



MAZHABUNA: Jurnal Perbandingan Mazhab

Volume 8 Number 2 August 2026; 280-304

P-ISSN: 2685-6905; E-ISSN: 2685-7812

DOI: 10.24252/mazahibuna.vi.65061

<http://journal.uin-alauddin.ac.id/index.php/mjpm>

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Restorative Justice in Legal Pluralism: A Socio-Legal and Comparative Madhhab Study of Homicide Settlement in Arfak Indigenous Courts

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[Received: January 28, 2026] [Reviewed: March 19, 2026] [Revised: May 25, 2026] [Accepted: June 16, 2026] [Published: July 01, 2026]

How to Cite:

Bonggoibo, A. A., Pide, A. S. M., Haeranah, Ribeiro, L., & Mulyono, A. (2026). Restorative Justice in Legal Pluralism: A Socio-Legal and Comparative Madhhab Study of Homicide Settlement in Arfak Indigenous Courts. *Mazahibuna: Jurnal Perbandingan Mazhab*. 8 (2): 280-304. <https://doi.org/10.24252/mazahibuna.vi.65061>

Abstract

This study examines the intersection between Arfak customary justice in West Papua and Islamic criminal law in the settlement of homicide cases within Indonesia's plural legal system. Contemporary criminal justice discourse increasingly highlights tensions between state-centered retributive justice and indigenous restorative mechanisms rooted in communal reconciliation. Although the Indonesian Constitution recognizes customary law communities, the formal criminal justice system continues to prioritize legal positivism, often overlooking the sociocultural and spiritual values embedded in indigenous legal traditions. Employing a socio-legal and comparative madhhab approach, this study investigates how the Arfak customary mechanism operates as living law through deliberation, compensation (*bayar kepala*), and reconciliation rituals designed to restore social harmony and communal balance. The findings reveal substantial similarities between the Arfak model and the Islamic doctrines of *qisās* and *diyāt*, particularly in the Shāfi'ī and Ḥanbalī madhhabs, which emphasize forgiveness, compensation, and reconciliation as essential components of justice. The Arfak restorative framework also aligns with the objectives of *maqāṣid al-sharī'ah*, especially *hifz al-naḥs* (protection of life) and *hifz al-ummah* (protection of community cohesion). Furthermore, comparative analysis demonstrates parallels with indigenous restorative justice systems in New Zealand, Canada, Australia, and Rwanda, where customary reconciliation has been institutionally integrated into criminal justice. This study argues that incorporating indigenous restorative principles into Indonesia's criminal law reform represents a model of managed legal pluralism that preserves state authority while recognizing socially legitimate customary norms. It contributes to comparative Islamic criminal law by proposing a hybrid framework that integrates customary justice, comparative madhhab perspectives, restorative justice, and constitutional



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criminal law within a human rights-oriented legal system.

Keywords: Customary Law, Arfak, Legal Pluralism, Comparative Law, Criminal Law Reform.

Abstract

Penelitian ini mengkaji titik temu antara peradilan adat Arfak di Papua Barat dan hukum pidana Islam dalam penyelesaian perkara pembunuhan di tengah sistem hukum plural di Indonesia. Diskursus hukum pidana kontemporer semakin menyoroti ketegangan antara keadilan retributif yang berpusat pada negara dan mekanisme keadilan restoratif masyarakat adat yang berlandaskan rekonsiliasi komunal. Meskipun Konstitusi Indonesia mengakui keberadaan masyarakat hukum adat, sistem peradilan pidana formal masih cenderung mengedepankan positivisme hukum sehingga sering mengabaikan nilai-nilai sosiokultural dan spiritual yang hidup dalam tradisi hukum adat. Dengan menggunakan pendekatan sosio-legal dan perbandingan mazhab, penelitian ini menganalisis bagaimana mekanisme peradilan adat Arfak berfungsi sebagai living law melalui musyawarah, pembayaran kompensasi (bayar kepala), dan ritual perdamaian yang bertujuan memulihkan keharmonisan sosial serta keseimbangan kehidupan masyarakat. Hasil penelitian menunjukkan bahwa mekanisme tersebut memiliki kesamaan substantif dengan konsep qisās dan diyāt, khususnya dalam mazhab Syafi'i dan Hanbali, yang menempatkan pemaafan, kompensasi, dan rekonsiliasi sebagai unsur penting dalam penegakan keadilan. Kerangka keadilan restoratif masyarakat Arfak juga selaras dengan tujuan maqāsid al-syarī'ah, terutama ḥifz al-nafs (perlindungan jiwa) dan ḥifz al-ummah (perlindungan terhadap kohesi sosial masyarakat). Selain itu, analisis komparatif memperlihatkan adanya kesamaan dengan sistem keadilan restoratif masyarakat adat di Selandia Baru, Kanada, Australia, dan Rwanda, yang telah mengintegrasikan mekanisme rekonsiliasi adat ke dalam sistem peradilan pidana. Penelitian ini berargumen bahwa integrasi prinsip-prinsip keadilan restoratif berbasis adat dalam reformasi hukum pidana nasional merupakan bentuk pluralisme hukum yang terkelola (managed legal pluralism), yang tetap mempertahankan kewibawaan negara sekaligus mengakomodasi norma-norma adat yang memiliki legitimasi sosial. Penelitian ini memberikan kontribusi terhadap pengembangan hukum pidana Islam komparatif melalui pengajuan model hibrida penyelesaian perkara pembunuhan yang mengintegrasikan keadilan adat, perspektif perbandingan mazhab, keadilan restoratif, dan hukum pidana konstitusional dalam kerangka yang berorientasi pada hak asasi manusia.

