving state apparatus. The measure of Justice is not based on retributive Justice in the form of revenge (an eye for an eye) or imprisonment but based on conviction and forgiveness (Restorative Justice). Even though the general criminal acts handled by the community are contrary to positive law, this mechanism has proven successful in maintaining social harmony.<sup>44</sup> The involvement of state law enforcement officials is often seen as complicating and exacerbating the problem.<sup>45</sup>

The concept of Indonesian customary law as a container for the customary justice system has a concept that can be described as the root of the concept of Restorative Justice. The characteristics of customary law in each region in Indonesia strongly support the application of the concept of Restorative Justice

This model can be seen from the prevailing customary courts. Hilman Hadikusuma states customary Justice (*rechtspraak*) means legal and judicial discussions with the justice system (deliberation) to settle cases out of court and/or before a court. Customary Justice can be carried out by (1) community members individually, (2) by family/neighbors, (3) heads of relatives or customary heads (*Hakim Adat*), (4) village heads (village judges), or (5) by management organizations associations, in the peaceful resolution of customary violations to restore the disturbed balance of society.<sup>46</sup> Furthermore, according to Hilman Hadikusuma that "What we call customary

<https://juna.nusantarajournal.com/index.php/nula/article/view/21>.

<sup>37</sup> Fera Zasrianita, Syukri Hamza, and Hadi Winata, 'Students' Perception Of Application In Writing Of Peer-Assessment: Before And After Revision', *Nusantara Education*, 1.1 SE-Articles (2022), 94–108

<https://juna.nusantarajournal.com/index.php/nula/article/view/28>.

<sup>38</sup> Baihaqi, 'Upaya Guru Madrasah Dalam Membentuk Kedisiplinan Pelajar Di Madrasah Aliyah Swasta Amaliyah Tanjung Tiga', *Nusantara Education*, 1.1 SE-Articles (2022), 1–9

<https://juna.nusantarajournal.com/index.php/nula/article/view/19>.

<sup>39</sup> Wahyu Ziaulhaq, 'Madrasah Effort In Improving The Quality Of Teacher Work On Covid 19 Pandemic At Madrasah Aliyah Of Besitang', *Nusantara Education*, 1.1 SE-Articles (2022), 20–28

<https://juna.nusantarajournal.com/index.php/nula/article/view/20>.

<sup>40</sup> Kusdiyana, Samsudin, and Muhammad Wildan Nur Akmal, 'Accuracy of Qibla Direction Mosque at Rest Area Toll Road on the Qibla Jurisprudence Perspective', *NUSANTARA: Journal Of Law Studies*, 2.1 SE-Articles (2023), 31–39

<https://juna.nusantarajournal.com/index.php/juna/article/view/42>.

<sup>41</sup> Kurtubi, 'View of Child Playing Online Game in the Sadd Al-Zari'ah's Perspective', 2022

<https://juna.nusantarajournal.com/index.php/juna/article/view/16/7> [accessed 16 December 2022].

<sup>42</sup> Muladi, *"Kapita Selekta Hukum Pidana"*, Semarang: Diponegoro University Press, 2015, p. 125.

<sup>43</sup> Harkrisnowo, Harkristuti. *"Rekonstruksi Konsep Pemidanaan: Suatu Gugatan Terhadap Proses Legislasi Dan Pemidanaan Di Indonesia"*, Orasi Pada Upacara Pengukuhan Guru Besar Tetap Dalam Hukum Pidana, Jakarta: FH UI, 2003.

<sup>44</sup> suryaningsih, 'Impact of Gadget Addicts on Family Harmony Perspective of Islamic Law', *NUSANTARA: Journal Of Law Studies*, 1.1 (2022), 50–64 <https://juna.nusantarajournal.com/index.php/juna/article/view/18>.

<sup>45</sup> DS. Dewi, Fatahillah A. Syukur, *"Mediasi Penal: Penerapan Keadilan Restoratif di Pengadilan Anak Indonesia"*, Depok: Indie Publishing, 2011, p. 4

<sup>46</sup> Hadikusuma, Hilman. *"Pengantar Hukum Adat Indonesia"*, Bandung: Citra Aditya Bakti, 2020, p. 99.

Justice here is the settlement of cases peacefully, not customary Justice which was formerly called customary Justice (inheemsche rechtspraak) or autonomous Justice (*zelfbestuur rechtspraak*).<sup>47</sup>

In this regard, Soepomo in Bushar Muhammad stated that every customary decision is intended to restore the balance disrupted due to customary violations (adat delicate). These recovery efforts are necessary because customary offenses are unilateral acts of a person or group of people which threaten or offend or disturb the balance of social life, both material and immaterial, towards a person or community in the form of a unit. These actions or actions result in a customary reaction that he believes can restore the balance that has been disturbed, among others, by various means or methods by customary payments in the form of goods or money, holding salvation, slaughtering large/small animals, and so on so that there is no interest in having to win or lose in customary Justice between the parties to the dispute (dispute). The principle of Justice for peace must also be realized from the outset that in customary Justice, Justice cannot be strictly separated for civil or criminal cases.<sup>48</sup>

