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Constitutional Values and Restorative Justice: A Critical Analysis in the Indonesian Context

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Abstract

This research examines the alignment between Restorative Justice concepts and constitutional principles embedded in Indonesia's 1945 Constitution, analyzing its effectiveness in achieving substantive justice and social restoration. Employing normative legal research methodology with statute, conceptual, comparative, and case approaches, this study investigates how Restorative Justice can serve

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as an instrument for actualizing constitutional values within Indonesia's constitutional system. The research reveals profound philosophical harmonization between Restorative Justice principles and constitutional values, particularly regarding human rights protection (Article 28I), substantive justice (Article 28D), and the rule of law principle (Article 1(3)). The analysis demonstrates that Restorative Justice effectively achieves substantive justice through participatory processes that prioritize dialogue, accountability, and community involvement over punitive measures. Evidence from juvenile criminal justice implementation and comparative analysis with international practices indicates significant effectiveness in reducing recidivism rates and strengthening social cohesion. The study concludes that Restorative Justice constitutes a constitutional imperative rather than merely an alternative judicial mechanism, representing the actualization of substantive constitutionalism that aligns with Indonesia's foundational Pancasila values. This research contributes to constitutional law scholarship by establishing a theoretical framework that integrates alternative justice mechanisms within constitutional governance, providing empirical evidence for constitutional-based Restorative Justice effectiveness, and offering methodological foundations for future research examining the intersection between constitutional values and innovative justice practices.

Penelitian ini mengkaji keselarasan antara konsep Keadilan Restoratif dengan prinsip-prinsip konstitusional yang tertanam dalam Undang-Undang Dasar 1945 Indonesia, menganalisis efektivitasnya dalam mencapai keadilan substantif dan pemulihan sosial. Dengan menggunakan metodologi penelitian hukum normatif melalui pendekatan perundang-undangan, konseptual, komparatif, dan kasus, studi ini meneliti bagaimana Keadilan Restoratif dapat berfungsi sebagai instrumen untuk mengaktualisasikan nilai-nilai konstitusional dalam sistem ketatanegaraan Indonesia. Penelitian ini mengungkapkan harmonisasi filosofis yang mendalam antara prinsip-prinsip Keadilan Restoratif dengan nilai-nilai konstitusional, khususnya terkait perlindungan hak asasi manusia (Pasal 28I), keadilan substantif (Pasal 28D), dan prinsip negara hukum (Pasal 1 ayat 3). Analisis menunjukkan bahwa Keadilan Restoratif secara efektif mencapai keadilan substantif melalui proses partisipatif yang mengutamakan dialog, akuntabilitas, dan keterlibatan masyarakat daripada tindakan punitif. Bukti dari implementasi sistem peradilan pidana anak dan analisis komparatif dengan praktik internasional menunjukkan efektivitas yang signifikan dalam mengurangi tingkat residivisme dan memperkuat kohesi sosial. Studi ini menyimpulkan bahwa Keadilan Restoratif merupakan imperatif konstitusional daripada sekadar mekanisme peradilan alternatif, yang merepresentasikan aktualisasi konstitusionalisme substantif yang selaras dengan nilai-nilai dasar

Pancasila Indonesia. Penelitian ini berkontribusi pada keilmuan hukum konstitusi dengan membangun kerangka teoretis yang mengintegrasikan mekanisme keadilan alternatif dalam tata kelola konstitusional, menyediakan bukti empiris untuk efektivitas Keadilan Restoratif berbasis konstitusional, dan menawarkan landasan metodologis untuk penelitian masa depan yang mengkaji persinggungan antara nilai-nilai konstitusional dan praktik keadilan inovatif.

Keywords: restorative justice; constitutional law; substantive justice; social restoration; constitutional values

Introduction

The evolution of societal life constitutes an inevitable consequence of temporal transformations,¹ encompassing advancements in science and technology that significantly impact legal transformation across conceptual, theoretical, cultural, and practical implementation dimensions.² These social dynamics profoundly influence the fabric of daily community life, particularly manifesting in increasingly complex behavioral patterns within society.³ In conducting life activities, interactions between individuals or legal entities, whether in interpersonal relationships or business transactions, can generate various reactions ranging from positive outcomes to potentially detrimental consequences that may precipitate disputes.⁴ The expanding complexity of legal relationships consequently creates

¹ Jonas van der Straeten and Heike Weber, "Technology and Its Temporalities, a Global Perspective," in *Global History of Techniques*, vol. 9, Techne 9 (Brepols Publishers, 2024), 261–79, <https://doi.org/10.1484/M.TECHNE-EB.5.129811>; Jonathan Friedman, "Our Time, Their Time, World Time: The Transformation of Temporal Modes," *Ethnos* 50, no. 3–4 (January 1, 1985): 168–83, <https://doi.org/10.1080/00141844.1985.9981301>.

² Abdullah Alsaleh, "The Impact of Technological Advancement on Culture and Society," *Scientific Reports* 14, no. 1 (December 30, 2024): 32140, <https://doi.org/10.1038/s41598-024-83995-z>.

³ Achmad Hidir and Rahman Malik, *Teori Sosiologi Modern* (Sumatera Barat: Yayasan Tri Edukasi Ilmiah, 2024).