Keywords: Hukum Adat, Arfak, Pluralisme Hukum, Hukum Perbandingan, Reformasi Hukum Pidana.

Introduction

Contemporary legal discourse in Indonesia reveals a profound ontological tension between state law and customary law (Mubayyinah et al., 2025; Widjajanto et al., 2025), in which indigenous juridical practices are frequently marginalized by the dominance of formal state legality. This phenomenon reflects a broader global conflict between rigid legal positivism and dynamic local normative systems within the discourse of legal pluralism (Pide, 2017). Across many jurisdictions, increasing criticism has emerged regarding the inability of modern retributive criminal justice systems to deliver comprehensive justice for indigenous communities. At the core of this tension lies a fundamental divergence concerning the purpose of law: while the state prioritizes procedural certainty and uniformity, indigenous communities emphasize social restoration, reconciliation, and communal equilibrium. In the Indonesian context, the

dominance of the principle of formal legality (*nullum crimen sine lege*), inherited from the colonial civil law tradition, has often neglected the existence of *living law* operating within society (Butt, 2023; Faisal et al., 2026; Puspito & Masyhar, 2023; Saputra et al., 2026). The inability of the formal criminal justice system to accommodate these sociological realities has intensified demands to reconsider the position of customary law within the national legal hierarchy (Zarkasi et al., 2022). This study therefore examines such tensions through the legal cosmology of the Arfak Indigenous community in West Papua as its principal case study.

The legal cosmology of the Arfak people conceptualizes homicide not merely as an offense against an individual life, but as a disruption of cosmic equilibrium requiring communal restitution and integrative reconciliation. Within Arfak customary law, the death of a person creates a social and spiritual rupture that cannot be resolved solely through the incarceration of the offender within the state penal system (Faisal et al., 2024; Hamzani et al., 2026; Widyawati et al., 2025). This paradigm sharply contrasts with Indonesian criminal law, which traditionally treats homicide as a crime against the state whose resolution is monopolized by formal law enforcement institutions. From a victimological perspective, the limitations of modern criminal law frequently emerge in its failure to provide direct psychological and material restoration for victims and their families (Azisa et al., 2025; Murhula & Tolla, 2020; Nascimento et al., 2023). By contrast, the Arfak customary mechanism, through deliberative consensus and customary compensation (*igya*), offers a more comprehensive framework for maintaining communal stability. The persistence of this customary system demonstrates a strong form of normative sovereignty that retains sociological legitimacy despite operating outside formal state structures. Consequently, the Arfak legal order represents a form of *living law* grounded in principles of balance, reconciliation, and enduring peace.

The significance of the Arfak mechanism also resonates conceptually with the global development of restorative justice models practiced by indigenous communities elsewhere. In Canada, for instance, sentencing circles have demonstrated that community participation in criminal adjudication can reduce recidivism and increase victim satisfaction (Stewart et al., 2018; Wilson et al., 2002). Similarly, the Māori *Marae* system in New Zealand emphasizes communal healing and collective responsibility in responding to serious offenses (Bowling, 2022; Gordon, 2019; Martin, 2023; Pratt, 1996). These comparative experiences strengthen the argument that customary mechanisms for resolving serious criminal offenses possess both theoretical and practical legitimacy at the international level. The principal challenge, however, concerns how national jurisdictions grounded in civil law traditions may absorb these substantive restorative values without undermining legal certainty. This issue becomes increasingly relevant within broader global efforts to

decolonize criminal justice systems in post-colonial societies. The comparison between the Arfak system and international indigenous justice models therefore demonstrates that legal pluralism is not merely an optional policy orientation, but an unavoidable reality in multicultural societies.

The enactment of Law Number 1 of 2023 concerning the new Indonesian Criminal Code (KUHP Baru) has further intensified the debate regarding the relationship between formal legality and the recognition of *living law* within indigenous communities (Hardinanto et al., 2024; Mansur et al., 2025; Napsiah et al., 2024; Putra et al., 2026; Rozah & Yudistira, 2025). Article 2 of the 2023 Criminal Code explicitly recognizes living law as a basis for criminal punishment while simultaneously maintaining state law as the supreme normative authority. This condition generates an epistemological contradiction between state law, which is written, standardized, and positivistic in character, and customary law, which operates dynamically, contextually, and through the social legitimacy of the community (F. Arifin et al., 2025; Rusdi et al., 2024; Sarmadi et al., 2025). A fundamental question therefore arises regarding the extent to which serious crimes such as homicide may be resolved through customary mechanisms without violating the principle of legality and universal human rights standards. From the perspective of legal pluralism theory, this situation reflects a clear *clash of norms* between the standardization imposed by national law and the normative flexibility of customary law (Gcumeni, 2024; Kamaruddin et al., 2023), which traditionally functions through social consensus and the restoration of communal harmony. The principal concern lies in the possibility that state recognition of customary law may ultimately become an instrument of domestication through proceduralization and standardization that erodes the organic character and normative autonomy of indigenous values.

