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The Urgency of Restorative Justice Regarding Customary Criminal Violations: Harmonization Between Customary and National Criminal Laws

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Abstract

Indonesia is rich in cultural and traditional diversity, including a variety of customary laws in different regions. Conflict often arises between customary laws and national criminal laws. Restorative Justice is an important approach to resolving this conflict, with a focus on reconciliation rather than punishment. This research aims to understand the implementation of Restorative Justice in the Indonesian context, identify its positive and negative impacts, and contribute valuable insights to international discussions on legal conflicts in culturally diverse societies. Normative legal research methods and document analysis are used for this study. The findings suggest that the implementation of Restorative Justice in resolving violations of customary criminal laws in Indonesia has the potential to enhance harmony between customary and national criminal laws. Necessary steps include establishing a dedicated restorative justice judicial system, involving local communities, fostering collaboration between authorities of customary and national criminal laws, and conducting extensive public education. However, it is crucial to consider both the positive outcomes, such as community relationship restoration and reduced burdens on the criminal justice system, and the negative impacts, including potential justice disparities and implementation challenges. Therefore, the integration of restorative justice needs to be carefully aligned with principles of justice, respect for customary culture, and the protection of the rights of vulnerable victims and offenders.

I. Introduction

Indonesia is a country rich in cultural diversity and traditions. One important aspect of this diversity is the diversity of customary laws that have existed for centuries in various communities throughout the Indonesian archipelago.(Tresnoputri et al., 2023) This customary legal system developed in response to different local needs and values in various regions. However, as time goes by, this diversity often conflicts with general national criminal law. Along with the modernization and centralization of power in Indonesia, the conflict between customary law and national law is becoming increasingly clear, especially in the context of customary criminal violations. (Disantara, 2021). Therefore, this research will discuss the urgency of the Restorative Justice approach in resolving legal conflicts between customary and national criminal law in Indonesia. In the context of customary law in Indonesia, customary criminal law is a very important aspect. Customary criminal law includes the norms and procedures set by local communities to regulate the behavior of members of their communities.(Tongat et al., 2020) This customary criminal law can include different sanctions, such as fines, compensation, or reconciliation processes. However, customary criminal law often conflicts with the more general and uniform national criminal law enforced by the central government. This often leads to legal ambiguity, social conflict, and inequality in legal treatment of individuals who violate customary law.

The Restorative Justice approach becomes relevant in this context because it emphasizes reconciliation, restoration and conflict resolution rather than just punishment. This approach allows for better understanding between perpetrators and victims of violations, as well as encouraging the renewal of social relations in society (Flora et al., 2023). Therefore, the Restorative Justice approach can help overcome disharmony between customary and national criminal law by paying more attention to the values, needs and aspirations of local communities. The importance of this research is also apparent in the context of human rights. Conflicts between customary and national criminal law often impact the rights of indigenous peoples, such as land rights, rights to natural resources, and rights to their culture and identity. Therefore, efforts to understand and resolve these conflicts in a way that respects human rights is crucial. In addition, this research also has significant practical implications (Abotsi, 2020). With indigenous peoples' increasingly open access to law and legal institutions, it is important for the Indonesian government to find effective and fair ways to resolve these legal conflicts. The Restorative Justice approach can provide a framework that is potentially more effective and fair in dealing with customary criminal violations, reducing conflict, and promoting harmonization between customary and national criminal law.

In a global context, issues surrounding cultural diversity, human rights and fair law enforcement are increasingly receiving attention. Therefore, this research can also make a

valuable contribution to international discussions about ways to resolve legal conflicts in societies with diverse cultures and traditions. It is hoped that this research will provide a clearer view of how the Restorative Justice approach can be used to achieve harmonization between customary and national criminal law, as well as provide recommendations for improving relevant laws and policies. The problem formulation in this research is as follows: (i) How can the implementation of restorative justice in resolving customary criminal violations increase harmonization between customary criminal law and national criminal law in Indonesia?; (ii) What are the positive and negative impacts of integrating restorative justice principles in handling customary criminal violations?

