

ARTIGO

RESTORATIVE JUSTICE AS A SYSTEM FOR RESOLVING CHILD VIOLENCE IN THE VILLAGE COURT PHASE IN BALI¹

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1 The Article is the result of coursework.

to the legal framework adopted and providing insights in the areas of law and society. The fourth author, Komang Satria Wibawa Putra, served as the data collection coordinator and also reviewed the research design and the manuscript, offering a critical perspective. The fifth author, Bagus Gede Ari Rama, was the team member responsible for field data collection and assisted in conducting the data analysis. Finally, the sixth author, Kadek Julia Mahadewi, contributed as a member of the data collection team and in translating the manuscript for the journal.

ABSTRACT

The primary focus of this study is the use of restorative justice to address child violence crimes at the customary village level. Enforcing laws against violence towards children in traditional villages is crucial for effectively managing and preventing crimes of child violence. The jurisdiction of village courts established by indigenous peoples in Indonesia to address child violence using restorative justice principles is not clearly defined in the Juvenile Criminal Justice System. This study will investigate the concept of restorative justice in conjunction with *pamuput wicara*, which is the traditional wisdom of indigenous Balinese people. This study focuses on socio-legal methods. Customary villages in Bali have established a restorative justice system in village courts known as *pamuput wicara*. This study can be used as a guide for indigenous peoples seeking to improve their diversion system by using restorative justice ideas and traditional knowledge in village courts to address child violence crimes.

Keywords: Restorative justice. Village court. Children's rights. Child violence. Indigenous peoples.

A JUSTIÇA RESTAURATIVA COMO SISTEMA DE RESOLUÇÃO DE CASOS DE VIOLÊNCIA INFANTIL NA FASE DO TRIBUNAL COMUNITÁRIO EM BALI

RESUMO

O foco principal deste estudo é a utilização da justiça restaurativa para lidar com crimes de violência contra crianças ao nível das aldeias tradicionais. A aplicação das leis contra a violência contra crianças nas aldeias tradicionais é crucial para gerir e prevenir eficazmente os crimes de violência contra crianças. A jurisdição dos tribunais de aldeia estabelecidos pelos povos indígenas na Indonésia para lidar com a violência infantil utilizando princípios de justiça restaurativa não está claramente definida no Sistema de Justiça Penal Juvenil. Este estudo irá investigar o conceito de justiça restaurativa em conjunto com o *pamuput wicara*, que é a sabedoria tradicional do povo indígena balinês. Este estudo centra-se em métodos socio-jurídicos. As aldeias tradicionais em Bali estabeleceram um sistema de justiça restaurativa nos tribunais de aldeia conhecido como *pamuput wicara*. Este estudo pode servir de guia para os povos indígenas que procuram melhorar o seu sistema de desvio, utilizando ideias de justiça restaurativa e conhecimentos tradicionais nos tribunais de aldeia para lidar com crimes de violência infantil.

Palavras-chave: Justiça restaurativa. Tribunal de aldeia. Direitos da criança. Violência infantil. Povos indígenas.

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1 INTRODUCTION

Protecting children is one of the most significant things, especially ensuring children's fundamental rights are fulfilled. Children's rights advocate for ensuring equitable treatment, protection, and well-being of

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children, acknowledging them as independent holders of rights (Couso; Pernas, 2023; Fitt *et al.*, 2023; Nissen, 2021; Reimer-Kirkham *et al.*, 2024). Advocates for children's rights work diligently to safeguard, advocate for, and achieve children's rights globally (Mallon; Martinez-Sainz, 2021). Children's rights are essential privileges that guarantee children's welfare, safeguarding, and growth, covering areas like education, health, safety, and involvement (Bostani, 2021; Hof, van der *et al.*, 2022; Jones; Manion, 2023). Violence against children violates their fundamental rights, particularly in terms of protection. Child abuse is a severe infringement of their fundamental rights. It violates their right to exist without injury, to physical and mental well-being, and to be shielded from any abuse, neglect, and exploitation (Sahlberg; Karlsson; Darcy, 2020). Violence jeopardizes their rights to health, education, and a safe environment, hindering their entire development and well-being. Every child is entitled to a caring and non-violent environment where their rights are recognized, safeguarded, and met. It is crucial to prevent and treat violence against children to protect their fundamental rights and secure a future of dignity and equality for all children.

The United Nations aims to promote global peace through 17 goals, with poverty eradication being a pivotal initiative to safeguard children and prevent violence against them. It is essential to implement thorough programs that target all types of violence in childhood, such as emotional violence, to protect children and prevent violence towards them (Annor *et al.*, 2020; Ramaiya *et al.*, 2021; Tuyll van Serooskeren Rakotomalala, van *et al.*, 2023). Preventive parenting treatments like the International Child Development Programme (ICDP) focus on safeguarding children through encouraging healthy parenting behavior and decreasing the occurrence of violence (Skar *et al.*, 2021). Developing extensive initiatives that target all types of violence in childhood, such as emotional abuse, can help safeguard children and enhance their welfare (Annor *et al.*, 2020).

Law enforcement's role in combating violence against children is undeniable. Law enforcement agencies protect children by implementing laws that prevent kids from being exploited, abused, or harmed (Fors; La, 2020; Smith, 2021). Efforts should be focused on safeguarding children from exploitation, abuse, and injury while promoting their well-being and rights (Bajari; Kuswarno, 2020; Gaag, van der; Walpot; Boendermaker, 2024; Mkonyi *et al.*, 2021; Zubaedah; Tira; Almusawir, 2023). Preventive measures against violence towards children should be implemented by law enforcement at all levels, from the state to the hamlet.