From the perspective of *uṣūl al-fiqh*, this normative tension may be examined through the dialectic between *thabāt* (normative stability) and *taghayyur al-aḥkām* (legal adaptability in response to changing social realities) (Z. Arifin et al., 2025; Arrasyid et al., 2023; Yaqin et al., 2026). The principle of formal legality represents the modern state's demand for legal certainty (*al-yaqīn al-qānūnī*), whereas customary law reflects a *maṣlaḥah*-oriented approach that prioritizes social harmony and the prevention of communal disintegration (I. Haq et al., 2025; Idrus et al., 2022; Shcherbanyuk et al., 2023). Within Islamic criminal jurisprudence, particularly in the doctrine of *qīṣāṣ-diyāt*, there exists a normative space for reconciliation between state interests and the rights of the victim's family through forgiveness, compensation, and peaceful settlement (I. Haq et al., 2024; Haz et al., 2024; Syatar et al., 2025). The Shāfi'ī school, which historically dominates Indonesian Islamic legal thought, recognizes *diyāt* as a legitimate substitute for *qīṣāṣ* when forgiveness is granted by the victim's family (Khamim et al., 2025; Sanjaya et al., 2026),

while the Ḥanbalī perspective places greater emphasis on *iṣlāḥ* (social reconciliation) as the ultimate objective of punishment (Mashdurohatun et al., 2026). These approaches demonstrate that legal flexibility does not necessarily contradict legal certainty; rather, it may function as an instrument for achieving substantive justice grounded in the objectives of *maqāṣid al-sharī'ah*, particularly *ḥifz al-naḥs* (protection of life) and *ḥifz al-ummah* (protection of communal cohesion). Accordingly, Article 2 of the new Criminal Code should not be understood merely as a symbolic recognition of customary law, but as a normative space for dialogue between state legality and *living law*, enabling the constitutional, proportional, and human rights-oriented integration of indigenous restorative justice into the national criminal law system.

This study seeks to address the existing scholarly gap by proposing a substantive integration model capable of respecting human rights while preserving the originality of indigenous justice. Based on this background, the research is guided by three principal questions. First, what substantive values are embodied in the homicide settlement mechanism of the Arfak customary justice system in West Papua? Second, what structural and normative challenges arise in accommodating Arfak customary law within the national criminal justice system following the enactment of the 2023 Criminal Code? Third, what constitutes an ideal model for reforming homicide offenses through the integration of customary justice principles into the framework of modern national criminal law? These questions are designed to explore the possibility of harmonizing Arfak local wisdom with the demands of progressive national law while simultaneously examining the elasticity of national criminal law in accommodating restorative justice values rooted in Papuan indigenous society.

The primary objective of this research is to identify and formulate the essential values embedded in the Arfak homicide settlement mechanism as a manifestation of *living law*. In addition, this study aims to comprehensively map the juridical and sociological obstacles encountered in synchronizing Arfak customary norms with the provisions of the 2023 Criminal Code. More specifically, the research seeks to formulate an ideal concept for homicide law reform that is not merely administrative but substantively transformative for the development of Indonesian criminal law. Theoretically, this study contributes to the advancement of legal pluralism theory, comparative Islamic criminal law, and critical criminology within post-colonial societies. Practically, the findings are expected to provide guidance for policymakers in formulating implementing regulations concerning the recognition of *living law* under Article 2 of the new Criminal Code. Furthermore, this research seeks to strengthen the position of Papuan indigenous communities within Indonesia's constitutional framework in order to promote a more inclusive conception of justice. Ultimately, this study positions Arfak customary law not as an inferior legal system,

but as a dialogical partner of national law in realizing substantive justice. The focus on homicide is particularly significant because it constitutes the ultimate test of whether integration between customary law and state criminal law can occur proportionally and constitutionally. If customary mechanisms can be meaningfully recognized even in cases as serious as homicide, then the recognition of indigenous justice in other categories of offenses will possess a stronger juridical foundation. Accordingly, this study argues that the future of Indonesian criminal law depends upon its capacity to absorb local wisdom without losing its modern legal character, thereby strengthening national legal resilience amidst global demands for the universal recognition of indigenous rights.

Methods

This study employs a normative-empirical legal research design that integrates doctrinal legal analysis with empirical field inquiry to examine the interaction between state criminal law and the living law of the Arfak Indigenous community in West Papua. The normative dimension is directed toward analysing the constitutional and statutory framework governing the recognition of customary law within the Indonesian criminal justice system, particularly after the enactment of Law Number 1 of 2023 concerning the New Criminal Code (KUHP Baru). In this respect, the study applies several interconnected approaches. First, the statute approach is utilized to examine relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, Law Number 2 of 2021 on Papua Special Autonomy, Law Number 1 of 2023 on the Criminal Code, and Law Number 39 of 1999 on Human Rights. Second, the conceptual approach is employed to analyse the study through the theoretical frameworks of legal pluralism, living law, restorative justice, and *maqāṣid al-sharīʿah*, particularly the principles of *ḥifẓ al-naḥs* (protection of life) and *ḥifẓ al-ummah* (protection of communal order). Third, the comparative approach is applied by comparing the Arfak customary justice mechanism with restorative justice practices in other plural legal jurisdictions, including Māori justice practices in New Zealand and Indigenous sentencing circles in Canada, as well as with the Islamic criminal law doctrine of *qīṣāṣ-diyāt* within the Shāfiʿī and Ḥanbalī schools. This comparative framework is intended to identify the normative similarities and differences between indigenous reconciliation mechanisms and Islamic restorative principles in homicide cases. Finally, the historical approach is used to trace the evolution of state recognition toward customary law in Indonesia and the transformation of indigenous justice within the post-colonial legal order.