2. Research Method

This research will use normative legal research methods as the main framework. This method will allow researchers to examine legal norms relating to customary criminal violations in Indonesia. The legislative approach will be the main focus, where researchers will analyze various legal regulations relating to customary criminal law and national law (Diantha, 2017). Sources of research material used include statutory regulations, related court decisions, legal literature, and legal documents related to customary criminal violations. This research will also rely on library research as the main source of information. Data collection techniques will involve searching and analyzing legal documents relevant to this research topic. For data analysis techniques, researchers conducted content analysis of legal documents, focusing on potential conflicts between customary criminal law and national law. This research will also try to identify concrete cases where such conflicts have emerged. In addition, comparative analysis will be used to understand the harmonization that may occur between customary criminal law and national law, especially in the context of restorative justice. By using this research method, research on the urgency of restorative justice related to customary criminal violations can provide an in-depth understanding of the comparisons, conflicts and potential for harmonization between customary and national criminal laws in Indonesia.

3. Results and Discussion

The Implementation of Restorative Justice in Resolving Customary Criminal Violations: A Harmonization Effort

The implementation of restorative justice in resolving customary criminal violations has great potential to increase harmonization between customary criminal law and national criminal law in Indonesia. This can happen through various means, including integrating restorative justice principles into the customary criminal justice system, increasing local community

participation in the dispute resolution process, and closer collaboration between customary and national criminal law authorities. The establishment of a restorative justice system specifically for resolving customary criminal violations is a concrete step that can be taken by Indonesia to realize harmonization between customary criminal law and national criminal law.(Syarifuddin, 2019) This system will provide a clear and structured framework for dealing with cases of customary criminal violations with a strong restorative approach. In the context of establishing a restorative justice system, Law Number 5 of 2014 concerning State Civil Apparatus (ASN) becomes relevant. This law regulates the structure and role of the state civil apparatus in carrying out government tasks. One of the main benefits of establishing a restorative justice system is providing legal clarity to all parties involved in cases of customary criminal violations. This clarity includes the procedures that must be followed, the roles of each party, and possible sanctions.(Junius Fernando, 2020)

That way, the conflict resolution process will be more transparent and can be understood by all parties, including perpetrators, victims and indigenous communities. In addition, a restorative justice system that operates in line with the national criminal justice system can avoid ambiguity in the legal process. This is important because cases of customary criminal violations often involve conflicts between customary criminal law and national criminal law. This restorative justice system must be developed by taking into account local values and culture. Indigenous communities must be actively involved in the formation and management of these systems so that they reflect their needs and expectations (Staubach, 2020). This will also ensure that the restorative approach implemented is in accordance with the social and cultural norms of indigenous communities. In this case, collaboration between government, civil society institutions and indigenous community leaders will be key. All parties must work together to design a restorative justice system that is effective and in accordance with the interests of all parties. In addition, there needs to be outreach and education to indigenous communities about how a restorative justice system will operate, as well as the benefits of this approach in improving relationships between individuals and communities. The importance of community participation in resolving customary criminal violations cannot be ignored. Restorative justice, as an approach that emphasizes restoring relationships and healing losses, requires the active role of all parties involved in the conflict, including perpetrators, victims and local communities.

In the context of indigenous communities in Indonesia, involving communities in the conflict resolution process can ensure that the solutions found are in line with the community's specific values and needs.(Annisa, 2023) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is a relevant example of the importance of participation in the conflict resolution process. Although this law specifically focuses on children, the principles of participation contained in it can be adapted and applied in resolving customary criminal offenses. One of the main principles regulated in Law Number 11 of 2012 is the right to participation of children in the juvenile criminal justice process. This includes children's rights to express their opinions, to be heard, and to be involved in making decisions that affect their fate.(Rosidah, 2019) In

resolving customary criminal violations, similar rights can be granted to local communities. This will allow indigenous communities to speak out about what they consider appropriate solutions in cases of criminal violations in their own communities. Apart from participation rights, Law Number 11 of 2012 also emphasizes the importance of listening to children's views and needs. In the context of resolving customary criminal violations, this can be interpreted as listening to the views and needs of indigenous communities. Indigenous communities must have space to raise their concerns, define what they consider to be justice, and participate in decision-making regarding the resolution of the conflict.

