

The Value of Restorative Justice in Balinese Customary Criminal Law in Cases of Sexual Violence

I Gusti Ayu Kabhita Julia Putri^{1*}, A A A Ngurah Tini Rusmini Gorda² 

^{1,2} Faculty of Law, Universitas Pendidikan Nasional, Denpasar, Indonesia.



: yukabhita@gmail.com

Corresponding Author*



Abstract

Introduction: This article examines sexual violence as a serious human rights violation that affects victims physically, psychologically, and socially, including within indigenous communities in Bali. The handling of sexual violence cases therefore requires a legal approach that goes beyond punishment and emphasizes victim recovery while maintaining social harmony. In this context, Balinese customary criminal law, which is rooted in local wisdom, offers restorative justice values that merit critical examination within the national legal framework.

Purposes of the Research: The purpose of this study is to analyze the values of restorative justice embedded in Balinese customary criminal law in addressing cases of sexual violence and to assess their relevance and compatibility with Indonesia's national legal system, particularly in relation to victim protection and human rights standards.

Methods of the Research: This research employs normative juridical legal research using a literature study approach. The study analyzes primary legal materials, including statutory regulations, and secondary legal materials such as books, academic journals, and official reports to examine restorative justice principles in Balinese customary criminal law.

Results of the Research: The findings show that restorative justice values have long existed in Balinese customary criminal law through mechanisms emphasizing harmony and social balance. However, their application in sexual violence cases reveals normative tensions, as customary settlements may marginalize victims' rights. This study contributes original insight by critically positioning Balinese customary law as a complementary, not substitutive, mechanism to national criminal law in ensuring victim-centered justice.

Keywords: Restorative Justice; Balinese Customary Law; Sexual Violence.

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INTRODUCTION

Sexual violence is a form of human rights violation that has serious impacts on victims, physically, psychologically, and socially. This phenomenon does not only occur in modern public spaces, but can also be found in the lives of indigenous communities, including in Bali.¹ In this context, the handling of sexual violence cases requires a legal approach that is not solely oriented toward punishment, but is also capable of providing fair recovery for victims while maintaining social balance within the community.

Although Indonesia has strengthened legal protection for victims through Law Number 12 of 2022 concerning the Crime of Sexual Violence, several reported cases indicate that sexual violence occurring within indigenous communities, including in Bali, is sometimes addressed through customary mechanisms emphasizing communal harmony. Reports

¹ Febra Anjar Kusuma et al., "Analisis Studi Kasus Dampak Sosiologis Terhadap Korban Pelecehan Seksual Di Indonesia," SOSMANIORA: Jurnal Ilmu Sosial Dan Humaniora 4, no. 1 (2025): 77-88, <https://doi.org/10.55123/sosmaniora.v4i1.4927>.

published by National Commission on Violence against Women and several media outlets reveal that customary settlements may involve social pressure on victims to prioritize family honor and village reputation over individual recovery. These conditions demonstrate that Balinese customary criminal law deserves critical examination to assess whether restorative justice values genuinely protect victims or instead reinforce structural inequalities within customary communities.

Balinese customary criminal law, which is rooted in local wisdom values such as *awig-awig* and *pararem* of customary villages, has characteristics that emphasize harmony, balance, and social responsibility. The settlement of criminal cases in Balinese customary law is generally carried out through deliberation and involves the roles of Krama Village and customary officials (*prajuru adat*).² This pattern of resolution is in line with the concept of restorative justice, which places victim recovery, acknowledgment of wrongdoing by the perpetrator, and the restoration of social relationships as the main objectives of law enforcement.³

Normatively, the restorative justice approach has also gained recognition within the national legal system. Law Number 12 of 2022 on the Crime of Sexual Violence emphasizes the importance of protecting and restoring victims' rights as an integral part of law enforcement.⁴ In addition, the application of restorative justice is reinforced through Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which opens space for case resolution by prioritizing substantive justice, as long as it complies with applicable legal provisions.⁵

Based on these conditions, a study on the values of restorative justice in Balinese customary criminal law in relation to cases of sexual violence becomes important to undertake. This study aims to understand how Balinese customary values can contribute to the fair resolution of sexual violence cases, while also assessing their relevance to the development of national law. Thus, it is expected that the legal approach applied will not only provide legal certainty, but also ensure victim protection and maintain the harmony of Balinese indigenous communities.