The empirical component of the research was conducted within the customary territory of the Arfak Tribe in West Papua, particularly in areas where customary dispute settlement mechanisms for homicide cases remain actively practiced ([Irwansyah, 2021](#)).

Field data were collected through semi-structured interviews and limited participatory observation involving customary leaders (*Manir*), members of the Arfak customary council, judges of the Manokwari District Court, police officers from the South Manokwari Regional Police, prosecutors, and indigenous community members who had directly participated in customary settlement processes. Informants were selected purposively based on their institutional authority, social legitimacy, and direct involvement in customary adjudication. Primary legal materials consist of constitutional provisions, statutory regulations, judicial decisions, and documented customary norms relating to homicide settlement. Secondary legal materials include academic books, peer-reviewed journal articles, legal commentaries, and previous studies on legal pluralism, restorative justice, and Islamic criminal law, while tertiary materials include legal dictionaries and encyclopaedias to ensure terminological precision. Data analysis was conducted qualitatively through deductive and interpretative reasoning by examining the coherence between Arfak customary mechanisms, the legality principle within the national criminal law system, and international human rights standards. The study also employs teleological interpretation to assess whether customary reconciliation mechanisms substantively fulfil the objectives of criminal law, particularly social restoration, victim recovery, and communal stability ([Patittingi, 2012](#); [Susiaty, 2020](#)). Through this integrated methodological framework, the research seeks to formulate a contextual and constitutionally grounded model for integrating indigenous restorative justice into the Indonesian national criminal law system without undermining legal certainty and human rights protections.

Result and Discussion

Restorative Justice and Deliberative Consensus in Arfak Customary Law

The settlement mechanism for homicide cases within the Arfak customary justice system reflects a restorative and communitarian conception of justice grounded in deliberation (*musyawarah*) and consensus (*mufakat*). Unlike the adversarial orientation of the modern criminal justice system, the Arfak model prioritizes collective reconciliation, restoration of social harmony, and the re-establishment of kinship relations disrupted by violent conflict. In this context, justice is not primarily understood as state-imposed punishment but as a communal process aimed at restoring equilibrium within the social and cosmological order of the indigenous community.

The findings demonstrate that customary deliberation functions not merely as a procedural forum for dispute settlement, but as a normative and symbolic space in which collective emotions, moral responsibility, acknowledgment of wrongdoing, and reconciliation are articulated. The process typically involves customary leaders, clan elders, representatives of the perpetrator's and victim's families, and respected community

members whose social legitimacy ensures the authority of the final agreement. Consensus is therefore not based on majoritarian voting but on unanimous moral acceptance among all parties involved (Jeziarska, 2019). Such agreements possess strong social binding force because their legitimacy derives from communal recognition rather than coercive enforcement mechanisms.

Sociologically, this model illustrates that the legitimacy of Arfak customary law rests upon communal acceptance and the internalization of shared cultural values (Suhardi, 2025). In homicide cases, deliberation serves multiple functions: preventing retaliatory violence between clans, reducing the potential for prolonged inter-family conflict, and restoring fractured kinship relations (Rahman et al., 2026). Consequently, the objective of the process extends beyond resolving an individual criminal act toward preserving long-term social stability. The research further indicates that customary deliberation contains performative and ritual dimensions, including public apologies, symbolic reconciliation ceremonies, and collective commitments to peace. These ritual practices reinforce communal solidarity and reaffirm the moral obligations of the offender toward the broader community.

The restorative orientation of Arfak customary law may be interpreted through several contemporary theories of justice. From the perspective of John Rawls's theory of justice as fairness, the deliberative process reflects an implicit commitment to moral equality and participatory fairness (Chen, 2026; Nnodim & Okigbo, 2020). Although Arfak society does not conceptualize justice through Rawlsian notions such as the "original position," the customary forum substantively creates a dialogical space in which both victim and offender families are granted equal opportunities to express grievances, negotiate obligations, and pursue socially acceptable outcomes. The consensus reached through deliberation therefore embodies a localized form of procedural fairness grounded in collective participation.

From Aristotle's conception of corrective justice, customary deliberation functions as an instrument for restoring proportional balance disrupted by wrongful conduct (Bronsther, 2021). Homicide is perceived as creating social disequilibrium that must be corrected through compensation, moral accountability, and communal reconciliation (Roberts, 2023). Unlike modern criminal justice systems that position the state as the principal injured party, the Arfak system focuses on repairing concrete social relations between clans and kinship groups. Justice is therefore relational and communal rather than institutional and punitive.

The communitarian theory of justice advanced by Michael Sandel further illuminates the philosophical basis of Arfak restorative practices. Sandel argues that individual identity is embedded within moral communities and cannot be separated from

collective social obligations (Sandel, 2005). This principle is strongly reflected in Arfak society, where personal identity is inseparable from clan and kinship structures. Consequently, homicide is understood not merely as an individual offense but as a collective disruption affecting communal dignity and solidarity. Deliberation and consensus thus become mechanisms for reaffirming shared moral values and restoring collective honor.