According to Soepomo, in line with this, it is necessary to disclose the provisions in Article 134 Indische Staatregerling (abbreviated IS), which regulates the legal differences between European, foreign eastern and native groups, which emphasizes that "based on differences in European nations the legal order, namely public law and private law, then for the judiciary which must treat the customary law of the Indonesian people, the difficulty now is that the customary law order does not recognize the difference between the public legal atmosphere and the customary law."<sup>49</sup>

In addition, it is focused on peace and Justice. If we look at the case settlement model during the Dutch East Indies era, it was recorded as *corps justice* (village justice), as stipulated in article 3 a RO (Reglement Op De Rechtelijke Organisatie en het Beleid der Justitie in Indonesia; Judicial). organizational regulations and justification for wisdom in Indonesia) Staatblad Tahunn 1847/20 jo.1848/57; that has never been revoked According to Article 3 a RO are (1) All cases which according to customary law include the power of judges from a scale-based legal community (village judges) are still tried by these judges; (2) The provisions in the paragraph above do not diminish in the slightest the right of the plaintiff to present it to the judge as referred to in Article 1, Article 2, Article 3 (a higher judge); (3) Judges as referred to in paragraph (1) adjudicate cases according to customary law may not impose a sentence.<sup>50</sup>

Law Number 2 of 2021 Set aside the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua as well as Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (after this referred to as the Special Autonomy Law) in Article 50 paragraph (1) states that "the Judicial Body carries out trials in Papua Province by statutory regulations." While paragraph (2), namely, "Apart from judicial power as referred to in paragraph (1), there is recognized the existence of customary justice in certain customary law communities". Furthermore, Article 51 it is stated that<sup>51</sup>

1. Customary courts are peaceful courts within customary law communities that have the authority to examine and adjudicate customary civil disputes and criminal cases among members of the relevant customary law communities.
2. Customary courts shall be drawn up according to the provisions of the customary law of the relevant customary law community.
3. The customary court examines and adjudicates customary civil disputes and criminal cases, as referred to in paragraph 1, based on the customary law of the relevant customary law community.
4. If one of the parties to the dispute or the parties to the disputed object to a decision that has been taken by the customary court examining it as referred to in paragraph 3, the objecting party has the right to ask the district court within the jurisdiction of the competent judicial body to examine and re-trial the dispute or case concerned.
5. Customary courts do not have the authority to impose prison sentences or confinement.
6. Decisions of customary courts regarding criminal acts for which a re-examination is not requested, as referred to in paragraph 4 shall become final decisions with permanent legal force.

<sup>47</sup> Hadikusuma, Hilman. "Pengantar Hukum Adat Indonesia", Bandung: Citra Aditya Bakti, 2020, p. 99.

<sup>48</sup> Muhammad, Bushar. "Pokok-Pokok Hukum Adat", Jakarta: Pradnya Paramita, 2004, p.62.

<sup>49</sup> Soepomo, "Sistem Hukum Di Indonesia Sebelum Perang Dunia II", Jakarta: PT Pradnya Paramita, 2004, p. 39

<sup>50</sup> Tim Polda Papua dan Fakultas Hukum Uncen, "Rancangan Makalah Peraturan Daerah Khusus (Perdasus ) Tentang Penyelenggaraan Peradilan Adat Di Provinsi Papua", Jayapura, 2005.

<sup>51</sup> Mark A. Hlatky et al., "Quality-of-Life and Depressive Symptoms in Postmenopausal Women after Receiving Hormone Therapy: Results from the Heart and Estrogen/Progestin Replacement Study (HERS)" Trial, *Journal of the American Medical Association* (2008): 276-287. [https://www.iiste.org/journals/?gclid=CjwKCjAiwAdj5dRhMj3mLuYruvK3tpCRL\\_K-NoP1B2kHgIhPJT43Hc4En0AG3PiIfkFxoC4wYQAvD\\_BwE](https://www.iiste.org/journals/?gclid=CjwKCjAiwAdj5dRhMj3mLuYruvK3tpCRL_K-NoP1B2kHgIhPJT43Hc4En0AG3PiIfkFxoC4wYQAvD_BwE) (accessed on December 24, 2022).



7. To acquit the perpetrators of criminal acts from criminal charges according to the provisions of the applicable criminal law, it is necessary to submit a statement of approval from the Head of the District Court, which in his area is obtained through the Head of the District Court. The Prosecutor's Office is concerned with the place where the crime, as referred to in paragraph 3, occurred.
8. If the request for a statement of approval for implementing the customary court decision, as referred to in paragraph 7, is rejected by the District Court, then the customary court decision, as referred to in paragraph 6, becomes a legal consideration for the District Court—the court in deciding the case in question.