LITERATURE REVIEW

A. The Concept of Restorative Justice in Criminal Law

Restorative justice is an approach in criminal law that emphasizes the restoration of harm caused by criminal acts through the active involvement of victims, offenders, and the community.⁶ This concept developed as a critique of the conventional criminal justice system, which is oriented toward punishment (retributive justice) and often neglects the

² Aliyih Prakarsa, Dadang Herli Saputra, and Abitsa Zora Sya'bana, "Keberlakuan Peradilan Adat Dalam Masyarakat Hukum Adat Bali: Posisi Dan Tantangan Dalam Sistem Hukum Nasional," *Proceeding of Seminar Nasional "Membentuk Model Ideal Peradilan Pidana Adat Dalam Sistem Hukum Nasional"* 27 (2025): 175–83, <https://doi.org/10.30595/pssh.v27i.1839>.

³ Alfemba Ramadhan and Hudi Yusuf, "Keadilan Yang Memulihkan: Restorative Justice Sebagai Alternatif Penegakan Hukum Pidana Yang Humanis Dan Efisien," *Jurnal Intelek Dan Cendekiawan Nusantara* 2, no. 5 (2025): 9161–79.

⁴ Faruk Rumbu Raya Rabani Ente, "Analisis Hukum Terhadap Perlindungan Saksi Dan Korban Dalam Kasus Tindak Pidana Kekerasan Seksual," *PERAHU (Penerangan Hukum) Jurnal Ilmu Hukum* 13, no. 1 (2025): 181–97.

⁵ Fandika Wahyu Ramadhani and Suyatna Suyatna, "Penerapan Restorative Justice Dalam Kecelakaan Lalu Lintas Berdasarkan Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif," *Indonesian Journal of Law and Justice* 1, no. 4 (2024): 9, <https://doi.org/10.47134/ijlj.v1i4.2185>.

⁶ Henny Saida Flora, "Keadilan Restoratif Sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya Dalam Sistem Peradilan Pidana di Indonesia," *University of Bengkulu Law Journal* 3, no. 2 (2018): 142–158.

needs of victims. According to scholars, restorative justice aims to restore the balance disrupted by crime by encouraging offenders to take responsibility for their actions, providing space for victims to obtain recovery, and rebuilding damaged social relationships within the community.⁷

Previous studies have examined customary dispute resolution mechanisms and the application of restorative justice within Indonesia's legal system. These studies generally conclude that customary law plays an important role in restoring social harmony through deliberation, customary sanctions, and the reconciliation of community relationships. Meanwhile, research on restorative justice has primarily focused on its implementation within the national criminal justice system without specifically examining its application within Balinese customary criminal law in cases of sexual violence. Consequently, limited scholarly attention has been devoted to critically assessing the compatibility between restorative justice values embedded in Balinese customary law and the victim protection standards established under Law Number 12 of 2022 concerning the Crime of Sexual Violence. This study seeks to fill this gap by examining the intersection between Balinese customary criminal law, restorative justice principles, and national legal standards concerning victim protection and human rights.

In the context of Indonesian criminal law, the concept of restorative justice has gained normative legitimacy through various laws and regulations. Law Number 12 of 2022 on the Crime of Sexual Violence emphasizes the importance of victim recovery as an integral part of the law enforcement process.⁸ In addition, the application of restorative justice is also accommodated in Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which opens opportunities for case resolution by prioritizing substantive justice, balance of interests, and legal utility, without disregarding the principles of legal certainty and the protection of human rights.