Adapting the principles of participation from Law Number 11 of 2012 in resolving customary criminal violations will also help avoid a paternalistic or authoritarian approach. Too often, solutions implemented by outsiders without considering the views of indigenous communities can result in further dissatisfaction and disharmony. By actively involving indigenous communities in the conflict resolution process, the solutions found will be more acceptable and sustainable. In addition, involving indigenous communities in resolving customary criminal violations also creates opportunities to strengthen cooperation between customary and national criminal law systems. In order to ensure the successful implementation of restorative justice in resolving customary criminal violations in Indonesia, it is important to take into account the views, values and needs of local communities. Applying the principles of participation regulated in Law Number 11 of 2012 is a wise step in respecting the rights of indigenous communities and achieving a more just and sustainable solution in the context of customary criminal law.

Close cooperation between authorities in customary criminal law and national criminal law is a key step in strengthening harmonization between these two different legal systems.(Jainah, 2022) A formal agreement or memorandum of understanding (MoU) between customary and national criminal authorities can provide a strong legal basis to support this cooperation. The MoU may include a joint commitment to advance the implementation of restorative justice in resolving customary criminal violations. In this MoU, customary and national criminal authorities can regulate the details of cooperation, such as the exchange of information, the selection of mediators or facilitators trained in restorative justice, as well as conflict resolution procedures that are in accordance with the culture and social norms of indigenous communities. One of the main benefits of this collaboration is that it creates an effective communication channel between traditional and national criminal authorities (Kuruk, 2020). Good communication is an important element in overcoming differences and potential conflicts between two different legal systems. Through open and continuous communication, authorities can understand each other, share views, and better evaluate the implementation of restorative justice.(F. A. Naway, 2017) The necessary exchange of information will also allow authorities to complement each other.

Customary criminal authorities can provide insight into the cultural values, traditions and social norms of indigenous peoples to national criminal authorities. This collaboration will also help the authorities understand how restorative justice can be integrated effectively in resolving

customary criminal violations. This includes learning about the mediation or reconciliation process, the role of the mediator or facilitator, as well as how to identify and evaluate the positive impact of restorative justice approaches in indigenous communities. Education and training are key factors in implementing restorative justice in resolving customary criminal violations in Indonesia.(Mareta, 2018) Law Number 5 of 2014 concerning State Civil Apparatus (ASN) provides an important legal basis for the development of education and training programs that include the principles of restorative justice. One of the main goals of ASN is to improve the quality of the state civil service, which includes legal officers and other stakeholders involved in law enforcement. By ensuring that stakeholders at the local and national levels have a good understanding of restorative justice, Indonesia can ensure that the implementation of this approach is carried out effectively and in accordance with its principles. Training programs organized by competent institutions, such as the National Civil Service Agency (BKN) or the Ministry of Law and Human Rights, can be designed to introduce legal officers to the concept of restorative justice..

Additionally, training can also help overcome resistance to change that may arise in adopting this new approach. Changes in the legal system and law enforcement are often met with challenges and resistance from actors who are accustomed to old practices. With proper training, legal officers can understand the benefits of restorative justice in resolving conflicts and customary criminal violations.(Forestriawan, 2023) Apart from ASN, Law Number 11 of 2005 concerning Employment also has relevance in the context of education and training. Education and training programs can be organized by involving workers who are experts in restorative justice. This education can help create a broader and deeper understanding of this approach, so that indigenous communities and local leaders can play an active role in its implementation. That way, the conflict resolution process can involve the entire community, creating a more sustainable and socially acceptable solution. The implementation of restorative justice in resolving customary criminal violations must be supported by an effective evaluation and monitoring mechanism to ensure its sustainability and effectiveness. Presidential Regulation Number 37 of 2019 concerning Implementing Regulations of Law Number 25 of 2004 concerning the National Development Planning System can be a relevant basis for developing evaluation and monitoring mechanisms.