Moreover, the restorative justice framework articulated by Howard Zehr provides a particularly relevant analytical lens. Zehr emphasizes that justice should address three central questions: who has been harmed, what are their needs, and who bears responsibility for repairing the harm (Zehr, 2015). These principles are embedded within Arfak customary proceedings. Victims and their families are given space to articulate their losses and expectations, while perpetrators and their kin are encouraged to acknowledge wrongdoing and assume collective responsibility. The resulting agreement constitutes not merely a legal settlement but a moral covenant aimed at sustaining long-term peace and coexistence.

Taken together, these findings indicate that the Arfak customary justice system embodies substantive dimensions of procedural justice, corrective justice, communitarian justice, and restorative justice simultaneously. The mechanism demonstrates that indigenous legal traditions are not merely remnants of pre-modern social organization but constitute coherent normative systems possessing strong philosophical legitimacy. In the broader context of Indonesian legal pluralism, the Arfak model offers an alternative paradigm of criminal justice that is participatory, humanistic, and oriented toward social restoration rather than retributive punishment.

Customary compensation within the Arfak indigenous justice system constitutes a central mechanism for resolving homicide cases and restoring social equilibrium following violent conflict. Unlike compensation in modern civil law, which is generally economic and individual in nature, compensation in Arfak customary law possesses broader social, moral, spiritual, and cosmological dimensions. The payment of compensation is not understood as replacing the value of human life, but rather as a symbolic acknowledgment of wrongdoing and a collective effort to restore fractured relationships between families, clans, and communities.

The findings reveal that responsibility for compensation is collective rather than exclusively individual. The perpetrator's extended family and clan are expected to contribute to the settlement process, reflecting the communitarian structure of Arfak society in which individual actions are inseparable from collective identity. This collective responsibility also functions as an effective mechanism of social control because it encourages communities to maintain internal discipline and prevent future violence.

Compensation therefore serves not merely as material restitution but as a socially embedded process of reconciliation and reintegration.

Substantively, customary compensation usually takes the form of culturally valuable goods such as pigs, traditional wealth objects, agricultural produce, and monetary payments agreed upon through customary deliberation. Pigs occupy a particularly important symbolic position because they signify prosperity, honor, and social status within Arfak culture. The amount and form of compensation are negotiated collectively and depend on several factors, including the degree of intent, the social standing of the victim, the broader social consequences of the homicide, and the relationship between the parties involved. This demonstrates that proportionality in Arfak customary law is contextual and socially constructed rather than formally codified.

The process of compensation is commonly accompanied by customary rituals and reconciliation ceremonies led by clan elders or customary authorities. These rituals often involve the slaughtering and communal consumption of pigs, public declarations of peace, and symbolic acts of forgiveness between the families of the victim and the offender. Such ceremonies possess significant performative meaning because they publicly affirm the end of hostility and the restoration of social relations. Without the completion of these rituals, compensation is often considered incomplete from the perspective of customary legitimacy.

From a sociological standpoint, customary compensation functions as a preventive mechanism against horizontal conflict and cycles of revenge (Forsyth, 2024; Kasenda et al., 2026). In strongly kinship-based societies such as Arfak, homicide carries the potential to escalate into inter-clan violence if not addressed through culturally legitimate means. Compensation channels retaliatory impulses into institutionalized forms of reconciliation regulated by customary authority. Once compensation has been accepted and reconciliation rituals performed, the victim's family is morally expected to cease hostilities, thereby preventing further violence and preserving communal stability.

The restorative nature of compensation reflects the broader conception of *living law* within indigenous society. Justice is measured not by the severity of punishment imposed upon the offender but by the extent to which social harmony has been successfully restored (Yustia et al., 2026). Consequently, the effectiveness of customary compensation is evaluated through the restoration of peaceful relations and the absence of future conflict rather than through formal legal sanctions alone. Compliance with customary decisions is maintained through moral legitimacy and social pressure, including the risk of exclusion or loss of honor for those who refuse to fulfill communal obligations.

The empirical findings further illustrate several concrete forms of compensation practices within Arfak society. First, homicide cases commonly require the payment of

“blood compensation” in the form of pigs, money, or valuable customary property. The number of pigs may vary substantially depending on the seriousness of the offense and the social status of the victim. Second, compensation obligations are borne collectively by the offender’s clan, indicating that homicide is perceived as a collective social failure rather than merely an individual crime. Third, reconciliation rituals involving communal feasts and public declarations of peace symbolically terminate the conflict and restore social relations. Fourth, customary authorities may impose additional obligations aimed at preventing future violence, including temporary separation between families or public oaths renouncing revenge. Finally, customary law distinguishes between intentional homicide and accidental killing, resulting in differing levels of compensation according to the principle of proportionality.

From the perspective of justice theory, the Arfak compensation system aligns closely with contemporary restorative justice frameworks. Following John Braithwaite’s restorative model, crime is understood primarily as harm to social relationships rather than solely as a violation of state authority ([Braithwaite, 2001](#)). Compensation functions as a mechanism through which offenders acknowledge responsibility, victims receive recognition, and communities participate actively in reconciliation. Similarly, Aristotle’s concept of corrective justice is reflected in the attempt to restore social balance disrupted by wrongful conduct through proportionate forms of compensation and moral accountability ([Irwin, 2019](#)).

The compensation mechanism may also be interpreted through Rawlsian notions of fairness and deliberative participation ([Rawls, 2017](#)). Although not formally institutionalized within liberal contractual frameworks, customary negotiations provide space for all affected parties to articulate their interests until a collectively acceptable resolution is achieved. Moreover, from a communitarian perspective inspired by Michael Sandel, the collective responsibility of clans demonstrates that justice within Arfak society is rooted in shared moral obligations rather than purely individual liability.