However, today, violence against children still often occurs both in modern society and among indigenous peoples in rural areas, especially in Indonesia (Babvey *et al.*, 2021; Ramaiya *et al.*, 2021; Rakotomalala, van *et al.*, 2023). The law enforcement and protection of children in Indonesia are not yet fully effective (Wismayanti *et al.*, 2021). Yanuar Farida Wismayanti and friends elaborate on child protection measures in Indonesia that do not specifically address child sexual abuse, suggesting that the overall protection of children in Indonesia is not entirely adequate (Wismayanti *et al.*, 2019). Law enforcement and child protection in Indonesia are suboptimal, highlighting the necessity for enhancing measures to guarantee their safety and welfare. Optimization was not achieved because of the ambiguity in Article 8, paragraph (1) of the juvenile justice system law, which does not grant customary villages the competence to conduct village justice. Parents and the community have crucial roles in avoiding violence against children in whatever form. Parents and the community are essential in preventing violence against children through their combined efforts and support systems (Case; Haines, 2021). There are incomplete provisions for restorative justice for diverting child violence among indigenous peoples in Indonesia.

The diversion system, rooted in restorative justice principles, addresses violence against children through a non-discriminatory approach. The diversion system is based on restorative justice concepts, addressing

cases by engaging all parties impacted by the crime and promoting accountability and harmony (Sudarwin, 2020). Traditional community justice can be used for diversion in the adolescent justice system, particularly when these culturally ingrained procedures have public backing (Evans, Raynor e Heath, 2022). The principle of non-discrimination is applied in addressing criminal acts of violence against children through both repressive and preventive measures. The idea of non-discrimination states that individuals should receive fair and equitable treatment without bias due to characteristics like colour, gender, religion, or disability (Colaneri; Keim; Adesman, 2020; Häuselmann; Custers, 2024; Lin, 2022). The principle of non-discrimination is a crucial factor in applying restorative justice for solving incidents of child violence. Restorative justice is a procedure that centers on addressing the damage caused by a crime by engaging in discourse, ensuring accountability, and involving all impacted individuals (Pfander, 2020; Zhu; Lo, 2021).

The explicit provisions of the principle of restorative justice in the provisions of the law help in solving violence against children not only in the litigation room but also in non-litigation systems such as in village courts or Bali called *pamuput wicara* (Sudantara, 2017, p. 323). Violence against children can be resolved using non-litigious methods to obtain a more efficient and cost-effective law enforcement approach. Customary villages can address crimes of violence against children using restorative justice in village courts. Village courts use restorative justice approaches to settle problems and promote harmony via communication, reconciliation, and community participation (Rasdi *et al.*, 2022). Restorative justice is an approach that upholds the principle of non-discrimination towards children, whether they are offenders or victims. Indigenous villages in Indonesia should implement restorative justice due to this reason.

Indigenous villages have a longstanding traditional legal system that dates back to their forefathers. Traditional Balinese communities have a customary justice system known as *pamuput wicara*, which includes the *pamidanda* mechanism for enforcing sanctions. Restorative justice and *pamidanda* encompass the concept of restoring equilibrium and fairness. In *pamidanda*, *Tri Hita Karana* is applied in customary courts to achieve peace and justice through the balance of *parahyangan*, *pawongan*, and *palemahan* (Peters; Wardana, 2013).

This research will investigate the concept of restorative justice in partnership with *pamidanda* within the traditional court system in Bali to address cases of child violence through both repressive and preventive measures.

2 RESEARCH METHOD

This study focuses on socio-legal techniques. This research employs a statutory approach, a legal facts approach, and a comparative approach. The study utilized primary data from interviews conducted in three traditional Bali villages and secondary data comprising laws and regulations. Additionally, this research relied on legal literature tools and relevant periodicals. This study employs legal analysis approaches in its procedure.

3 RESULTS

Bali, known for preserving its customs and culture, nevertheless has customary law communities that are relevant today. The customary law community is categorized into genealogical, territorial, and genealogical-territorial. Bali is currently classified as a customary law community that follows genealogical-territorial concepts in its growth. Indigenous people of Bali have a *sekeha dadia* in their genealogy. Indigenous peoples in Bali have legal agreements focusing on shared interests in the territorial domain, such as *Su-*

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bak, which is involved in water management for rice fields and plantations (*Subak Abian*). Customary law communities in Bali prioritize safeguarding their area, known as a customary village.

Bali Province distinguishes between traditional and official villages with unique functions, systems, and organizational structures. Official villages coexisting with traditional villages in Bali do not negate the existence of the latter. Customary villages enforce customary law and are now legally recognized under Bali Provincial Regulation Number 4 of 2019 regarding Customary Villages in Bali. Traditional villages are a crucial component for traditional law groups in Bali to navigate their social interactions. Article 8 of the customary village bylaw states that customary villages are a fundamental component of customary law communities in Bali. This legal community unit possesses its area, position, customary rights, and property. Balinese customary village bylaws are local regulations that offer legal support and protection to customary law communities in Bali.

Customary villages in Bali can be categorized geographically according to their location. It is possible to observe the similarities between traditional villages in Bali based on the territorial grouping of mountains known as Bali Aga village and plain village or Pantai. Some historic villages have adapted to modern times, mainly affected by the heritage of the Majapahit Kingdom known as Apanage village.