This mechanism can have an important role in identifying obstacles and potential improvements in the implementation of restorative justice in resolving customary criminal violations. The Indonesian government has the responsibility to ensure that the implementation of restorative justice runs as expected and provides significant benefits in increasing harmonization between customary and national criminal laws. One tool that can be used to achieve this goal is a careful evaluation mechanism.(Elmayanti, 2022) By referring to Presidential Regulation Number 37 of 2019, the government can develop a comprehensive evaluation framework. Through systematic evaluation, the government can identify various aspects that need to be evaluated in implementing restorative justice. This includes aspects such as the effectiveness of the restorative justice process, participation of indigenous communities,

positive impact on victims and perpetrators, as well as compliance with restorative justice principles. Apart from that, a strong monitoring mechanism is also important to ensure that the implementation of restorative justice does not deviate from its initial objectives. Presidential Regulation Number 37 of 2019 can provide guidance on how the government can carry out effective supervision of related programs and policies. This includes monitoring the implementation of restorative justice programs at the local level, including the handling of concrete cases and the involvement of indigenous communities in the process.

Careful evaluation and supervision can also help in identifying obstacles that may arise in the implementation of restorative justice.(Rahmawati et al., 2022) For example, obstacles such as lack of training for restorative justice mediators, barriers in access to restorative justice services for indigenous communities, or disagreements in the application of restorative sanctions can be identified through appropriate evaluation mechanisms. With good cooperation between the central and regional levels, evaluation and monitoring can be carried out more efficiently and the results can be used to formulate better policies. Apart from that, the results of the evaluation and supervision obtained must also be provided to the community and other stakeholders. Transparency in the implementation of restorative justice is the key to building trust and support from indigenous communities and the parties involved. Furthermore, there needs to be an independent reporting mechanism that can provide an objective review of the implementation of restorative justice. This mechanism can involve NGOs, academics, or other independent institutions that have expertise in evaluating legal and policy programs. They can provide the independent perspective needed to ensure that evaluation and monitoring are carried out well. In developing evaluation and monitoring mechanisms, the government must ensure that there is an adequate budget allocated for this purpose.

An extensive public education campaign is one of the key elements in supporting the implementation of restorative justice in resolving customary criminal violations in Indonesia. This campaign aims to educate the public about the concept of restorative justice, its benefits, and how they can be involved in the process of resolving customary criminal violations.(Asmui et al., 2022) One of the main objectives of this campaign is to increase public understanding of the concept of restorative justice. The public needs to know that restorative justice is an approach that focuses on restoring relationships and recovering losses caused by violations of the law, not just punishment for the perpetrator. With better understanding, society can be more open to the idea of implementing restorative justice in resolving customary criminal violations. Apart from that, this campaign must also explain the benefits of restorative justice.(Leonard, 2022) These benefits include healing damaged relationships, empowering communities, and reducing overcriminalization. By communicating these benefits clearly, the public will be more likely to support this approach as a better alternative for dealing with customary criminal offences. The next step is to inform the community about how they can be involved in the process of resolving customary criminal violations through restorative justice. The government can provide information on local mediation bodies that can be contacted, the procedures to be followed, and their role in the process.

By facilitating public access, the government can increase active participation in restorative justice. In addition, this campaign can also include involving the community in open discussions and forums to hear their views, input and concerns.(Abubakar, 2014) During campaign implementation, the government must use various communication channels, including social media, television, radio, print, and direct meetings with the public. This multi-channel approach will ensure that the message about restorative justice reaches various community groups, including those in remote areas. Additionally, these campaigns must be ongoing and updated regularly. The government needs to measure the impact of this campaign and carry out evaluations to ensure that the messages conveyed are effective in increasing public understanding and support for restorative justice. With a broad and effective public education campaign, Indonesia can create greater support for the implementation of restorative justice in resolving customary criminal violations. This will help strengthen harmonization between customary criminal law and national criminal law, as well as provide the public with a better understanding of the concept of restorative justice and its benefits for indigenous communities and society as a whole

Integrating Restorative Justice in Handling Customary Criminal Violations: What are the Impacts?