⁴ Joseph P. Folger, Marshall Scott Poole, and Randall K. Stutman, *Working Through Conflict: Strategies for Relationships, Groups, and Organizations*, 10th ed. (New York: Routledge, 2024), <https://doi.org/10.4324/9781003381556>.

increasingly diverse opportunities for conflicts, necessitating more comprehensive approaches to dispute resolution mechanisms.⁵

The fundamental challenge facing Indonesia's contemporary legal system lies in the tension between traditional retributive justice approaches and the growing demand for more holistic, victim-centered dispute resolution mechanisms.⁶ This challenge becomes particularly acute when considering Indonesia's constitutional commitment to justice, human rights protection, and social welfare as enshrined in the 1945 Constitution.⁷ While Indonesia has made significant strides in legal reform since the reform era, the criminal justice system continues to rely heavily on punitive measures that often fail to address the underlying causes of criminal behavior, adequately compensate victims, or facilitate meaningful community healing.⁸ This systemic limitation has created a pressing need for alternative approaches that can better align judicial practice with constitutional values while addressing the complex social dynamics of modern Indonesian society.⁹

Indonesia's criminal justice system, which has traditionally adhered to retributive justice paradigms, increasingly demonstrates limitations in providing holistic solutions to legal conflicts occurring within society.¹⁰ The retributive approach, which primarily emphasizes punitive measures against criminal perpetrators, frequently neglects victim interests and fails to contribute significantly to restoring social

⁵ Bhupinder Singh, "Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues Arising in Cyberspace Lensing E-Commerce and Intellectual Property: Proliferation of E-Commerce Digital Economy," *Revista Brasileira de Alternative Dispute Resolution - Brazilian Journal of Alternative Dispute Resolution - RBADR* 5, no. 10 (2023): 81–105, <https://rbadr.emnuvens.com.br/rbadr/article/view/183>.

⁶ John Braithwaite, *Restorative Justice & Responsive Regulation* (New York: Oxford University Press, 2002), <https://scholar.google.com/scholar?cluster=10604625279258759632&hl=en&oi=scholar>; Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated* (United States: Simon and Schuster, 2015).

⁷ Eddy O. S. Hiarij, *Prinsip-prinsip hukum pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016); Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta Timur: Sinar Grafika, 2021).

⁸ Emaliawati and Dasuki, *Hukum Pidana Anak di Indonesia* (Padang: Takaza Innovatix Labs, 2024).

⁹ Herlina Ratna, *Asas-Asas Umum Hukum Perdata dalam Perspektif Modern* (Padang: Takaza Innovatix Labs, 2025).

¹⁰ Iwan Rasiwan, *Dinamika Sistem Peradilan Pidana Indonesia* (Grafindo Publisher, 2025).

damage caused by criminal acts.¹¹ Within this context, the concept of Restorative Justice has garnered attention as a more holistic alternative approach to criminal case resolution.¹² Restorative justice offers a new paradigm that prioritizes dialogue, mediation, and active participation from all involved parties, including victims, perpetrators, families, and communities, to achieve fair and balanced resolutions.¹³

Indonesia, as a constitutional state, upholds principles of justice, legal certainty, and human rights protection, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945).¹⁴ Constitutional values such as human rights protection (Article 28), due process of law principles, and social justice (Article 28D and the Preamble of UUD 1945) provide robust juridical foundations for developing a more responsive judicial system to societal needs.¹⁵ These principles align with the Restorative Justice philosophy, which emphasizes restoration, reconciliation, and social reintegration. Nevertheless, implementing these constitutional values in judicial practice continues to face challenges, particularly in

¹¹ Divya Govindan, "Retribution, Rehabilitation and Restoration - Working towards the Goals of Criminal Justice," *Indian Journal of Integrated Research in Law* 2 Part 1 (2022): 1, <https://heinonline.org/HOL/Page?handle=hein.journals/injloiid2&id=2649&div=&collection=>; Nabilla N. Afifah, "Perbandingan Antara Pendekatan Keadilan Restoratif Dan Pendekatan Hukuman Adat Dalam Kasus Tindak Pidana Ringan," *Syntax Idea* 6, no. 6 (June 12, 2024): 2804–16, <https://doi.org/10.46799/syntax-idea.v6i6.3749>.

¹² Otitiosa U. Agbonaye and I. O. AGBEDE & Ademola Taiwo, "Analysing Restorative Justice System as A Tool for Dispute Resolution In The Administration Of Justice In Lagos State, Nigeria," *Law and Social Justice Review* 5, no. 1 (2024), <https://nigerianjournalonline.com/index.php/LASJURE/article/view/5804>.

¹³ Oanh Thi Cao and Tuan Van Vu, "Proposing Restorative Justice Models as Alternative Approaches to Addressing Criminal Matters: A Case Study of Judicial Systems in Civil and Common Law Countries," *Access to Justice in Eastern Europe* 2024 (2024): 93, <https://heinonline.org/HOL/Page?handle=hein.journals/ajee2024&id=1558&div=&collection=>.

¹⁴ Ias Muhlashin, "Negara Hukum, Demokrasi dan Penegakan Hukum di Indonesia," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 8, no. 1 (June 29, 2021): 87–100, <https://doi.org/10.24252/al-qadau.v8i1.18114>.

¹⁵ Mohamad Hidayat Muhtar et al., *Teori & Hukum Konstitusi : Dasar Pengetahuan dan Pemahaman serta Wawasan Pemberlakuan Hukum Konstitusi di Indonesia* (Jambi: PT. Sonpedia Publishing Indonesia, 2023).

transforming legal paradigms from punitive approaches toward more restorative orientations.¹⁶

Several previous studies have examined the concept of Restorative Justice within Indonesian legal contexts through various approaches and research focuses. The first study investigated the essence of Restorative Justice in Indonesian legal development using normative legal approaches and case study methodologies, analyzing judicial decisions, legislative reforms, and historical precedents to understand the integration of Restorative Justice principles within Indonesia's legal system. Research findings indicate that Restorative Justice as an approach can simultaneously realize legal compliance, justice, and legal expediency, making it imperative for Indonesia to establish specific legislation governing Restorative Justice.¹⁷ The second study focused on human rights aspects of enforcing Restorative Justice in Indonesia, a constitutional law state. It emphasized that constitutional enforcement fundamentally depends on citizen commitment to the rule of law principles and public awareness of compliance.¹⁸ The third study examined Restorative Justice concepts in criminal case handling within the criminal justice system, concluding that this concept can become permanent legal politics in building national criminal law systems in the future. However, the current implementation remains sectoral.¹⁹

Despite significant contributions from previous studies in understanding Restorative Justice in Indonesia, substantial research

¹⁶ Sujono Sujono, Sudarto Sudarto, and Hiskia Ady Putra, "Analisis Penerapan Restorative Justice Oleh Kejaksaan Republik Indonesia Dalam Bingkai Arah Pembaharuan Politik Hukum Pidana Di Indonesia," *JURNAL RECTUM* 6, no. 3 (September 30, 2024), <https://jurnal.darmaagung.ac.id/index.php/jurnalrectum/article/view/4753>.