3.1 CEMPAGA AND TENGANAN PEGRINGSIGNAN AS *BALIAGA* TRADITIONAL VILLAGE

The leadership in *Baliaga* village follows a dual or collective system based on seniority, referred to as "*Ulu-Ampad*". The family system of the Bali Aga village community is primarily structured around a single hierarchy that serves as the foundation for the village's governance. The *Baliage* traditional village kinship system assigns vital roles in the village government to the oldest members of the community, including the *kubayan*, *de mangku*, *rama ing dusun*, *sang mathani*, *tuha-tuha*, *wulu-wulu*, and *dulun desa*, who are now referred to as *kelihan adat* in more advanced social hierarchies.

Cempaga Traditional Village is an ancient *Baliaga* village lacking historical documentation in inscriptions or lontar manuscripts. The village existence is recounted verbally and transmitted through generations (RI 1). The Banyusri Inscription states that Cempaga Traditional Village was governed by King Sri Sura-dipa in 1115 AD. The Cempaga indigenous people believe that worship of God and ancestors should be conducted within the household area. Currently, the community lacks a designated family worship space (*mrajan/sanggah*) like most indigenous groups in Bali (RI 1). The Cempaga traditional village follows a village institutional system called the *ulum-ampad* system, also known among the Cempaga indigenous people as "*mulu gugun puon mulu apad*" (RI 1). Traditional elders are selected based on the principle of "*takin kenawan*, *takin keke*, *penginter juru betek*". Traditional elders are chosen based on marriage or family seniority, known as "*kelih-kelihan dadia*" or "*para ulu*". The traditional elder will then be appointed to the position known as "*Tugu*". The responsibilities of the custom manager (*Tugu*) include organizing ceremonial events and presiding over village tribunals, known as *paruman adat*. The traditional village of Cempaga grants *Tugu* the ability to address breaches as a village judge, known as *pamuput wicara* in Bali.

Tugu will conduct a village court called *paruman agung* to impose traditional fines for violations. Aside from regular penalties, the Cempaga indigenous people follow the "*lontar ten petulis*" when conducting

customary village activities, mainly ceremonial rites. “*Lontar ten petulis*” refers to customary laws enforced according to traditions and verbal instructions.

Another historic settlement categorized as a *Baliaga* village is Tenganan Pegringsingan Traditional settlement, in addition to Cempaga Traditional Village. Tenganan Pegringsingan Traditional Village, unlike Cempaga Traditional Village, is a *Baliaga* village with a well-documented history record in the *awig-awig* lontar from 1842, with assistance from the Klungkung Kingdom (RI 2). The Tenganan Pegringsingan Traditional Village’s institutional system also follows the *ulu ampat* system, which is determined by the seniority of marriages. The Tenganan Pegringsingan Traditional Village community comprises *krama desa*, *krama gumi*, and *krama gumi pulangan*. In Tenganan Pegringsingan, customary village management involves communal decision-making. The village court, known as *pamuput wicara*, is presided over by two pairs of husband and wife who hold the positions of village heads and judges based on their material wealth and status (RI 2). The Tenganan Pegringsingan customary village has a system for addressing customary violations, including violence against children, through village courts. These courts decide whether the violations can be resolved within the village or should be referred to state law enforcement agencies like the police, prosecutors, and courts (RI 2).

3.2 SEPANG AS APANAGE TRADITIONAL VILLAGE

Sepang Traditional Village is an Apanege traditional village in Buleleng Regency. Sepang Village historically refers to a group of individuals residing in the mountainous region known as Basturi. *Apanage* Village has transformed from an ancient *Baliage* village to a traditional Apanage village due to the strong influence of Majapahit. This influence has led to changes in religious practices, structures, community systems, and leadership within traditional villages in Bali (RI 3). Sepang Traditional Village is a historic village with an autonomous system for religious ceremonies that diverges from the beliefs of Majapahit or Mpu Kuturuan. Sepang Traditional Village previously had a unique *upakara* (Religious rituals) system compared to other traditional villages in Bali. However, it now solely follows a village institutional structure with a single leadership, influenced by Mpu Kuturuan and Majapahit Understanding (RI 3).

Sepang Traditional Village comprises 33 *sanggah dadia* (Indigenous family groups), the original family groups that initiated the establishment of the village. These 33 *dadia* rebuttals must serve as village leaders and judges in village courts (*Bendesa Adat*), a unique requirement. Sepang Traditional Village also demonstrates a hierarchical system of *awig-awig* (customary law) similar to the *stufanbau* theory, known as the hierarchy of laws and regulations. Each family in Sepang possesses its own family *awig-awig*, which are descendants of the *awig-awig* of Sepang Traditional Village (RI 3). Family regulations must align with the village rules and should not contradict the regulations of village.

Sepang Traditional Village features a village court separated into two sections: *paruman adat* and *paruman banjar*. While *paruman adat* emphasizes the execution of religious ceremonies, customary delicacy addresses issues like violence against children, divorce, and disputes over customary land. *Paruman banjar* discusses traditional village programs, official village matters, and government initiatives (RI3). *Paruman Banjar* occurs monthly, whereas *Paruman Adat* is held every three months (*Anggara Kasih Medangsia* and *Dukut*) in *Bale Agung* (Village Court). During every vital decision, traditional elders known as *Bendesa Adat* will conduct a ceremonial ceremony utilizing *keris* (traditional Balinese weapons) in the presence of 33

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representatives from indigenous family groups called *sanggah suoan*. *sanggah suoan* is to validate the traditional decision (*incracht*) (RI 3).