B. Balinese Customary Criminal Law and Case Resolution Mechanisms

Balinese customary criminal law is a legal system that thrives within indigenous communities, drawing on local wisdom, particularly those enshrined in customary village bylaws and regulations. This legal system emphasizes the principles of balance, harmony, and social order, with the primary goal of restoring relationships disrupted by a violation.⁹ The mechanism for resolving cases in Balinese customary criminal law is generally carried out through deliberation involving customary leaders, village officials, and the disputing parties, prioritizing the responsibility of the perpetrator and reparation for the injured party. The customary sanctions imposed are not solely punitive but also educational and restorative, thus hopefully restoring social balance and maintaining harmony within Balinese customary society.¹⁰

⁷ Akhmad Indra Pranata and Rudy Indrawan, "Penyelesaian Tindak Pidana Pengerusakan Melalui Pendekatan Restorative Justice," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 9, no. 1 (2025): 110–23, <https://doi.org/10.52266/sangaji.v9i1.4347>.

⁸ Nazla Husnayain, "Politik Hukum Terhadap Integrasi Keadilan Restoratif Dalam Praktik Penegakan Hukum Di Indonesia," *Jurnal Ilmiah Advokasi* 13, no. 3 (2025): 1006–1020.

⁹ Deli Bunga Saravistha, I Ketut Sukadana, and Kadek Dedy Suryana, "Optimalisasi Penerapan Sanksi Adat Dalam Upaya Pengejawantahan Asas Restoratif Justice Di Desa Adat (Studi Kasus Di Desa Adat Penyaringan, Kabupaten Jembrana)," *Jurnal Impresi Indonesia* 1, no. 3 (2022): 201–10, <https://doi.org/10.58344/jii.v1i3.32>.

¹⁰ Evelyn Hasibuan, Meiske T Sondakh, and Deine R. Ringkuangan, "Eksistensi Pidana Adat Dalam Kerangka Pembaharuan Hukum Pidana Nasional (Analisis Konsepsi Rancangan Kuhp)," *Lex Crimen* 10, no. 7 (2021): 208–16.

METHODS OF THE RESEARCH

The research method used in this study was a literature study (library research) with a normative juridical approach. This research was conducted by reviewing and analyzing various legal sources and library materials relevant to the topics of restorative justice, Balinese customary criminal law, and the handling of sexual violence cases. The legal materials used included primary legal materials in the form of laws and regulations, such as Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, as well as regulations related to restorative justice, and secondary legal materials in the form of books, scientific journals, previous research results, and other academic documents. Data collection techniques were carried out through systematic searches and reviews of literature related to the research problem. The obtained data were then analyzed qualitatively using descriptive-analytical methods to understand the concepts, principles, and relevance of restorative justice values in Balinese customary criminal law. The results of this analysis were used to draw conclusions regarding the role and contribution of Balinese customary criminal law in resolving sexual violence cases in a just manner that aligns with the national legal system. This study employs a normative legal research method using both the statutory approach and the conceptual approach. Primary legal materials consist of statutory regulations concerning sexual violence, restorative justice, and Balinese customary criminal law. Secondary legal materials were obtained through library research by searching several academic databases and official legal sources, including Google Scholar, ScienceDirect, HeinOnline, Garuda (*Garba Rujukan Digital*), and national and international legal journal repositories containing publications related to restorative justice, customary criminal law, sexual violence, victim protection, and legal pluralism. In addition, official reports issued by the National Commission on Violence Against Women, statutory regulations, and other official documents were used to support the legal analysis. The collected legal materials were analyzed using a descriptive-analytical method. The analysis began by identifying and classifying legal materials according to the main themes of the study, namely restorative justice, Balinese customary criminal law, victim protection, and the national legal framework. Subsequently, statutory regulations, legal doctrines, previous studies, and scholarly literature were compared and synthesized to identify similarities, differences, and normative gaps among these sources. The synthesized findings were then systematically interpreted through the statutory and conceptual approaches to develop legal arguments concerning the relevance of restorative justice values within Balinese customary criminal law and their compatibility with Indonesia's national legal system, particularly regarding victim protection in cases of sexual violence.