¹⁷ Supriansa et al., "The Essence of Restorative Justice in the Development of Indonesian Law," *Revista de Gestão Social e Ambiental* 18, no. 8 (April 17, 2024): e05780–e05780, <https://doi.org/10.24857/rgsa.v18n8-025>.

¹⁸ Siti Miskiah and Abustan, "Human Rights in Enforcing Restorative Justice in Indonesia as a Constitutional Law State" (2nd International Conference on Law Reform (INCLAR 2021), Atlantis Press, 2021), 128–32, <https://doi.org/10.2991/assehr.k.211102.181>.

¹⁹ Nurul Putri Awaliah Nasution, Fathul Hamdani, and Ana Fauzia, "The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System," *European Journal of Law and Political Science* 1, no. 5 (November 28, 2022): 32–41, <https://doi.org/10.24018/ejpolitics.2022.1.5.37>.

gaps persist. First, prior research primarily focused on technical and normative implementation aspects of Restorative Justice without deeply examining philosophical connections between Restorative Justice principles and constitutional values within constitutional law frameworks. Second, no comprehensive study has analyzed how Restorative justice can serve as an instrument for holistically actualizing UUD 1945 constitutional values within Indonesia's constitutional system. Third, previous research has not explored the effectiveness of Restorative Justice in achieving substantive justice mandated by the constitution and its contribution to sustainable social restoration from constitutional law perspectives. Fourth, limited studies have analyzed challenges and opportunities for transforming legal paradigms from retributive to restorative within broader constitutional system frameworks, including implications for Indonesia's legal structure and culture.

Based on the identified problems and research gaps, this study aims to analyze the compatibility of Restorative Justice concepts with constitutional principles in UUD 1945 and evaluate their effectiveness in achieving substantive justice and social restoration. Specifically, this research will examine how Restorative justice can be positioned as an instrument for actualizing constitutional values within Indonesia's constitutional system while providing recommendations for transforming legal paradigms from retributive to restorative approaches that better align with constitutional mandates. This study is expected to contribute theoretically and practically to developing a more just and responsive judicial system to Indonesian society's needs while strengthening Indonesia's position as a constitutional state that prioritizes humanitarian values and universal justice.

Methods

This research employs normative legal research methodology, which positions law as a coherent and hierarchical system of norms. Normative legal research, also known as library research or doctrinal research, constitutes a research approach conducted by examining library materials or secondary data encompassing primary legal

materials, secondary legal materials, and tertiary legal materials.²⁰ Within the context of this study, the normative approach was selected to analyze the compatibility and implementation of Restorative Justice concepts with constitutional principles embedded in the 1945 Constitution (UUD 1945) and to evaluate their effectiveness in achieving substantive justice. The selection of this methodology is predicated upon the characteristics of the research problem, which necessitates an in-depth analysis of legal norms and conceptual interconnections among various legal instruments governing the constitutional framework of Indonesia's justice system.

This research utilizes four principal approaches to address the investigated problems comprehensively. First, the statute approach is employed to examine and analyze all legislation pertaining to the legal issues under investigation, encompassing the 1945 Constitution, organic laws, government regulations, and other technical regulations governing the implementation of restorative justice in Indonesia.²¹ Second, the conceptual approach serves as a conceptual framework to illustrate relationships among concepts to be investigated. It is done by examining theoretical concepts and scholarly perspectives concerning Restorative Justice, substantive justice, constitutional values, and constitutional law.²² Third, the comparative approach is utilized to compare Restorative Justice implementation in Indonesia with best practices in other countries possessing similar constitutional systems, aiming to identify similarities, differences, or patterns that may exist in applying Restorative Justice within constitutional frameworks. Fourth, the case approach is employed to analyze judicial decisions and practical applications of Restorative Justice within Indonesia's judicial system to evaluate the effectiveness of implementing Restorative Justice principles in achieving substantive justice objectives as mandated by the constitution.²³

The types of legal materials utilized in this research comprise three principal categories systematically organized to ensure

²⁰ Salim HS and Erlies Septianan Nurbani, *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis* (Jakarta: Raja Grafindo Persada, 2013), <https://www.rajagrafindo.co.id/produk/penerapan-teori-hukum-pada-penelitian-buku-ii/>.

²¹ HS and Nurbani.

²² Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Depok: RajaGrafindo Persada, 2020), <https://opac.ut.ac.id/detail-opac?id=39958>.

²³ Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2017).

comprehensive coverage of relevant sources. Primary legal materials encompass the 1945 Constitution of the Republic of Indonesia, legislation governing the criminal justice system, Supreme Court regulations concerning Restorative Justice, judicial decisions implementing Restorative Justice principles, and legislation related to human rights protection. Secondary legal materials include scholarly books and academic journals on Restorative Justice and constitutional law, relevant research findings and dissertations, expert opinions from constitutional and criminal law scholars, research reports from legal research institutions, and scholarly articles published in national and international journals. Tertiary legal materials consist of legal dictionaries and encyclopedias, mass media and legal news sources, official websites of legal institutions, and online legal databases that provide additional informational support to strengthen the research analysis and ensure a comprehensive understanding of the subject matter.

The collection of legal materials is conducted through library research methodology involving systematic incentivization of all legal materials relevant to the research topic, classification of legal materials based on their hierarchy and relevance to the research questions, systematization of legal materials according to the formulated research problems, and verification of the validity and currency of collected legal materials. This collection process is undertaken systematically and comprehensively to ensure the completeness of data required for addressing the research problems effectively. All collected legal materials are subsequently classified based on their relevance to the issues investigated and arranged hierarchically according to the legal authority of each respective instrument, thereby facilitating systematic analysis and ensuring methodological rigor in the research process.²⁴

Legal material analysis is conducted employing four complementary analytical methods that collectively provide a comprehensive examination of the research subject.²⁵ Descriptive analysis is utilized to systematically describe Restorative Justice concepts and their relationships with constitutional principles in the

²⁴ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Rajagrafindo Persada, 2011), <https://opac.ut.ac.id/detail-opac?id=26005>.