Overall, the customary compensation mechanism within Arfak indigenous law represents a sophisticated restorative justice model that integrates corrective, communitarian, and restorative dimensions of justice simultaneously. Far from being merely a traditional cultural practice, it constitutes a living normative system capable of maintaining social cohesion, preventing retaliatory violence, and restoring communal harmony. Within the broader discourse of legal pluralism in Indonesia, the Arfak model provides an important example of how indigenous justice systems can contribute to the development of more contextual, participatory, and humanistic approaches to criminal justice.

Reformulating Homicide Offences Through the Integration of Indigenous Justice Principles into the National Criminal Law Framework

The ideal reformulation of homicide offences within the Indonesian criminal justice system requires a paradigmatic transformation from a purely state-centered and retributive model toward a pluralistic, constitutional, and restorative framework capable of accommodating indigenous legal traditions (Philoni & Awaludin, 2025). In the Indonesian context, such reform derives normative legitimacy from the constitutional recognition of indigenous communities under Article 18B(2) of the 1945 Constitution, which affirms state recognition and respect for customary law communities and their traditional rights insofar as they remain compatible with national principles and societal development (H. S. Haq et al., 2026; Ma'ruf et al., 2026; Masyhar et al., 2025). Consequently, the reform of homicide offences should no longer be understood merely as a technical revision of penal provisions, but as a broader reconstruction of criminal justice values that reconciles modern legality with the *living law* embedded within indigenous communities.

Classically, homicide within Indonesian criminal law has been formulated as an unlawful act against human life, regarded as one of the most fundamental legal interests (*rechtsbelang*) (Butt, 2023; Mohas et al., 2025). This formulation, historically reflected in the Criminal Code provisions concerning murder, is rooted in the principles of unlawfulness and culpability (*schuld*) as the basis for punishment (Nemeth, 2022). The prevailing paradigm has traditionally emphasized retributive justice, focusing on proportional punishment as a means of protecting public order and legal certainty (Lesmana et al., 2026). However, such an approach frequently fails to address the sociological realities of many Indonesian communities that continue to employ customary mechanisms of dispute settlement. Within these communities, homicide is not viewed solely as an offense against an individual victim, but as a disruption of communal harmony, kinship relations, and cosmological balance.

In indigenous justice systems such as those practiced among the Arfak community of West Papua, homicide is understood as a social rupture requiring collective restoration rather than purely punitive retaliation. Resolution mechanisms therefore emphasize deliberation, mediation, customary compensation, ritual reconciliation, and the restoration of social equilibrium. The core normative values underlying these mechanisms are restoration, collective responsibility, and communal reconciliation. Accordingly, an ideal reform of homicide offences must integrate these restorative orientations into the national criminal law framework while simultaneously preserving fundamental principles of legality, accountability, and human rights protection.

Conceptually, the most appropriate model is an integrative and inclusive framework grounded in constitutional restorative justice. Such a model would not abolish homicide offences within national criminal law but would reconstruct the sentencing and procedural orientation of the system by creating institutional space for customary settlements within formal judicial processes. Under this framework, the state would retain prosecutorial authority as the guardian of public interest, while judges would be granted normative discretion to consider valid customary settlements as mitigating factors, or in specific circumstances, as grounds for diversion through restorative mechanisms. In this sense, customary reconciliation would not replace criminal law but would function as a complementary normative process recognized within the broader judicial structure.

This reform necessarily entails a shift from the paradigm of exclusive state monopoly over punishment toward a model of normative coexistence. National criminal law would no longer be treated as the sole legitimate normative order, but rather as one system operating alongside customary law within a framework of conditional constitutional recognition (Butt & Murharjanti, 2022; Kridasakti et al., 2025). The principle of legality would remain preserved through limited codification of general indigenous justice principles—such as deliberation, restoration of balance, and compensation—without rigidly codifying the dynamic and context-dependent details of customary practice. This approach prevents the “freezing” of indigenous law into inflexible statutory formulations while simultaneously recognizing it as a legitimate juridical consideration.

From a structural perspective, the ideal model also requires clear procedural mechanisms regulating the interaction between state institutions and indigenous authorities (Merino, 2018). Prior to full prosecution, law enforcement authorities should be obligated to verify whether a customary settlement has occurred and whether such settlement fulfills principles of voluntariness, equality, non-discrimination, and compatibility with human rights standards. If the settlement satisfies these criteria and has been accepted by the victim’s family, formal criminal proceedings may proceed through conditional or symbolic sentencing models that preserve the normative condemnation of homicide while acknowledging the restorative process undertaken within the community. Such a framework balances the state’s obligation to enforce criminal law with the indigenous community’s interest in preserving social harmony.

The reformulation of homicide offences must also incorporate a stronger victimological orientation (Brunke, 2024). In many customary systems, the victim’s family occupies a central role in determining the form and legitimacy of resolution. Integrating this principle into national criminal law would strengthen the participation rights of victims, not merely as evidentiary witnesses but as substantive actors whose perspectives shape the restoration process. Consequently, the criminal justice system would move

beyond both offender-oriented and state-oriented paradigms toward a more balanced victim-oriented model that recognizes the needs of all parties affected by violent crime.