Handling customary criminal violations is an important part of efforts to maintain peace and harmony in indigenous communities in Indonesia. One approach that has been proposed to enhance justice and restoration in this context is through the integration of restorative justice principles. Restorative justice is an approach that emphasizes restoring losses caused by criminal offenses and promoting reconciliation between perpetrators, victims and communities. In the context of handling customary criminal violations, the integration of restorative justice principles has positive and negative impacts that need to be considered carefully. The following are the Positive Impacts of Restorative Justice Integration:

1. Restoration of Community Relations

The application of the principles of restorative justice in handling customary criminal violations has a very striking positive impact, namely restoring relations within indigenous communities. This approach is very much in line with the principles of customary law which are reconciliatory and restorative in nature.(Rochaeti & Sutanti, 2018) One concrete example is in the context of indigenous communities in Indonesia. In Indonesian customary law, there are various regulations that recognize and support a restorative justice approach to restoring community relations. For example, if a member of an indigenous community commits illegal logging in a customary forest and destroys it, a restorative justice approach enables a reconciliation process. Perpetrators can be asked to admit their mistakes, help repair the damage done, and publicly apologize to indigenous communities and victims. Furthermore, indigenous communities will be more likely to accept offenders again after these steps are taken. This re-

establishes bonds between perpetrators, victims and communities, and restores important social harmony in indigenous communities.

2. Active involvement of victims

Active involvement of victims in the restorative justice process is an important aspect of this approach. Restorative justice provides greater space for victims to participate in resolving conflicts involving them.(Chandra, 2023) One of the relevant regulations is Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). Article 5 paragraph (1) of the SPPA Law states that "Children who are involved in a criminal act have the right to be treated well and humanely and receive legal protection." This creates a legal basis for a restorative justice approach in handling cases involving children as victims or perpetrators. Apart from that, in practice, the restorative justice process often involves a mediator or facilitator who facilitates meetings between victims and perpetrators. Regulations regarding mediators in conflict resolution can be found in Supreme Court Regulation no. 1 of 2016 concerning Judicial Mediation. This mediator is tasked with helping to facilitate communication between victims and perpetrators, so that victims have the opportunity to convey their experiences to the perpetrator and to express their needs in resolving the conflict. By actively involving victims in the restorative justice process, it is hoped that a better understanding of the impact of criminal violations on victims can be created. Not only does this give victims a space to speak and feel more heard, but it can also help heal victims emotionally and provide them with a greater sense of justice.

3. Restoration Rather Than Punishment

The restorative justice approach prioritizes recovery and reconciliation as the main principles in handling crime. This approach is different from the traditional approach which focuses more on harsh punishment against the perpetrator. In this context, the restorative justice approach provides opportunities for perpetrators to correct their actions and get the opportunity to improve themselves. This is in accordance with the principles of justice which are more centered on recovery than harsh punishment.(Gultom, 2022)

In some jurisdictions, restorative justice approaches are supported by relevant legal regulations. For example, some states have adopted laws that encourage mediation between perpetrators and victims as part of the legal process. In this case, mediation can be a means to facilitate reconciliation between the two parties and provide an opportunity for the perpetrator to correct his actions. Apart from that, there are also laws that regulate rehabilitation and reintegration programs for criminals. These programs aim to help offenders overcome their problems, such as drug abuse or mental problems, so they can return to society as better individuals. The restorative justice approach is not always appropriate for every crime case. Some cases involving violence or serious danger to society may still require harsher sentences. Therefore, careful decision making and on a case by case basis is still needed in implementing a restorative justice approach.

4. Strengthening Traditional Culture and Traditions

Strengthening Traditional Culture and Traditions through the integration of restorative justice principles in handling customary criminal violations is an important step in preserving and strengthening cultural heritage and traditional traditions in Indonesia.(Nansi & Jontah, 2018) By applying the principles of restorative justice, customary criminal violations are not only seen as unlawful acts, but also as violations of customary values and norms that have existed for centuries. Indigenous communities can be more actively involved in the dispute resolution process, allowing them to practice their own traditional legal systems, as recognized in Article 18B of the 1945 Constitution. This approach allows indigenous communities to carry out traditional ceremonies, hold joint deliberations, and apply appropriate punishments. their traditional values, in accordance with Article 5 of Law Number 32 of 2004 concerning Regional Government. Apart from that, the principles of restorative justice also support the concept of sustainability of traditional culture. By allowing indigenous communities to lead the restoration process, the resulting dispute resolution will be more appropriate to their cultural context and traditions. This can help maintain the integrity of traditional culture and traditions from external threats that could damage their sustainability.