Customary village courts in Bali still exist and are conducted by indigenous people in Bali. Both *Baliaga* and *Apanage* have customary laws that apply inside their customary villages. The judge of the village court in Bali, who is also the Village Head, has the authority to uphold order in the village and rectify any breaches of customary laws, including acts like violence against children that disrupt harmony in the village.

4 DISCUSSION

Violence against minors still often occurs because the penal system in Indonesia is still oriented towards retributive justice, which produces justice based on retribution in the form of punishment and imprisonment. Indeed, imprisonment might cause the nature of children to become vengeful and not solve problems between families. For this reason, there is a need for efforts to resolve child violence crimes oriented towards rehabilitation, resocialization, restitution, reparation, and compensation (Trull-Oliva; Soler-Masó, 2021). These efforts are very effective in preventive efforts against child violence. The above system is a series of criminal solutions that exist in the principle of restorative justice. Restorative justice principles focus on mending harm and meeting the needs of all parties involved in an offense through diversionary approaches (Donnelly, 2023). A practical method to combat child violence crimes involves conducting thorough investigations, implementing therapeutic interventions, and offering community assistance to tackle the root causes and provide suitable rehabilitation for young offenders (Liu *et al.*, 2023).

Diversion programs steer juvenile offenders away from the conventional legal system and towards rehabilitative treatments and community assistance (Alkhatabi *et al.*, 2022; Aryana, 2020; Ritterbusch *et al.*, 2023). Diversion programs are successful in addressing child violence, especially in cases of sexual assault and intimate partner violence. Diversion effectively combats child violence by offering therapeutic interventions and support services that target the root causes of the behavior (Case; Haines, 2021). Community involvement is essential for the success and efficacy of diversion programs. Drawing on the expertise, resources, and backing of local knowledge, organizations, and stakeholders can enhance the effectiveness of diversion programs (Syahr *et al.*, 2023). Community involvement ensures that diversion programs are customized to the unique requirements and traits of the community, fostering a feeling of ownership and responsibility.

Furthermore, involving community members in decision-making promotes trust, transparency, and teamwork. This results in more sustainable and inclusive diversion methods that tackle the underlying reasons for crime and support rehabilitation and reintegration (Evans, Raynor e Heath, 2022). Community participation in implementing diversion will be incomplete without incorporating the fundamental notion of restorative justice, which is central to the diversion program.

Restorative justice measures to address and prevent child violence crimes should incorporate community elements, including village judicial institutions, to enhance the restorative justice process, which is specified in the philosophy of diversion within the juvenile justice system. Restorative justice involves engaging affected individuals in discussions about the crime's circumstances and consequences, as well as determining appropriate measures to address the harm caused to those impacted by the crime, thus facilitating the victim's recovery (Elmi; Daignault; Hébert, 2018; Sun *et al.*, 2024; Suzuki, 2023; Todić *et al.*, 2020). Res-

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torative justice principles can be included in village court systems to encourage healing, accountability, and community involvement in resolving problems and rebuilding healthy relationships (Zhu; Lo, 2021). Local expertise is crucial for the successful and culturally sensitive implementation of restorative justice procedures within the community or village court (Sukardi; Purnama, 2022). Local wisdom is essential for implementing restorative justice responses to criminalization. Restorative justice, which emphasizes repairing harm and restoring relationships, is in harmony with the values and practices of numerous local communities Agung *et al.*, 2024; Munawaroh, 2019; Patriadi; Bakar; Hamat, 2015; Atahau; Huruta; Lee, 2020). Local wisdom includes the traditional knowledge, customs, and practices handed down through generations to help community members resolve issues and deal with wrongdoing (Sinaga *et al.*, 2023). By integrating indigenous knowledge into restorative justice procedures, communities can utilize their cultural legacy to develop significant and contextually appropriate resolutions that encourage healing, reconciliation, and the reintegration of wrongdoers into society.

Diversion in restorative justice serves purposes beyond benefiting victims and preventing vengeance. Harmony and balance in society are highly achievable in village courts, as outlined in the result chapters, and align with the importance of diversion implementation. Village Courts are part of a restorative justice system that focuses on compensation, reintegrating offenders, and resolving conflicts (Ringo, 2023; Wiessner, 2020). The Village Court system is essential in handling situations of child violence. The system primarily concentrates on mediation and resolving disputes at the community level, but it also serves as a platform for dealing with cases of abuse against children. Village Court magistrates, under the Village Courts Act and customary law, have jurisdiction over matters involving child abuse, neglect, or other types of violence (Goddard, 2005). The courts provide a convenient and culturally appropriate platform for pursuing justice and safeguarding children to ensure their welfare and hold perpetrators of child violence accountable. Customary or village courts are essential for addressing child violence, offering a legally binding and peaceful avenue for justice (Miranti *et al.*, 2022). Based on local traditions and cultural norms, these village courts provide a familiar and accessible way to handle complex community issues. Parties involved in child violence situations might reach culturally approved remedies through customary judicial processes, fostering harmony and healing (Goddard, 2001).