Philosophically, such integration reflects the broader concept of substantive justice, which views social harmony and relational restoration as ultimate legal objectives (Darmawan et al., 2025; Nasution & Lubis, 2026). Criminal law is therefore reconceptualized not solely as an instrument of retribution, but as a mechanism for reconstructing damaged social relations. In a legally plural society such as Indonesia, rigidly uniform approaches often generate tension between state norms and local normative systems. Accordingly, an ideal reform of homicide offences must remain contextual and adaptive by allowing differentiated responses based on socio-cultural characteristics, provided that these responses remain consistent with constitutional principles and universal human rights standards.

The theoretical foundation for this reform is further strengthened through the perspective of legal pluralism. Legal pluralism rejects the assumption that a single monopolistic legal order exclusively governs social life. Instead, it recognizes the coexistence of multiple normative systems that interact, compete, and influence one another within the same social space. In Indonesia, legal pluralism is not merely an academic abstraction but a sociological and constitutional reality. The recognition of *living law* within the newly enacted Criminal Code demonstrates that national legal policy increasingly acknowledges the existence of normative systems operating beyond formal state law.

From the perspective of legal pluralism theory, the integration of indigenous justice principles into homicide reform represents a form of managed legal pluralism. Under this model, the state retains ultimate constitutional authority while simultaneously creating institutional pathways for customary justice mechanisms to operate within the criminal justice process. This approach avoids both rigid legal monism and unrestricted pluralism. Indigenous justice systems are recognized not as autonomous alternatives entirely detached from state authority, but as legitimate normative processes that may contribute to the realization of justice under constitutional supervision.

Through this pluralistic framework, homicide is no longer understood solely as a violation against state authority, but also as a disruption of social and cosmological relations within indigenous communities. Ignoring these dimensions in favor of purely punitive state-centered responses risks imposing legal monism that lacks social legitimacy in customary societies. Legal pluralism demonstrates that the effectiveness of law depends not only on coercive enforcement but also on social acceptance and normative legitimacy within the communities governed by the law. In many indigenous regions,

customary settlements are often perceived as more legitimate, efficient, and capable of preventing future violence than formal judicial proceedings detached from local realities.

Nevertheless, legal pluralism also demands normative limitations. The integration of indigenous principles cannot justify discriminatory practices or relativize human rights protections. Constitutional principles therefore function as the highest normative boundary regulating which customary values may be incorporated into national criminal law. Only indigenous mechanisms consistent with justice, equality, and human dignity may be recognized within the formal legal framework. This constitutional filtering process ensures that restorative integration strengthens rather than undermines the rule of law.

More broadly, the integration of customary justice principles requires a restructuring of institutional relationships between law enforcement agencies and indigenous authorities (Jzani, 2025). An ideal framework would establish formal coordination mechanisms among police institutions, prosecutors, courts, and customary leaders. Implementing regulations should define procedures for verifying customary settlements, protecting victims' rights, and determining the categories of homicide cases eligible for restorative treatment within indigenous contexts. Such mechanisms would create normative dialogue rather than unilateral subordination between state law and customary law.

Ultimately, the reformulation of homicide offences through the integration of indigenous justice principles reflects a broader redefinition of legal sovereignty within plural societies. Sovereignty should no longer be understood as the state's exclusive monopoly over normative authority, but as the capacity of the state to manage legal diversity within an integrative constitutional order. By recognizing indigenous justice systems, the state does not weaken its authority; rather, it strengthens its legitimacy through responsiveness to the social realities and normative values existing within society.

Accordingly, the ideal reform of homicide offences in Indonesia must be dialogical, contextual, and adaptive. National criminal law should not operate as an isolated and rigid structure detached from social realities, but as a responsive legal system capable of integrating local values without abandoning constitutional foundations. The incorporation of indigenous justice principles into homicide regulation therefore represents not a compromise of legal certainty, but the realization of a more inclusive, restorative, and socially grounded conception of justice within Indonesia's plural legal order.

Arfak Customary Justice and Islamic Criminal Law in Indonesia's Homicide Law Reform

The restorative justice paradigm embedded within the customary law of the Arfak Indigenous community reflects a normative orientation that fundamentally differs from the retributive logic dominating conventional criminal justice systems. Rather than

emphasizing punitive retaliation against offenders, Arfak customary adjudication prioritizes the restoration of social integrity, communal harmony, and cosmological balance disrupted by criminal acts, particularly homicide. In the Arfak worldview, murder is not merely an offense against an individual victim but a rupture of social, spiritual, and genealogical relations that threatens collective stability. Consequently, customary authorities, led by figures such as the *Manir* or *Nimboran*, facilitate deliberative processes designed not simply to determine guilt, but to restore equilibrium among the perpetrator, the victim's family, the wider clan structure, and ancestral spiritual order. Justice, therefore, is conceptualized not as retaliatory suffering inflicted upon the offender, but as the successful reintegration of fractured communal relations through participatory reconciliation.