5. Reducing the Burden on the Criminal Justice System

Reducing the burden on the formal criminal justice system is one of the significant benefits of implementing a restorative justice approach. This approach can be found in several laws and regulations governing the justice system in many countries.(Jamaludin & Saputra, 2023) For example, in the United States, there are various laws that allow the use of restorative justice in some criminal cases. One of the relevant laws is the "Victim-Offender Mediation Act" which allows mediation between victims and perpetrators of criminal acts as an alternative to the formal justice process.By applying a restorative justice approach, many minor violations or disputes can be resolved peacefully through meetings between the perpetrator and victim, as well as the relevant community. This means that the formal criminal justice system can divert its resources and attention to more serious and complex cases, such as serious or repeat crimes. In addition, this approach also provides an opportunity for perpetrators to understand the consequences of their actions and try to improve themselves, thereby reducing the possibility of repeat criminal acts in the future.

Then, the following are the negative impacts of integrating restorative justice into customary law and national law.

1. Lack of Justice

The potential lack of justice in the handling of criminal offenses is one of the main criticisms of the restorative justice approach. In some cases, social pressures or dominant forces within indigenous communities can influence the outcome of the restorative justice process, which can ultimately harm weaker victims or perpetrators. This creates an imbalance in the

treatment of perpetrators and victims, which should not occur in a fair legal system.(Nasution et al., 2022) Address this problem by issuing relevant regulations and laws. For example, in some jurisdictions, there are laws that stipulate that the restorative justice process must be carried out by ensuring that the rights of victims and perpetrators remain protected. Apart from that, there are also provisions that regulate the use of neutral and impartial mediators in the process. However, the potential lack of fairness in restorative justice remains a concern. There needs to be special attention to protecting the rights of weaker victims and perpetrators in this process to ensure that they are not exploited or subjected to pressure from stronger parties in society or the legal system. This can be achieved by continuing to develop better regulations and educating all parties involved in the restorative justice process about the principles of justice that must be upheld in handling criminal violations.

2. Difficulty in Implementation

Implementing the principles of restorative justice in the context of customary criminal offenses can face various significant difficulties. One of the main challenges is ensuring that the process remains fair and transparent, while respecting the different cultural values and traditional traditions of various indigenous communities. This can be complicated because it has the potential to cause conflict between customary law and state criminal law.(Muslih et al., 2021) Therefore, careful efforts need to be made to find common ground between these two legal systems.

Law Number 5 of 2014 concerning State Civil Apparatus can be relevant in ensuring that restorative law enforcement is carried out by involving competent legal officers with integrity. Apart from that, there needs to be more specific regulations or special guidelines that regulate the implementation of restorative justice in the context of customary criminal violations. This will help ensure that the process runs smoothly and adheres to local customary values and traditions, while adhering to universal principles of justice. The government needs to work together with traditional communities and other related parties to formulate appropriate and effective regulations in overcoming the difficulties of implementing restorative justice in this context.

3. Not All Cases Are Suitable

Not all cases are suitable for a restorative justice approach. Restorative justice is an approach that emphasizes reconciliation and restoration through dialogue and participation of all relevant parties, and is not always appropriate for certain cases of customary criminal violations.(Amdani, 2016) Cases involving physical violence or other serious offenses may require more formal handling and harsher penalties in accordance with applicable laws and regulations. One of the relevant regulations is Law no. 11 of 2012 concerning the Criminal Justice System, especially Article 55 which regulates alternative dispute resolution in criminal cases. Article 55 states that alternative dispute resolution, including restorative justice, can be applied in handling criminal cases with the terms and conditions regulated in the applicable

laws and regulations. However, this does not mean that all criminal cases are suitable for restorative justice. The government and criminal justice system need to develop clear and objective mechanisms to differentiate between cases that are appropriate for restorative justice and cases that are not. This may include criteria such as the severity of the violation, risk factors, and the desire of all parties involved to participate in a restorative approach.