Village courts play a crucial role in the legal system and are empowered to settle minor conflicts within the community (Mansur; Sulaiman; Ali, 2020). The restorative justice system may allow village courts to play a role in addressing child harm crimes. The above explanation has a strong basis when referring to Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The provision stipulates that indigenous Peoples possess the entitlement to exercise their right to self-determination, encompassing the right to autonomy or self-governance in areas about their internal and local affairs, as well as the resources and mechanisms to support their autonomous activities (Nations, 2007). Furthermore, article 5 explicitly states that indigenous peoples are entitled to uphold and enhance their legal establishments within the framework of state affairs. The emergence of rules about the rights of indigenous peoples in the execution of village justice processes is undeniably intertwined with the legal and historical realities surrounding the establishment and operation of village courts. As Katherine E. Hoffman explains, During the period of the French Protectorate in the Moroccan hinterlands, customary courts assumed the responsibility of adjudicating a diverse array of legal issues, encompassing instances about minors (Hoffman, 2010).

Indigenous peoples play a pivotal role in facilitating the processes of reconciliation, healing, and community restoration. Indigenous peoples frequently possess distinct traditional approaches to dispute resolution and harmony restoration, firmly grounded in their cultural values and customs (Syahr *et al.*, 2023).

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Integrating indigenous viewpoints and customs into the restorative justice procedure enhances inclusivity, cultural sensitivity, and efficacy in meeting the requirements of both the victim and the offender. The participation of indigenous peoples in the restorative justice approach promotes a feeling of inclusion, responsibility, and empowerment among their communities, ultimately enhancing the strategy's overall effectiveness (Aditya; Al-Fatih, 2023). Therefore, Village courts have the potential to adopt a community-oriented approach, fostering open communication and reconciliation among the juvenile offender, the victim, and their families. This approach prioritizes the healing and reintegration process instead of punitive actions (Rizanzarli *et al.*, 2023).

At present, Indonesia lacks regulatory measures about the jurisdiction of customary courts in addressing instances of child assault and following Article 8, paragraph (1) of the legislation about the juvenile justice system, the diversion process is conducted through a process of deliberation that encompasses not only children as victims but also the potential involvement of community counsellors. From the perspective of traditional village institutions, the discussion process conducted by community supervisors might be seen as a judicial procedure carried out by the village court. The village court utilizes restorative justice ideas to address minor criminal problems by employing mediation and consensus-building among the parties concerned. This approach aims to reinstate equilibrium within the community and prioritize the restoration of damage rather than implementing punitive actions (Munawaroh, 2019). This study cites Article 103, letter e of Law Number 6 of 2014 concerning Villages to establish legal certainty regarding village courts in Indonesia. This provision grants customary villages the power to organize peace sessions of customary village courts following the laws and regulations. The authority to convene peace sessions of customary village courts is vested in customary villages, thereby facilitating the resolution of conflicts and the preservation of social cohesion within the community (Werbner; Werbner, 2020). The peace sessions preserve and adhere to customary traditions and practices, enabling community members to actively engage in the decision-making process and reach conclusions that are in accordance with their cultural norms.

The deficiency in norms about the exercise of village judicial authority by customary village officials can be effectively addressed by incorporating customary law within the community, particularly in resolving offenses involving violence against children. The *pemuput wicara* system in Bali, based on the *Tri Hita Karana* philosophy, is a customary law that aligns with the principles of restorative justice. Its purpose is to foster harmony by promoting a balanced relationship between humans and God, humans with other humans, and humans with the natural environment (Saputra *et al.*, 2022). Customary law, an implicit norm within a community, is in accordance with the tenets of restorative justice since it prioritizes the reinstatement of equilibrium and concord within society by means of resolving criminal matters (Silambi *et al.*, 2022). The primary objective is to rectify the damage inflicted by the transgression and foster harmony among the wrongdoer, the victim, and the local population. *Tri Hita Karana* is a reference by Balinese indigenous people in every legal relationship carried out. The aforementioned assertion can be substantiated by examining several regional regulations in Bali that establish *Tri Hita Karana* as the foundational ideology. According to the Regional Regulation of Bali Province Number 4 of 2019, which pertains to Customary Villages in Bali, the legal status of Balinese indigenous peoples is established based on two concepts of local wisdom, namely *Tri Hita Karana* and *Sad Kerthi*. The concept of *pamuput wicara* or *paruman adat* emerged within the context of Balinese indigenous communities, specifically in the resolution of criminal cases, as a result of the implementation of *Tri Hita Karana*.

The term "*pambuput wicara*" refers to a customary organization responsible for resolving various matters within the jurisdiction of customary villages in Bali. According to Wayan P. Windia, the categorization of

pamuput wicara may be delineated into three distinct types based on its organizational structure. The first category pertains to the completion of *wicara* by traditional villages. According to the level, the *Wicara* must be completed by the *Majelis Desa Pakraman* (MDP) (*Pakraman* Village Council). The completion of *wicara* shall be carried out by *Majelis Desa Adat* (MDA), which refers to the Customary Village Council, following the established level (Sudantara, 2017, p. 323).

Pamuput wicara is a formal discussion and decision-making process conducted by the indigenous Balinese community to address matters concerning their lives and shared interests. The *pamuput wicara* procedure includes traditional participants such as village leaders, up streamers, and community members with shared interests. The *pamuput wicara* symbolizes the fundamental ideals of customs, association, and justice vital to the Balinese indigenous society. *Wicara* is implemented in customary village settings by the customary village management, known as *prajuru*. Settlement through the *pamuput wicara* institution is determined by *awig-awig* (customary law) and local customary village *pararem*, laws based on Hindu beliefs, whether written or unwritten. Suppose the customary village administrator cannot resolve the case at the *pamuput wicara* stage. In that case, they will refer the legal matter to the appropriate authorities outside the customary village, such as the Village head, Regent/Mayor, Police, Prosecutor's Office, and state judicial institutions. Customary village administrators should adhere to the objectives outlined in the *awig-awig* of the village when implementing *pamuput wicara*, as described by Windia as the purpose of traditional villages (Sudantara, 2017, p. 324): a. *Ha. Ngukuhang miwah negerejegang agama Hindu* (Enhancing and conserving Hinduism); b. *Na. nginggilang tata prawetine magama* (Recognizing the principles of Hinduism); c. *Ca. Ngerejegang kasukertan desa saha pawongannya sekala lan niskala* (Actualizing the tranquility of the community and its inhabitants genuinely and sincerely).