Thus, the development of national law is sourced and extracted from legal values that live in society to reflect Indonesian society's social, cultural, and structural values. Decisions of customary courts regarding crimes where a re-examination is not requested are final and have permanent legal force. So that the perpetrators can be released. So to free the perpetrators of criminal acts from criminal prosecution according to the provisions of the applicable criminal law, a statement of approval from the Head of the District Court in their area is required, which is obtained through the Head of the District Attorney's Office, related to the crime scene. So that the case cannot be continued in the national criminal justice system. However, if the application for a statement of approval to implement a customary court decision is rejected by the District Court, the customary court decision becomes a legal consideration for the District Court in deciding the case concerned. This can be interpreted that the prosecutor's office can make customary decisions as the basis for terminating cases based on restorative Justice. In this case, the prosecutor's office can continue the peace process after the police have delegated the case files.<sup>52</sup>

So that includes the decision of the Trong Yowari customary court as a model for solving customary criminal cases. Because, in the process, it can cooperate with the prosecutor's office in providing technical assistance.<sup>53</sup> The customary law community of the Trong Yowari tribe in restoring or restoring balance to its original state, then for those who make an imbalance or violate customary rules so that order in the customary law community of the Trong Yowari tribe is disrupted, then those concerned will be given customary sanctions or fines through the customary court to restore balance and uphold customary order in the Trong Yowari customary law community to create peace and tranquility so that the principle of peace is always put forward in the resolution of any customary criminal cases and the atmosphere always prioritizes family resolution.

The process of restoring balance and order or forms of customary Justice in the Trong Yowari indigenous people. If an imbalance occurs or the customary order is violated, the settlement can be done first through family deliberations.<sup>54</sup> Because all forms of customary criminal liability always involve the family, if for example a dispute occurs between customary law communities it is always resolved through deliberation for consensus, because in fact the Trong Yowari tribe itself is a large family consisting of the Trong and Yowari sub-tribes. -ethnic group.<sup>55</sup> However, if the process cannot restore balance in the adat law community, then the railroad leadership can resolve the case. Furthermore, the settlement process can be continued if the settlement of customary criminal cases does not reach peace at the keret level, then the case will proceed to the highest authority in the indigenous peoples of the Trong sub-tribe and Yowari sub-tribe.

If there is an imbalance and violation of customary rules committed by indigenous peoples between the Trong sub-tribe and the Yowari sub-tribe, the chairman of the Trong Yowari Customary Council or the head of the Trong Yowari indigenous peoples' organization will resolve it. Of course, if a criminal case occurs among the Trong Yowari customary law community, the first solution is through customary deliberations involving the litigants and their respective families. However, if it continues up to the head of the keret, then the litigant will face the head of the keret of each sub-tribe.

Meanwhile, the parties who will resolve each customary criminal case if the case cannot be resolved in their respective Keret will be carried out by the tribal chiefs of each sub-tribe within the Trong Yowari tribe. The parties who will resolve the case are the litigants, as justices of the peace, who are tasked with guiding and teaching customary norms in their respective sub-tribes and the head of the railway. And if there is an imbalance and violation of customary rules by indigenous peoples between sub-tribes within the Trong tribe.

<sup>52</sup> Afif, Afthonul. *"Forgiveness, Reconciliation and Restorative Justice"*, Yogyakarta:References Student, 2015, p. 368.

<sup>53</sup> <http://ww-w.epl.org/library/strategic-plan-00.html> (accessed on Juni 1, 2015).

<sup>54</sup> Shapland, Joanna, E. *"From victimisation to restorative justice: developing the offer of restorative justice"*. The International Journal of Restorative Justice, 3 (2), (2020). 176-195 <https://www.semanticscholar.org/paper/From-victimisation-to-restorative-justice/%3A-the-of-Shapland-Burn/5d9ffa22fcb41078a02bc8e1b53d07c35401fdfa> (accessed on January 5, 2021).

<sup>55</sup> Tadjuddin, M. A., Y. Z. A. *"Protection of Papuan Native Children Conflicting with Lawtthrough a Restorative Justice Approach"*. Musamus Law Review Journal, 1(1), (2018): 99-123.

### Conclusion

Whereas the model of implementing restorative Justice from the perspective of the customary Justice of the Trong Yowari tribe in Jayapura Regency, namely in the event that an application for a statement of approval to implement a customary justice decision is rejected by the District Court, then the customary justice decision becomes material for the legal considerations of the District Court in deciding the case in question. So that the prosecutor can make customary decisions as the basis for terminating cases based on restorative Justice, in this case, the prosecutor's office can continue the peace process after the police have delegated the case files. Furthermore, the District Attorney can provide technical support for the implementation of customary Justice in Papua, including the Decision of the Trong Yowari Tribe Customary Court as a model for solving customary criminal cases with the stages of settling customary cases starting with family deliberation, without reaching a consensus then proceed to the head of the train, without further consensus then proceed to the customary head of the sub-tribe. If there is an imbalance and violation of customary rules, the settlement is handled by the Trong Yowari Tribe Customary Council. Parties who resolve customary cases are perpetrators and their families, victims/affected and their families and customary judges who are domiciled at their homes or at the adat hall. The settlement method is carried out by traditional leaders in each sub-tribe or can report directly to Ondoafi/Trong Yowari tribal customary assembly to settle down.

### Confession

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### Conflict of Interest

The Attorney General's Office needs to cooperate with tribal chiefs in Papua Province to resolve criminal cases through a restorative justice approach as a model for implementing restorative Justice that is in harmony with customary Justice.

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