²⁵ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2006), <https://lib.ui.ac.id/detail.jsp?id=20326032>.

1945 Constitution, as well as to elaborate on current implementation conditions and challenges encountered in practice. Interpretive analysis is performed to interpret the meaning and substance of constitutional provisions relevant to Restorative Justice, as well as to analyze the ratio legis of regulations governing its implementation within the Indonesian legal framework. Evaluative analysis is employed to assess the effectiveness of Restorative Justice implementation in achieving substantive justice and social restoration based on constitutional parameters that have been established through normative analysis. Prescriptive analysis is conducted to formulate recommendations for optimizing Restorative Justice implementation within Indonesia's constitutional framework, including proposals for necessary regulatory and policy improvements to enhance effectiveness and constitutional compliance.

The conceptual framework of this research is predicated upon the premise that Restorative Justice, as an alternative paradigm in the criminal justice system, possesses philosophical compatibility with Indonesia's constitutional values and principles. This framework integrates substantive justice theory, constitutionalism theory, and Restorative Justice theory to analyze how these concepts can be actualized within Indonesia's constitutional system effectively.²⁶ The analysis is conducted systematically, progressing from theoretical foundations through normative analysis to practical implementation considerations, thereby generating comprehensive conclusions and applicable recommendations for policy development. This holistic approach enables the research to produce findings that are not only theoretically robust but also practically implementable within the context of Indonesia's legal system, which is transforming a more restorative justice paradigm that aligns with constitutional values and the nation's commitment to human rights protection and social justice.

Results

Alignment of Restorative Justice Concepts with Constitutional Principles of the 1945 Constitution

²⁶ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2014), <https://simpus.mkri.id/opac/detail-opac?id=10270>.

The analysis reveals profound philosophical harmonization between Restorative Justice concepts and constitutional principles embedded in the 1945 Constitution. As John Braithwaite articulates, “restorative justice is a process whereby parties with a stake in a specific offense collectively resolve how to deal with the aftermath of the offense and its implications for the future.”²⁷ This conceptualization aligns seamlessly with Indonesia’s constitutional spirit that prioritizes substantive justice, human rights protection, and social restoration as integral components of the constitutional system.

The constitutional foundation for Restorative Justice implementation demonstrates systematic alignment across multiple constitutional provisions:

Table 1. Constitutional Foundation for Restorative Justice Implementation

Constitutional Article	Constitutional Principle	Restorative Justice Alignment
Article 1(3)	Rule of Law (Rechtsstaat)	Substantive justice over formal legality
Article 28D(1)	Fair legal certainty and equal treatment	Inclusive and participatory justice mechanisms
Article 28I(2)	Human dignity protection	Non-degrading, humanistic approaches
Article 27(1)	Equality before the law	Equal participation in restorative processes
Preamble & Pancasila Sila 5	Social justice for all Indonesian people	Community-based restoration and collective participation

Article 1, paragraph (3) declares that “the State of Indonesia is a state based on law,” establishing the foundation for developing a legal

²⁷ Braithwaite, *Restorative Justice & Responsive Regulation*.

system that emphasizes not merely formal legality but also the substance of justice accessible to all Indonesian citizens. The concept of rechtsstaat in this context aligns with Gustav Radbruch's perspective on the three fundamental values of law: justice (gerechtigkeit), legal certainty (rechtssicherheit), and legal utility (zweckmassigkeit), with justice occupying the highest position.²⁸

Article 28D paragraph (1) guarantees "the right of every person to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law," providing constitutional legitimacy for implementing more inclusive and participatory justice mechanisms as offered by Restorative Justice.

Article 28I paragraph (2) states that "every person has the right to be free from torture or treatment that degrades human dignity," establishing a robust constitutional foundation for Restorative Justice implementation. As Howard Zehr emphasizes, "restorative justice focuses on harm and accountability rather than rule-breaking and punishment."²⁹

The implementation of Restorative Justice corresponds with the principle of social justice embodied in the fifth principle of Pancasila and the Preamble of the 1945 Constitution. As Tony Marshall defines it, "restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future."³⁰

Comparative analysis of Restorative Justice implementation between Indonesia and the United States reveals significant differences in approach while maintaining identical essence. In Indonesia, Restorative Justice application occurs nationally and integrates within the criminal justice system, as regulated through various regulations, including Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Minor Criminal Act Boundaries and Police Regulation Number 8 of 2021 concerning Criminal Act Handling Based on Restorative Justice. Conversely, in the United States, Restorative Justice implementation is decentralized and depends on individual state

²⁸ Kurt Wilk, *The Legal Philosophies of Lask, Radbruch, and Dabin* (New York: Harvard University Press, 1950).

²⁹ Zehr, *The Little Book of Restorative Justice*.

³⁰ Tony F. Marshall, *Restorative Justice: An Overview* (Coventry: CreateSpace Independent Publishing Platform, 2018).

policies, with 45 states having adopted various forms of Restorative Justice programs.

Effectiveness of Restorative Justice in Achieving Substantive Justice and Social Restoration

The evaluation of Restorative Justice's effectiveness in achieving substantive justice demonstrates that this approach provides more comprehensive solutions compared to conventional retributive criminal justice systems. Substantive justice, as conceptualized by Ronald Dworkin, emphasizes not merely the mechanical application of legal rules but also the moral principles and justice underlying those rules.³¹

1. Implementation in Juvenile Justice System

The implementation of Restorative Justice within Indonesia's juvenile criminal justice system, as regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, demonstrates significant effectiveness in achieving substantive justice. Diversion programs that prioritize resolution through deliberation involving children in conflict with the law, victims, and families of both parties have successfully reduced stigmatization toward children and provided opportunities for social relationship restoration.

Marlina's research indicates that "diversion as a form of Restorative Justice proves effective in reducing children's psychological trauma and strengthening social bonds within communities."³² This finding underscores the capacity of Restorative Justice to address both immediate harm and long-term social consequences of criminal behavior, particularly in cases involving vulnerable populations such as children.