Dialogue mediation at the MDP (*Pakraman* Village Council) is conducted in cases of disagreement between parties by the local customary village management (*prajuru*). At the 2006 *Pesamuhan Agung* (Congress of Balinese Indigenous Peoples) MDP I, it was determined that MDP Bali holds the ultimate decision-making power for pure customary situations across different levels. The MDP process involves completion by the *Pakraman* Village First Council (*Majelis Alit Desa Pakraman*) at the village court institution on the sub-district level, followed by resolution by the *Pakraman* Village Intermediate Council (*Majelis Madya Desa Pakraman*) at the regency/city level, and ultimately resolved by the *Pakraman* Village Main Council (*Majelsi Utama Desa Pakraman*) of Bali Province. MUDP verdicts are conclusive and obligatory. MDP uses the same basis as customary village officers (*prajuru*) in deciding customary cases, which includes *awig-awig* or *pararem* (customary law), Hindu religious norms, Balinese customary law in the MUDP, and other relevant provisions in Balinese customary villages. The MUDP Bali Decree Number 002 / Skep / MDP Bali / IX / 2011, released on September 30, 2011, states that in carrying out *pamuput wicara*, MDP must strive to achieve peace (*kesukertan*) for the individuals involved in the case (*wicara*) and for society as a whole. Uncover the truth according to Balinese traditional law infused with Hindu religious principles.

The Indigenous Village Council (MDA) is a recently established indigenous village institution established in 2020. The *pamuput wicara input* process has parallels and variations between MDA and MUDP. The commonality between MDA and MUDP is their aim to address traditional issues, which ultimately support Hinduism and foster harmony in rural communities. The variation occurs in the phase of the *pamuput wicara* procedure where MDA is specified in the Regional Regulation of Bali Province Number 4 of 2019 for Customary Villages in Bali in Article 29, paragraph (1), Article 36, and Article 37. The *pamuput wicara* transcription procedure by MDA begins with the *kertha desa* section working in conjunction with the traditional village management (*prajuru*) in the initial stage. If the initial decision is not resolved or the parties

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are dissatisfied, the case can progress to the second stage. MDA oversees this stage at different levels: sub-district MDA, district/city MDA, and ultimately, MDA Bali Province, as outlined in Article 37 paragraph (4) of the Bali Customary Village Regulation in 2019.

TABLE 1

Index of Customary Court Terms in Bali²

No	Terms	Explanation of terms
1	<i>Sekeha dadia</i>	Balinese indigenous people in the genealogical category
2	<i>Ulu-ampad</i>	Leadership of <i>Baliaga</i> traditional villages collectively and seniority
3	<i>Kubayan, de mangku, rama ing dusun, sang mathani, tuha-tuha, wulu-wulu, dulun desa, kelihan adat</i>	The position of the head of a traditional village in Bali
4	<i>Mrajan/sanggah</i>	Family worship space
5	<i>Takin kenawan, takin keke, penginter juru betek/ kelih-kelihan dadia/ para ulu</i>	Principles for the election of customary village heads as village judges based on marital seniority
7	<i>Tugu</i>	The term customary judge in <i>Baliaga traditional village</i> in Bali
8	<i>Paruman agung</i>	Customary village court
9	<i>Lontar ten petulis</i>	Unwritten law by Cempaga Traditional Village (<i>Baliaga</i>)
10	<i>Awig-awig</i>	Law in customary law
11	<i>Krama desa</i>	Indigenous people of Tenganan Pegriingsingan Traditional Village (<i>Baliaga</i>)
12	<i>Krama gumi</i>	Immigrant residents living around the Tenganan Pegriingsingan Traditional Village area
13	<i>Krama gumi pulangan</i>	Former Residents of Tenganan Pegriingsingan Traditional Village/ Customary Villagers who Engaged in Exogamous Marriages
14	<i>Pamuput wicara</i>	The village court system in Bali
15	<i>Paruman adat</i>	Village meetings related to the implementation of religious ceremonies, customary issues discuss issues such as violence against children, divorce, and disputes over customary land
16	<i>Paruman banjar</i>	Indigenous peoples' meetings related to the customary village program with the official village program and discussions on cooperation with the government
17	<i>Anggara Kasih Medangsia and Dukut</i>	Schedule for the implementation of customary village courts
18	<i>Bale agung</i>	Location of the customary village court
19	<i>Sanggah suoan</i>	Form of validation of customary village court decisions (<i>incracht</i>) (Sepang Traditional Village)
20	<i>Tri hita karana</i>	The principle in customary law in Bali is the three causes of happiness, including a balanced or harmonious attitude to life between devotion to God, serving fellow humans, and loving the environment based on holy sacrifice (<i>yadnya</i>).
21	<i>Sad kerthi</i>	The principles of Balinese customary law are efforts to purify the soul (<i>atma kerthi</i>), maintain the preservation of forests (<i>wana kerthi</i>) and lakes (<i>danu kerthi</i>) as a source of clean water, the sea and beaches (<i>segara kerthi</i>), dynamic social and natural harmony (<i>jagat kerthi</i>), and build the quality of human resources (<i>jana kerthi</i>).
22	<i>Majelis desa pakraman/ majelis desa adat</i>	The Association (<i>pasikian</i>) of Traditional Villages at the Provincial, Regency/City, and Sub-district levels in stages which has duties and authorities in the field of practicing customs sourced from Hinduism and local wisdom and functions to provide advice, consideration, guidance, interpretation, and decisions in the fields of customs, traditions, culture, socio-religious, local wisdom, customary law, and customary economics.
23	<i>Prajuru</i>	Customary Village Administrator.
24	<i>Pararem</i>	Implementing regulations on customary law in Bali (<i>awig-awig</i>)
25	<i>Ha. Ngukuhang miwah negerejegang agama Hindu</i>	A form of effort to improve and preserve Hinduism