RESULTS AND DISCUSSION

The results of the literature study show that, normatively, the values of restorative justice have long been embedded in Balinese customary criminal law through the mechanisms of *awig-awig* and *pararem* of customary villages. The settlement of customary cases emphasizes the restoration of social balance, the responsibility of offenders, and the recovery of community harmony.¹¹ These values are conceptually aligned with the principles of restorative justice as developed in modern criminal law and accommodated in national legislation, such as Law Number 12 of 2022 on the Crime of Sexual Violence and

¹¹ A. H. Dahana, C. D., & Martana, "Aktualisasi Etika Lingkungan Dan Nilai-Nilai Kearifan Lokal Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Majelis* 02 (2020): 115–45.

Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

The research findings also indicate that the application of restorative justice values in Balinese customary criminal law to cases of sexual violence still leaves normative and practical issues. In a number of cases, customary-based settlements tend to place the collective interests of the customary community above the individual interests of victims.¹² This condition has the potential to create power imbalances, especially when victims occupy socially vulnerable positions, such as women or children, resulting in victims' rights to justice and recovery not being fully fulfilled.

This marginalization is influenced by several socio-cultural factors within Balinese customary communities. The concepts of family honor, communal reputation, and social harmony often encourage victims to remain silent or accept customary settlements to avoid bringing shame upon their families or customary villages. Furthermore, traditional gender norms may position women as responsible for preserving communal harmony, thereby limiting their ability to refuse customary agreements. Consequently, restorative mechanisms may unintentionally reproduce unequal power relations when victim participation is influenced by social pressure rather than genuine consent.

Common customary sanctions include the obligation to perform purification rituals (*Upacara Pembersihan*), payment of customary fines (*danda*), public apologies before the customary assembly, temporary exclusion from communal activities (*kasepekan*), and other obligations determined through village deliberation. While these sanctions may restore communal balance and reaffirm customary norms, they do not necessarily provide psychological recovery, compensation, or long-term protection for victims. Accordingly, the effectiveness of customary sanctions should be evaluated not only from the perspective of social harmony but also based on their contribution to victim recovery and offender accountability.

Several reports indicate that in practice, cases of sexual violence in Bali have at times been resolved through customary mechanisms with sanctions in the form of obligations to perform customary rituals, customary fines, or social exclusion of the perpetrator.¹³ Although these sanctions are intended to restore community balance, victims often experience social pressure to accept customary settlements in order to protect the reputation of their family or village. This condition is reflected in the Annual Reports of the National Commission on Violence Against Women, which note that non-litigation mechanisms, including customary settlements, have the potential to neglect the victim's perspective if they are not accompanied by human rights protection principles.

Critically, the findings of this study reveal a tension between the ideal of restorative justice and the reality of its implementation in cases of sexual violence within Balinese customary communities. On the one hand, restorative justice offers a more humane and contextual approach compared to a retributive criminal justice system. On the other hand, sexual violence is a crime with multidimensional impacts on victims, and therefore cannot be treated in the same manner as other minor or administrative customary violations.

¹² Putu Eva Ditayani Antari, "Fulfillment of Children Rights as Sexual Violence Victim Based on Restorative Justice on Tenganan Pegriingsingan Community in Karangasem, Bali," *Jurnal HAM* 12, no. 1 (2021): 75-93.

¹³ Allena Marvelia Silalahi et al., "Pelanggaran Hukum Adat Dan Sanksinya Di Dalam Kehidupan Masyarakat Bali," *Jurnal Multilingual* 3, no. 4 (2023): 1412-82.