4. Gender Inequality

Gender inequality in the restorative justice process is a serious issue that is still faced in several indigenous communities. In these situations, women or socially weaker victims often have little power to influence the outcome of the process. Especially if the dominant traditional culture tends to be patriarchal, women can face extra obstacles in getting justice and adequate redress. This problem reflects a violation of the principles of equality and non-discrimination mandated in various international and national laws and regulations.

In Law Number 23 of 2004, namely Article 7 of the law, for example, emphasizes the right of every victim to receive protection, recovery and fair compensation, regardless of gender, social status or culture. However, in practice, certain traditional cultures may still influence the way law enforcement and restorative justice processes take place at the local level, so that women and socially weaker victims can be ignored.

In addition, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has been ratified by many countries, also underlines the importance of ensuring gender equality in law and legal practice. Countries that have ratified CEDAW have a responsibility to take effective steps to address gender discrimination in all aspects of life, including in legal and judicial processes. To overcome gender inequality in the restorative justice process, efforts need to be made to align customary law practices with internationally and nationally recognized gender equality norms. Education and awareness regarding the rights of women and socially disadvantaged victims is also very important, as well as the active involvement of authorities and civil society in ensuring equal justice for all individuals, regardless of gender or social status.

5. Limitations in Sanctions

A limitation of the restorative justice approach is that it focuses primarily on recovery rather than punishment. This approach, while having important values in repairing social relationships and helping perpetrators to understand the impact of their actions, can be problematic in situations where perpetrators are unwilling or unable to make adequate restitution..(D. R. O. Naway et al., 2023) This is especially apparent in cases where the offense committed by an individual is very serious and stricter sanctions may be necessary to prevent repeat offences.

In cases where the perpetrator is unwilling or unable to make adequate restitution through a restorative justice approach, legislation usually allows the justice system to use

harsher sanctions in accordance with applicable policies and guidelines. This may include imprisonment, fines, or other legal action appropriate to the severity of the offense committed. Thus, although restorative justice is a valuable approach in many cases, its limitations in dealing with situations where adequate recovery is impossible can be overcome by referring to legislation that permits the use of more stringent sanctions in such situations.

The integration of restorative justice principles in handling customary criminal violations has a significant positive impact, including restoration of community relations, active involvement of victims, restoration rather than punishment, strengthening customary culture and traditions, and reducing the burden on the criminal justice system. However, there are also negative impacts that need to be considered, such as potential lack of justice, difficulties in implementation, gender inequality, and limitations in sanctions. Therefore, it is important to carefully consider how the principles of restorative justice can be properly integrated in the context of customary criminal offences, by prioritizing justice, restoration and respect for local customary culture and traditions. Relevant laws and regulations must also be implemented and developed in accordance with the needs of indigenous peoples and the values of justice.

4. Conclusion

The implementation of restorative justice in resolving customary criminal violations in Indonesia has great potential to increase harmonization between customary criminal law and national criminal law. This can be achieved through the establishment of a restorative justice system specifically for customary criminal offences, increasing local community participation in conflict resolution processes, collaboration between customary and national criminal authorities, as well as extensive education and training. Ongoing evaluation and monitoring will ensure the sustainability and effectiveness of restorative justice implementation, while public education campaigns will increase community understanding and support for this approach. With these steps, Indonesia can achieve greater harmonization between customary and national criminal laws, improve conflict resolution, and provide greater benefits for indigenous communities and society as a whole. The integration of restorative justice principles in handling customary criminal violations in Indonesia has positive and negative impacts that need to be taken into account. Positive impacts include restoration of community relations, active involvement of victims, restoration rather than punishment, strengthening traditional culture and traditions, and reducing the burden on the criminal justice system. However, there are also negative impacts that include a potential lack of fairness, difficulties in implementation, gender inequality, and limitations in sanctions. Therefore, the integration of restorative justice needs to be well aligned with the values of justice, restoration and respect for traditional culture, while paying attention to relevant laws and regulations and efforts to ensure the protection of the rights of socially weaker victims and perpetrators..

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