Continua

2 Krisna Prasada, Dewa, 9 Februari 2024, Sources based on the results of sample collection from the author in the form of interviews with the head of the *Baliage*, *Apanage* customary village, and Bali Province Regional Regulation Number 4 of 2019.

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No	Terms	Explanation of terms
26	<i>Na. Nginggilang tata prawetine magama</i>	Recognizing the principles of Hinduism
27	<i>Ca. Ngerejegang kasukertan desa saha pawongannya sekala lan niskala</i>	Actualizing the tranquility of the community and its inhabitants genuinely and sincerely
28	<i>Pesamuhan agung</i>	Congress of Balinese Indigenous Peoples
29	<i>Majelis alit desa pakraman</i>	<i>Pakraman</i> Village First Council
30	<i>Majelis madya desa pakraman</i>	<i>Pakraman</i> Village Intermediate Council
31	<i>Majelsi utama desa pakraman</i>	<i>Pakraman</i> Village Main Council
32	<i>Kesukertan</i>	The form of customary village court decisions must prioritize the achievement of peace
33	<i>Wicara</i>	Every customary law issue in <i>parahyangan</i> (religious), <i>pawongan</i> (between residents), <i>palemahan</i> (environment) affairs either on the basis of application or dispute.
34	<i>Kertha desa</i>	Prajuru Customary Village partner institution that carries out the function of resolving customary/speech cases based on customary law applicable in the local Customary Village.
35	<i>Banjar</i>	Part of the neighborhood where traditional villages live in Bali
36	<i>Karang paumahan</i>	Residential neighborhood
37	<i>Druwenang sareng-sareng</i>	The principle of customary law in Bali that prioritizes peace in order to maintain harmony

Fonte: Tribunal de Contas da União (Brasil, 2020).

The customary village court system in Bali is practically carried out through a *paruman* (meeting) process either on a restricted basis by the customary village administrators or with all residents of the customary village (*krama desa*). The customary village court system is implemented institutionally according to the customary law of each village, referred to as *awig-awig*. The implementation of Balinese customary village justice, as elucidated by I Ketut Sudantra, occurs in three stages: first within the *banjar* environment, second within the *banjar paruman* environment, and third at the highest village level in the *paruman adat* (Sudantra, 2016, p. 110). The problems that are solved in *wicara* are referred to as *wicara* as mentioned by the author in the preceding paragraph. The resolution of disputes in the customary village court in Bali can be achieved through three primary methods: familial negotiation among the individuals involved, mediation, and referral to the appropriate authority (Windia, 2023, p. 333). The integration of the restorative justice system within the framework of customary justice is highly appropriate and relevant in practice. The definition of restorative justice emphasizes the restoration of what is damaged, attending to the needs of both victims and offenders for recovery, reinstating a sense of security, and addressing the fundamental problems that precipitate the offenses. Restorative justice seeks to mend divisions by fostering reconciliation between victims and offenders, facilitating their reintegration into society, and envisioning a future where individuals are not defined by past transgressions, thereby restoring societal equilibrium. Allison Morris and Gabrielle Maxwell affirm that “restorative justice invites full participation and consensus and restorative justice seeks to heal what is broken” (Maxwell, 2001, p. 6). One could see that the form of case resolution in the sense of restorative justice can be integrated into the customary village justice process in Bali. Indeed, this might be seen from the nature of restorative justice itself, namely the healing of victims and perpetrators to restore the balance of the situation of the parties. This aligns with the customary village justice paradigm, which aims to restore equilibrium in the context of current issues within customary villages. One kind of incorporation of restorative justice ideas that is in keeping with traditional village courts in Bali is criminal mediation.

Penal mediation in the principle of restorative justice is a form of approach that encourages a meeting forum between the parties to the dispute, be it the victim, the perpetrator, and also a neutral and impartial third party (mediator), where, in this case, the mediator acts as a mediator to help as a communicator

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between the victim and the perpetrator in the hope of reaching an agreement. The punitive mediation procedure may persist until the Family Group Conference (FGC) phase, particularly when the case involves children as both victims and offenders. The practice of penal mediation is fundamentally contained in Tony F. Marshall's explanation that restorative justice involves a process in which all parties affected by a violation come together to collectively address the consequences of the violation and its implications for the future, including victims, perpetrators, their families, and community members, emphasizing relationships as the core of the process (Marshall, 1996). The incorporation of penal mediation in customary village courts in Bali is seen in the settlement *wicara* during the *paruman adat*, facilitated by the *pamuput wicara* conducted by the "penengah." The practice of *pemuput wicara* via a *penengah* method is facilitated by authorities, specifically the mediator, referred to as *kertha desa* in the context of customary village justice in Bali (RI 1, 2, and 3). *Kertha desa* comprises *Prajuru Adat* (Customary Village Administrators) and *krama desa* (Native Members of Customary Villages possessing devotion and experience in customary law, appointed by the Banjar Adat) (RI 1, 2, and 3).