2. Social Restoration and Recidivism Reduction

The social restoration aspect of Restorative Justice is reflected in its ability to reduce recidivism rates and strengthen social cohesion. Longitudinal research conducted by Latimer, Dowden, and Muise demonstrates that "participants in restorative justice programs had significantly lower rates of recidivism compared to those processed

³¹ Ronald Dworkin, *Law's Empire* (Harvard University Press, 1988), 255.

³² Marlina, *Peradilan pidana anak di Indonesia: pengembangan konsep diversi dan restorative justice* (Refika Aditama, 2009), 178.

through traditional criminal justice procedures.”³³ This finding indicates that Restorative Justice is effective not only in resolving current conflicts but also in contributing to future conflict prevention through learning processes and the internalization of positive social values.

3. Integration with Local Wisdom

The effectiveness of Restorative Justice in achieving social restoration can also be observed through its capacity to integrate local wisdom and cultural values of Indonesian society. Implementation of traditional mechanisms such as *paksa adat* courts in Bali, Dayak traditional courts in Kalimantan, and other conventional institutions demonstrates that Restorative Justice possesses the flexibility to adapt to local socio-cultural contexts.

As I Made Widnyana argues, “traditional justice systems that are restorative in nature have proven effective in maintaining social harmonization and preventing conflict escalation within traditional communities.”³⁴ This integration not only strengthens Restorative Justice effectiveness but also contributes to preserving cultural values and local wisdom as components of Indonesian national identity.

Nevertheless, Restorative Justice implementation in Indonesia continues to face several structural and cultural challenges that require resolution to optimize its effectiveness. Limited understanding among law enforcement officials regarding Restorative Justice philosophy and mechanisms, resistance from segments of society still adhering to retributive paradigms, and the absence of comprehensive procedural standardization constitute obstacles to achieving optimal substantive justice and social restoration.

Actualization of Constitutional Values through Restorative Justice

Restorative justice as an instrument for actualizing constitutional values demonstrates significant potential in realizing

³³ Jeff Latimer, Craig Dowden, and Danielle Muise, “The Effectiveness of Restorative Justice Practices: A Meta-Analysis,” *The Prison Journal* 85, no. 2 (June 1, 2005): 127–44, <https://doi.org/10.1177/0032885505276969>.

³⁴ I. Made; Widnyana, *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana* (Jakarta: Fikhati aneska, 2013), 89, https://perpustakaan.mahkamahagung.go.id%2Fslims%2Fpn-jakartaselatan%2Findex.php%3Fp%3Dshow_detail%26id%3D1864.

Indonesia's constitutional aspirations. This actualization process occurs through a paradigmatic transformation of the justice system from state-centered to community-centered approaches, where society plays active roles in conflict resolution and justice restoration processes.

As Satjipto Rahardjo states, "progressive law is law capable of accommodating social change and providing space for community participation in the pursuit of justice."³⁵ This concept aligns with the constitutional spirit that positions the people as holders of supreme sovereignty within Indonesia's constitutional system.

1. Integration of Pancasila Values

The implementation of Restorative Justice across various levels of the justice system demonstrates its capacity to actualize constitutional principles concretely. Within criminal law enforcement contexts, penal mediation mechanisms that prioritize dialogue and consensus reflect the implementation of Pancasila values, particularly the fourth principle concerning democracy guided by wisdom in deliberation/representation.

As Barda Nawawi Arief argues, "penal mediation as a manifestation of Restorative Justice is capable of integrating Pancasila values within criminal law enforcement processes."³⁶ This integration strengthens Restorative Justice's constitutional legitimacy and contributes to building a national legal system with distinctly Indonesian characteristics.

2. Rule of Law Transformation

The transformation of legal paradigms from retributive to restorative also reflects the actualization of the principle of a just rule of law as mandated by the 1945 Constitution. The concept of the rule of law within the Indonesian context cannot be separated from Pancasila values that emphasize the balance between rights and obligations, individuality and communality, and justice and order.

Restorative justice offers mechanisms capable of accommodating such balance through processes involving all

³⁵ Rahardjo, *Ilmu Hukum*.

³⁶ Barda Nawawi Arief, *Mediasi Penal: penyelesaian perkara pidana di luar pengadilan* (Pustaka Magister, 2012), www.digilib.uki.ac.id%2Findex.php%3Fp%3Dshow_detail%26id%3D23948%26keywords%3D.

stakeholders in seeking just solutions. As Jimly Asshiddiqie observes, “Indonesia’s rule of law is a rule of law based on Pancasila, which prioritizes balance between individual interests and collective interests.”³⁷

3. Democratic Governance and Community Empowerment

The actualization of constitutional values through Restorative Justice also manifests in its contribution to strengthening democratic governance and community empowerment. By involving communities in justice processes, Restorative Justice enhances civic engagement and promotes active citizenship, which are essential elements of democratic governance.

This participatory approach aligns with the constitutional principle of people’s sovereignty and contributes to building a more responsive and accountable justice system. Furthermore, the emphasis on dialogue, consensus-building, and mutual respect inherent in Restorative Justice processes reflects the constitutional values of tolerance, diversity, and social harmony that are fundamental to Indonesia’s national identity. The integration of these values into justice administration creates a more holistic and culturally appropriate approach to addressing crime and social conflict, ultimately contributing to the realization of constitutional aspirations for a just and prosperous society.

Discussion

Philosophy of Restorative Justice

The research findings reveal that the harmonization between Restorative Justice and constitutional principles of the 1945 Constitution is not merely coincidental but reflects profound philosophical congruence. Braithwaite’s concept of Restorative Justice as a collective process for resolving the aftermath of legal violations³⁸ demonstrates alignment with the spirit of cooperation (*gotong royong*) and deliberative consensus (*musyawarah mufakat*) that characterizes Indonesian society.

This philosophical alignment becomes even more evident when examining the epistemological foundations of both Restorative Justice

³⁷ Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*.

³⁸ Braithwaite, *Restorative Justice & Responsive Regulation*.

and Indonesian constitutional philosophy.³⁹ The communitarian approach inherent in Restorative Justice resonates deeply with Indonesian communal values, where individual actions are understood within their social context and consequences are addressed collectively. It stands in stark contrast to the individualistic assumptions of retributive justice systems, which focus primarily on the relationship between the state and the offender, often marginalizing victims and communities.