Cases of sexual violence occurring within Balinese customary communities, as reported in several media outlets and referenced in National Commission on Violence Against Women reports, demonstrate that customary settlements often focus on restoring social harmony rather than addressing the victim's trauma. In one case reported in Bali in 2021, the customary settlement involved imposing an obligation on the perpetrator to perform customary rituals, while the victim did not receive adequate psychological assistance or social recovery. Such cases illustrate that restorative values may be distorted if applied without clear standards for victim protection.¹⁴

From a normative perspective, Law Number 12 of 2022 on the Crime of Sexual Violence explicitly positions victims as the primary subjects of law enforcement. This law affirms victims' rights to handling, protection, and recovery, and rejects all forms of settlement that have the potential to harm victims. Therefore, the application of restorative justice in cases of sexual violence must be limited and must not eliminate the criminal justice process when the act fulfills the elements of a serious criminal offense.¹⁵

Regulation of the Chief of the Indonesian National Police Number 8 of 2021 also emphasizes that restorative justice cannot be applied to certain criminal acts that cause widespread public concern or have serious impacts on victims. Sexual violence, particularly cases involving women and children, is normatively included in the category of crimes that require maximum legal protection.¹⁶ Accordingly, the restorative approach in Balinese customary criminal law should be positioned as a complement in terms of social recovery, rather than as a substitute for the criminal justice process.

Critically, this study assesses that Balinese customary criminal law has significant potential to support the social recovery of victims, especially within strong customary communities. However, this potential must be accompanied by a reformulation of customary mechanisms to make them more sensitive to victims of sexual violence. Without normative reform and adequate oversight, customary mechanisms risk perpetuating a culture of silence and the normalization of sexual violence in the name of social harmony.

Therefore, synergy between Balinese customary criminal law and national law is imperative. The values of restorative justice within customary law must be aligned with human rights principles and victim protection as regulated in the Law on the Crime of Sexual Violence. Through such an approach, restorative justice will function not only as a means of resolving social conflict, but also as an instrument for victim protection and the prevention of sexual violence in the future.

CONCLUSION

Sexual violence constitutes a serious violation of human rights that requires a comprehensive legal response centered on victim protection and recovery. This study demonstrates that the values of restorative justice are normatively embedded within Balinese customary criminal law through customary mechanisms such as *awig-awig* and *pararem*, which emphasize social harmony, balance, and communal responsibility. These values are conceptually compatible with restorative justice principles recognized in

¹⁴ Susanto, *Penghapusan Kekerasan Seksual Dalam Berbagai Perspektif*, (Jakarta: Pusat Penelitian Badan Kahlilan, 2017), 1-128.

¹⁵ Putranto, Afandono Cahyo, and Irwan Triadi. "Konsep Hukum Pidana Adat Pasca Pemberlakuan Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Perspektif Living Law." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 7317-7338.

¹⁶ Moch Choirul Rizal. *Buku Ajar Hukum Pidana*, (Kediri: Lembaga Studi Hukum Pidana, 2021).

Indonesia's national legal system, particularly under Law Number 12 of 2022 concerning the Crime of Sexual Violence and Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Furthermore, this study finds that the implementation of restorative justice in cases of sexual violence within Balinese customary communities remains constrained by both normative and practical challenges. Although customary mechanisms possess considerable potential to facilitate social recovery, their implementation often prioritizes communal harmony over the protection and recovery of victims, thereby creating risks of unequal power relations and secondary victimization. Consequently, restorative justice within Balinese customary criminal law should not replace the formal criminal justice process in cases of sexual violence, but rather function as a complementary mechanism that supports victims' social recovery while remaining consistent with human rights principles and national legal standards. This study therefore concludes that achieving a fair balance between customary justice and the national criminal justice system requires the reformulation of customary dispute resolution mechanisms, the development of victim-centered procedural safeguards, and stronger institutional coordination between customary authorities and state law enforcement agencies. Such measures are essential to ensure that restorative justice genuinely promotes justice, victim protection, and the prevention of sexual violence within indigenous communities. Future research should move beyond normative legal analysis by examining the practical implementation of restorative justice in Balinese customary villages through empirical studies involving victims, customary leaders (*bendesa adat* and *prajuru adat*), law enforcement officials, and community members. Comparative studies involving other Indonesian customary legal systems are also recommended to evaluate whether victim-centered restorative justice can be implemented consistently within Indonesia's pluralistic legal framework while maintaining compliance with human rights standards.

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