Considering the aforementioned explanation, one may inquire to what degree the authority of the *kertha desa*, as a traditional village representative, serves as a mediator in addressing situations of violence against children through penal mediation. *Kertha desa* mostly comprises traditional village officials in Bali (*prajuru*) who possess the jurisdiction to adjudicate customary disputes occurring solely inside their designated customary villages. Numerous types of customary cases or violations can be adjudicated by *kertha desa*, including those about violence against children, which are classified as customary criminal offenses within the *karang paumahan* (residential house environment) of customary villagers in Bali. According to Wayan P. Windia, there are numerous sorts of customary infractions in Bali, including criminal offenses that infringe upon the villagers' *karang paumahan* (Windia, 2023, p. 281). The above explanation is also affirmed in the provisions of Article 37 paragraph (1) of Bali Provincial Regional Regulation Number 4 of 2019 concerning Customary Villages in Bali, that *kertha desa* is tasked and authorized to receive, inspect, and resolve customary/*wicara* that occur in customary villages.

Efforts to address situations of violence against children by *kertha desa* are carried out in *banjar* or *bale agung* according to the agreement of the parties to the case. The *kertha desa* will prioritize the dialogue process in executing *paruman adat*. One approach employed in addressing customary infractions by *kertha desa* is the principle of *druwenang sareng-sareng*, which emphasizes the resolution of situations that prioritize the collective welfare to preserve harmonious ties among Indigenous villagers (*krama desa*) (RI 3). Looking at the explanation of the practice of customary village justice above, in fact, indirectly, the practice of addressing customary infractions via *kertha desa* has linked the principle of restorative justice with the penal mediation method. The preceding statement is in line with the explanation by John Braithwaite that "Restorative justice is not just about crime, it is about peace and a way of bringing up our children that is less punitive and more decent". John elaborated that restorative justice will be effective if it incorporates multiple ideas in its application, one of which is the procedural theory of justice (Braithwaite, 2002, p. 73). It is important to acknowledge the distinctions between the restorative justice system and the traditional village courts in Bali. The distinction resides in the restricted regulatory constraints of the customary village courts in Bali, which solely enforce customary law in the resolution of customary violations. Restorative justice encompasses several methodologies and transdisciplinary perspectives that extend beyond legal frameworks and applicable good legal norms. Moreover, customary village courts can solely be constituted by *kertha desa* or customary village officials, presided over by customary elders or village leaders. In the restorative justice process, specifically the prison mediation process, informal mediation is acknowledged, involving prosecutors, judges, or legal advisors who are certified mediators in the case resolution process. Nevertheless, the aforementioned differences do not

preclude customary villages or *kertha desa* from embracing the principle of restorative justice through its inherent approaches, as the fundamental resolution of this non-litigious matter is to achieve peace in preserving community harmony.

The legal status of indigenous peoples is crucial for law enforcement at the local level. Involving indigenous peoples in local law enforcement is essential to defend their rights, preserve their cultural heritage, and promote justice and equality in their communities (Mulyadi e Sianturi, 2015). Their traditional knowledge, practices, and beliefs can enhance a legal system's inclusion and prosperity in meeting their distinct needs and goals. Integrating Indigenous traditional knowledge into restorative justice techniques can enhance a comprehensive and culturally attuned approach that honors Indigenous communities values, traditions, and insights (Carmona *et al.*, 2024; Myers *et al.*, 2020). Indigenous peoples' presence is undeniable due to the rights they uphold, particularly inside their communities. It is crucial for both the government and individuals to respect the autonomy and processes of Indigenous communities in addressing issues related to their environment. Respecting the self-governance and traditions of Indigenous people is essential for dealing with environmental challenges affecting them. The above efforts involve honoring their traditional knowledge, decision-making processes, and involvement in environmental management and conservation initiatives (Pickering *et al.*, 2023; Scheidel *et al.*, 2023). Respecting the autonomy and procedures of Indigenous people entails acknowledging their intrinsic rights to self-determination and self-governance about their environment. It involves recognizing their knowledge systems, cultural traditions, and spiritual linkages to the land that has supported their communities for many years.

5 CONCLUSION

Crimes involving violence against children should be addressed through both punitive measures and prevention strategies. Utilizing the diversion process based on restorative justice principles is highly suitable for enhancing law enforcement efforts against offenses involving child violence. Restorative justice aims to address criminal issues by restoring them to their original state with the agreement of all involved parties.

For improved restorative justice, it is essential to incorporate indigenous components into the local justice system. Customary villages in Bali have implemented a village judicial system known as *pamuput wicara*, based on *awig-awig*, the customary law of Customary Villages in Bali.

This article explores restorative justice as a means of addressing child harm crimes in village court systems in Bali, known as *pamuput wicara*. This research can serve as a reference for indigenous communities looking to enhance their diversion system using restorative justice principles and traditional knowledge in village courts to solve child violence crimes.

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RI = Reflexion Informant

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Restorative justice as a system for resolving child violence in the Village Court Phase in Bali

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