The ontological perspective of Restorative Justice, which views crime as harm to relationships rather than merely rule-breaking, aligns with the Indonesian indigenous understanding of social order.⁴⁰ Traditional Indonesian societies have long recognized that violations of social norms create imbalances that must be restored through collective processes rather than punitive measures alone. This indigenous wisdom provides fertile ground for Restorative Justice implementation, as it builds upon existing cultural frameworks rather than imposing foreign concepts.

The constitutional foundations identified in Article 1 paragraph (3), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution provide strong legitimacy for Restorative Justice implementation. The concept of *rechtsstaat* adopted by Indonesia, as articulated by Gustav Radbruch, with three fundamental values of law (justice, legal certainty, and legal utility),⁴¹ places justice in the highest position. It aligns with the philosophy of Restorative Justice, which prioritizes substantive justice over formal justice.

The constitutional principle of *rechtsstaat* in the Indonesian context requires deeper examination beyond its German origins. The Indonesian interpretation of *rechtsstaat*, as reflected in the constitutional amendments, emphasizes not only the rule of law but also the supremacy of justice as a value system that guides legal

³⁹ Agung Wibowo, Hartiwiningsih Hartiwiningsih, and Sulistyanta Sulistyanta, "Harmonization of Restorative Justice Regulation in the Legal System in Indonesia" (International Conference on Cultural Policy and Sustainable Development (ICPSD 2024), Atlantis Press, 2024), 352–60, https://doi.org/10.2991/978-2-38476-315-3_48.

⁴⁰ Gholin Noor Aulia Sari et al., "Tinjauan Filosofis Keadilan Restoratif Dalam Lensa Teori Keadilan," *Bookchapter Hukum Dan Politik Dalam Berbagai Perspektif* 3 (December 24, 2024): 253–91, <https://doi.org/10.15294/hp.v3i1.210>.

⁴¹ Wilk, *The Legal Philosophies of Lask, Radbruch, and Dabin*.

implementation.⁴² It creates a unique constitutional framework where legal formalism must be balanced with substantive justice considerations, providing constitutional space for alternative dispute resolution mechanisms like Restorative Justice.

Furthermore, the constitutional mandate for human dignity protection creates an imperative for justice systems that respect and enhance rather than diminish human worth. Restorative justice's emphasis on treating all participants - victims, offenders, and community members - with respect and dignity directly fulfills this constitutional requirement.⁴³ The process-oriented nature of Restorative Justice, which prioritizes meaningful participation and voice for all stakeholders, embodies the constitutional principle of democratic participation in justice administration.

The principle of human rights protection in Article 28I paragraph (2) of the 1945 Constitution provides a solid foundation because Restorative Justice distances judicial processes from practices that may degrade human dignity. As Howard Zehr emphasizes,⁴⁴ This approach is more humane and constructive in focusing on harm and accountability rather than rule-breaking and punishment.

Implementation and Effectiveness in the Indonesian Context

The effectiveness of Restorative Justice in achieving substantive justice demonstrates the superiority of this approach compared to conventional retributive systems. Dworkin's concept of substantive justice,⁴⁵ which emphasizes the consideration of moral principles behind legal rules, is highly relevant to Restorative Justice practices that provide space for victims, perpetrators, and communities to participate actively in restoration processes.

Implementation effectiveness can be measured through multiple dimensions that extend beyond traditional criminal justice metrics.

⁴² Luh Putu Vera Astri Pujayanti et al., "Indonesia's Constitutional Court: Bastion of Law Enforcement and Protector of Human Rights in The Reform Era," *Jurnal Pamator : Jurnal Ilmiah Universitas Trunojoyo* 17, no. 1 (February 26, 2024): 35–49, <https://doi.org/10.21107/pamator.v17i1.24128>.

⁴³ Andi M. Rahmat, "Kebijakan Hukum Pidana Oleh Kepolisian Dalam Menerapkan Restorative Justice" (masters, Semarang, Universitas Islam Sultan Agung Semarang, 2024), <https://repository.unissula.ac.id/38254/>.

⁴⁴ Zehr, *The Little Book of Restorative Justice*.

⁴⁵ Dworkin, *Law's Empire*.

Victim satisfaction rates in Restorative Justice processes consistently show higher levels of closure and healing compared to conventional court proceedings. Research indicates that victims who participate in restorative processes report a greater sense of validation, empowerment, and psychological healing.⁴⁶ This effectiveness is particularly pronounced in cases involving interpersonal crimes where relationship repair is crucial for long-term social stability.

From an offender rehabilitation perspective, Restorative Justice demonstrates superior outcomes in promoting genuine accountability and behavioral change. Unlike punitive measures that often generate defensiveness and resentment, restorative processes create conditions for authentic remorse and commitment to change. The face-to-face encounter with victims and community members humanizes the consequences of criminal behavior, leading to deeper understanding and motivation for personal transformation.

Community-level impacts of Restorative Justice implementation reveal significant improvements in social cohesion and collective efficacy. Communities that actively participate in restorative processes develop stronger networks of support and informal social control mechanisms. Its enhanced social capital contributes to crime prevention and creates more resilient communities capable of addressing conflicts before they escalate to criminal behavior.⁴⁷

Implementation within Indonesia's juvenile criminal justice system shows encouraging results. Diversion programs regulated under Law No. 11 of 2012 have successfully reduced stigmatization toward children and provided opportunities for social relationship restoration. Marlina's findings regarding the effectiveness of diversion in lowering children's psychological trauma demonstrate that Restorative Justice can address both short-term and long-term consequences of criminal behavior.⁴⁸

The juvenile justice context provides particularly compelling evidence for Restorative Justice effectiveness due to the developmental

⁴⁶ Faizaturriski MR, "Penilaian keadilan restoratif korban kekerasan seksual" (undergraduate, Malang, Universitas Islam Negeri Maulana Malik Ibrahim, 2025), <http://etheses.uin-malang.ac.id/73940/>.

⁴⁷ Pupu Sriwulan Sumaya, "Keadilan Restoratif Dalam Sistem Hukum Adat Di Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 2 (2025): 1136–43, <https://doi.org/10.38035/jihhp.v5i2.3308>.

⁴⁸ Marlina, *Peradilan pidana anak di Indonesia*, 178.

considerations specific to young offenders. Research in developmental psychology confirms that adolescent brain development continues into the mid-twenties, with implications for decision-making capacity and potential for change.⁴⁹ Restorative justice approaches that emphasize learning, growth, and reintegration align with these developmental realities far better than punitive measures that may actually impede healthy development.

Longitudinal studies of youth who participated in restorative programs show significantly lower rates of school dropout, substance abuse, and mental health problems compared to those processed through conventional juvenile courts.⁵⁰ The educational component inherent in restorative processes, where young people learn about the impact of their actions and develop empathy and problem-solving skills, contributes to positive youth development outcomes that extend far beyond crime prevention.

The social restoration aspect is demonstrated through reduced recidivism rates, as shown in research by Latimer, Dowden, and Muise,⁵¹ indicates that Restorative Justice addresses root causes of criminal behavior rather than merely its symptoms. It contributes to broader crime prevention objectives.

Integration with Local Wisdom and Implementation Challenges

The strength of Restorative Justice lies in its flexibility to adapt to local socio-cultural contexts. The implementation of traditional mechanisms such as *paksa adat* courts in Bali and Dayak traditional courts in Kalimantan demonstrates that Restorative Justice has strong roots in Indonesia's legal tradition. As I Made Widnyana argues,⁵² Restorative traditional justice systems have proven effective in maintaining social harmonization and preventing conflict escalation within traditional communities.

⁴⁹ Elizabeth Scott, Natasha Duell, and Laurence Steinberg, "Brain Development, Social Context, and Justice Policy," *Washington University Journal of Law & Policy* 57 (2018): 13, <https://heinonline.org/HOL/Page?handle=hein.journals/wajlp57&id=23&div=&collection=>.

⁵⁰ Moch Rahmania Yudha and M. Sifa' F. Yulianis, "Penyalahgunaan Narkotika Oleh Anak Dengan Menerapkan Restorative Justice," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 8 (March 19, 2024), <https://doi.org/10.5281/zenodo.10839295>.

⁵¹ Latimer, Dowden, and Muise, "The Effectiveness of Restorative Justice Practices."

⁵² Widnyana, *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana*, 89.

The diversity of traditional conflict resolution mechanisms across Indonesia's archipelago provides a rich repository of restorative practices that can inform contemporary implementation. The *sasi* system in Maluku, which combines environmental conservation with community justice, demonstrates how restorative principles can address multiple social needs simultaneously. The *dalihan na tolu* system among the Batak people emphasizes kinship relationships and collective responsibility in addressing wrongdoing, reflecting a sophisticated understanding of social restoration principles.⁵³

The integration of Islamic law principles, particularly those related to *sulh* (reconciliation) and *diyat* (compensation), provides the additional cultural foundation for Restorative Justice in Indonesia's predominantly Muslim society.⁵⁴ Islamic jurisprudence's emphasis on mercy, forgiveness, and community healing aligns closely with restorative principles, creating opportunities for religiously informed approaches to justice that respect both Islamic values and constitutional requirements.

Regional variations in implementation approaches reflect the federal character of Indonesian governance and the principle of autonomy that allows local governments to adapt policies to local conditions. This decentralized approach to Restorative Justice implementation provides for innovation and experimentation while maintaining consistency with national policy frameworks.

The integration between formal Restorative Justice mechanisms and traditional conflict resolution practices creates a more culturally responsive and contextually appropriate justice system. This synergy not only strengthens Restorative Justice effectiveness but also contributes to preserving cultural values and local wisdom as components of Indonesian national identity.

However, Restorative Justice implementation in Indonesia continues to face various structural and cultural challenges. Limited

⁵³ Elizabeth Ghozali, "Relevance of Legal Value of "Dalihan Natolu" for Solving the Legal Issues in Indigenous Communities," *The International Journal of Humanities & Social Studies* 8, no. 8 (2020), <https://doi.org/10.24940/theijhss/2020/v8/i8/HS2008-060>.

⁵⁴ Joko Budi Darmawan et al., "Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values," *MILRev: Metro Islamic Law Review* 4, no. 1 (May 30, 2025): 269–94, <https://doi.org/10.32332/milrev.v4i1.10435>.

understanding among law enforcement officials regarding Restorative Justice philosophy and mechanisms, resistance from segments of society still adhering to retributive paradigms, and the absence of comprehensive procedural standardization constitute obstacles to achieving optimal substantive justice and social restoration.⁵⁵

Institutional resistance within the formal justice system represents a significant implementation challenge that requires systematic capacity-building and cultural change initiatives. Many justice sector professionals have been trained in adversarial, punitive approaches and may lack the skills and mindset necessary for effective restorative practice. It highlights the need for comprehensive training programs, mentorship systems, and institutional incentives that support the adoption of restorative approaches.

Resource constraints, particularly in terms of trained facilitators and appropriate physical spaces for restorative encounters, create practical barriers to widespread implementation. The intimate, dialogue-based nature of restorative processes requires specialized skills and careful preparation that may not be readily available in all jurisdictions. Investment in human resource development and infrastructure is essential for sustainable implementation.

Public education and awareness campaigns are crucial for addressing societal resistance to restorative approaches. Many citizens may initially view restorative processes as being “soft on crime” without understanding the accountability and responsibility components inherent in these approaches. Media representation, community education programs, and victim advocacy organizations play essential roles in building public support and understanding.

Actualization of Constitutional Values and Paradigmatic Transformation

The actualization of constitutional values through Restorative Justice demonstrates a paradigmatic transformation from state-centered to community-centered approaches. Satjipto Rahardjo's concept of progressive law capable of accommodating social change and providing space for community participation in justice pursuit aligns with the

⁵⁵ Alana Saulnier and Diane Sivasubramaniam, “Restorative Justice: Underlying Mechanisms and Future Directions,” *New Criminal Law Review* 18, no. 4 (November 1, 2015): 510–36, <https://doi.org/10.1525/nclr.2015.18.4.510>.

constitutional spirit that positions people as holders of supreme sovereignty.⁵⁶ This paradigmatic transformation reflects a broader evolution in governance philosophy from top-down, authoritarian approaches toward more participatory, democratic models of public administration. The shift from state-controlled to community-involved justice processes mirrors similar transformations in other sectors, such as development planning, environmental management, and education policy. This consistency across policy domains suggests a fundamental reorientation of the relationship between state and society in post-reform Indonesia.

The empowerment dimension of this transformation extends beyond individual cases to strengthen civil society institutions and democratic participation more broadly. Communities that engage in restorative justice processes develop enhanced capacity for collective problem-solving, dialogue facilitation, and conflict prevention. These skills transfer to other community challenges, contributing to overall social capital and democratic governance capacity.

The constitutional principle of unity in diversity (*Bhinneka Tunggal Ika*) finds practical expression through restorative processes that accommodate multiple perspectives and seek common ground among diverse stakeholders. This approach to justice reflects the pluralistic character of Indonesian society and provides mechanisms for managing diversity constructively. The implementation of penal mediation reflects Pancasila values, particularly the fourth principle concerning democracy guided by wisdom in deliberation/representation, which shows concrete integration between traditional values and modern justice mechanisms. Barda Nawawi Arief's perspective on penal mediation's ability to integrate Pancasila values within criminal law enforcement processes strengthens the constitutional legitimacy of Restorative Justice.⁵⁷

The transformation of paradigms from retributive to restorative reflects the actualization of the principle of the just rule of law. The concept of the rule of law in the Indonesian context cannot be separated from Pancasila values that emphasize the balance between rights and obligations, individuality and communality, and justice and order.

⁵⁶ Rahardjo, *Ilmu Hukum*.

⁵⁷ Arief, *Mediasi Penal*.

Restorative justice offers mechanisms capable of accommodating such balance through processes involving all stakeholders.

Implications for the National Justice System

The actualization of constitutional values through Restorative Justice also manifests in its contribution to strengthening democratic governance and community empowerment.⁵⁸ By involving communities in justice processes, Restorative Justice enhances civic engagement and promotes active citizenship, which are essential elements of democratic governance.

The systemic implications of widespread Restorative Justice implementation extend to fundamental changes in how Indonesian society conceptualizes justice, accountability, and social order.⁵⁹ The participatory nature of restorative processes creates opportunities for civic education and democratic skill development that strengthen the overall democratic culture. Citizens who participate in restorative encounters develop an enhanced capacity for dialogue, empathy, and collaborative problem-solving that benefits society beyond the criminal justice context.

The economic implications of Restorative Justice implementation also deserve consideration, as these approaches typically require less state expenditure than incarceration while producing better outcomes for individuals and communities. The cost-effectiveness of restorative approaches, combined with their superior results in terms of victim satisfaction and offender rehabilitation, presents compelling arguments for policymakers facing budget constraints and demands for effective governance.

The international dimensions of Indonesia's embrace of Restorative Justice position the country as a leader in progressive criminal justice reform within the Southeast Asian region. Indonesia's experience in integrating traditional wisdom with modern restorative practices provides valuable lessons for other countries seeking to develop culturally appropriate justice systems. This leadership role

⁵⁸ Albert W. Dzur and Susan M. Olson, "The Value of Community Participation in Restorative Justice," *Journal of Social Philosophy* 35, no. 1 (2004): 91–107, <https://doi.org/10.1111/j.1467-9833.2004.00218.x>.

⁵⁹ Fauziah Lubis, Fatimah Zahara, and Wanda Hamidah, "Implementation of Restorative Justice, The Intent of Punishment, and Legal Clarity In Indonesia," *UNES Law Review* 6, no. 2 (2023): 6602–13, <https://doi.org/10.31933/unesrev.v6i2.1521>.

enhances Indonesia's soft power and contributes to its reputation as a democratic, rights-respecting nation.

This participatory approach aligns with the constitutional principle of people's sovereignty and contributes to building a more responsive and accountable justice system. The emphasis on dialogue, consensus-building, and mutual respect inherent in Restorative Justice processes reflects constitutional values of tolerance, diversity, and social harmony that are fundamental to Indonesia's national identity.

The integration of these values into justice administration creates a more holistic and culturally appropriate approach to addressing crime and social conflict, ultimately contributing to the realization of constitutional aspirations for a just and prosperous society. This comprehensive approach ensures that justice extends beyond punishment to encompass healing, accountability, and social repair, thereby fulfilling the constitutional mandate for substantive justice accessible to all Indonesian citizens.

Conclusion

This research establishes that Restorative Justice transcends being merely an alternative judicial mechanism to constitute a constitutional imperative within Indonesia's legal framework. The systematic convergence between restorative principles and constitutional mandates, particularly through Articles 1(3), 28D (1), and 28I (2) of the 1945 Constitution, demonstrates that implementing Restorative Justice fulfills rather than supplements constitutional obligations. The paradigmatic shift from retributive to restorative approaches represents the actualization of substantive constitutionalism that honors both Indonesia's foundational Pancasila values and its commitment to human dignity, social justice, and democratic governance. The integration of traditional conflict resolution mechanisms with formal restorative processes creates a uniquely Indonesian model that strengthens national identity while advancing constitutional aspirations for a just and harmonious society.

The study's theoretical contribution lies in developing a comprehensive framework that bridges constitutional law scholarship with restorative justice theory, providing empirical validation for constitutional-based alternative justice mechanisms. Practically, this research offers methodological foundations for policy development that can guide the transformation of Indonesia's criminal justice system

toward greater constitutional compliance and social responsiveness. By demonstrating that Restorative Justice serves as both a vehicle for actualizing constitutional values and a means of preserving cultural heritage, this study provides a roadmap for other constitutional democracies seeking to integrate traditional wisdom with modern legal frameworks. The findings challenge conventional assumptions about the relationship between formal legal systems and indigenous justice practices, opening new avenues for research into constitutional pluralism and culturally grounded approaches to justice administration in diverse societies.

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