This restorative orientation bears significant resemblance to the Islamic legal doctrine of *diyya* (blood compensation), particularly within the classical jurisprudence of the Shāfi'ī and Ḥanbalī schools. In Shāfi'ī jurisprudence, which historically dominates Indonesian Islamic legal thought, *diyya* functions as a substitute for *qīṣāṣ* when forgiveness (*'afw*) is granted by the victim's family. The Shāfi'ī madhhab emphasizes that the acceptance of *diyya* is not merely financial compensation but a mechanism for restoring social order and preventing prolonged hostility between families and tribes (Absar, 2020). Meanwhile, the Ḥanbalī school places stronger emphasis on reconciliation and communal interest (*maṣlaḥah*), allowing broader flexibility in restorative settlement where public harmony is at stake (Sarmadi et al., 2025). Both schools recognize that the preservation of life (*ḥifẓ al-naḥs*) and the prevention of wider communal disorder align with the higher objectives of Islamic law (*maqāṣid al-sharī'ah*). In this regard, the Arfak concept of restoring cosmological balance demonstrates substantive compatibility with the principles of *ḥifẓ al-naḥs* (protection of life) and *ḥifẓ al-ummah* (protection of communal cohesion). The customary process seeks not only to address the death of an individual but also to prevent cycles of revenge, social fragmentation, and inter-clan violence that could endanger the continuity of the community itself.

The mechanism of *bayar kepala* within Arfak customary law constitutes the central instrument of restorative reconciliation. This form of compensation, often involving pigs, heirloom beads, or culturally valuable goods, possesses symbolic and spiritual dimensions extending far beyond economic restitution. Similar to *diyya* in Islamic jurisprudence, *bayar kepala* represents acknowledgment of wrongdoing, assumption of responsibility, and commitment to restoring communal peace. Importantly, within both Shāfi'ī and Ḥanbalī perspectives, *diyya* does not eliminate moral accountability but transforms punishment into a restorative framework capable of preserving social stability while still recognizing the gravity of homicide. This comparative parallel demonstrates that restorative

compensation mechanisms are neither legally primitive nor culturally isolated practices; rather, they represent historically recognized forms of justice within both Islamic and indigenous legal traditions.

The restorative dimension of Arfak law also resonates with broader global developments in restorative justice discourse. Comparable mechanisms can be identified within Māori reconciliation practices in New Zealand, Sentencing Circles among First Nations communities in Canada, and the Gacaca system in Rwanda. Such comparisons illustrate that indigenous legal systems worldwide increasingly contribute to contemporary debates on criminal justice reform by emphasizing reconciliation, reintegration, and collective healing over purely punitive sanctions. The Arfak model is particularly significant because compensation is inseparable from ritual reconciliation processes intended to restore both social and spiritual balance. These rituals function anthropologically as performative affirmations that hostility has ended and communal order has been re-established. Failure to conduct such rituals is believed to invite spiritual consequences and prolonged social instability, thereby reinforcing communal commitment to peaceful coexistence.

The theoretical relevance of the Arfak restorative model can be explained through multiple contemporary legal theories. Howard Zehr's conception of restorative justice emphasizes repairing harm, involving affected parties (Zehr, 2015), and restoring social relationships rather than merely imposing punishment. Similarly, John Braithwaite's theory of reintegrative shaming highlights the importance of social reintegration over stigmatizing isolation of offenders (Braithwaite, 2001). These principles are organically embedded within Arfak customary practices, where the offender is reintegrated into communal life following public acknowledgment of wrongdoing and fulfillment of customary obligations. Moreover, Philippe Nonet and Philip Selznick's theory of responsive law supports the notion that legal systems must adapt to substantive social needs rather than rigid formalism. The Arfak system demonstrates precisely this responsiveness by prioritizing social reconciliation capable of preventing prolonged inter-clan violence.

From the perspective of legal pluralism, Arfak customary law operates as a living normative order possessing strong sociological legitimacy independent of formal state recognition. Following John Griffiths' concept of legal pluralism, customary law represents a semi-autonomous social field capable of regulating social conduct effectively within indigenous communities (Griffiths, 1986). Its legitimacy derives not from state coercion but from deep cultural internalization and collective acceptance. This explains why customary settlements often prove more effective in preventing retaliatory violence than formal imprisonment detached from local realities. Nevertheless, the interaction between

customary law and national criminal law creates significant juridical tensions, particularly regarding serious crimes such as homicide.

The formal recognition of *living law* under Article 2(1) of Law No. 1 of 2023 concerning the new Indonesian Criminal Code provides a transformative legal foundation for integrating indigenous justice principles into national criminal law. However, the implementation of this recognition remains procedurally ambiguous, especially regarding homicide cases where state jurisdiction continues to dominate. In practice, customary settlements completed through *bayar kepala* frequently fail to halt police investigations or prosecutorial proceedings, resulting in potential normative dualism between state law and customary reconciliation. This condition raises important questions regarding how law enforcement authorities should respond to cases already resolved through customary mechanisms.

To address this issue, the study proposes a more concrete procedural framework for police and prosecutors handling homicide cases previously settled through Arfak customary law. First, police investigators should be required to conduct formal verification of customary settlements through consultation with recognized customary authorities, victim families, and community representatives. This verification must ensure that the settlement occurred voluntarily, involved genuine participation of the victim's family, fulfilled principles of non-coercion and non-discrimination, and did not violate constitutional human rights standards. Second, prosecutors should incorporate customary settlement outcomes into prosecutorial discretion by considering them as significant mitigating circumstances during indictment and sentencing recommendations. Third, courts should adopt a dual-track sentencing approach in which fulfillment of customary obligations such as *bayar kepala* may justify reduced custodial sentences or conditional penalties while still affirming the state's authority to condemn homicide as a criminal offense. Fourth, customary leaders should be granted formal participatory roles within criminal proceedings as expert witnesses or cultural mediators capable of explaining the social significance of reconciliation outcomes to judges and prosecutors.

This procedural integration does not seek to replace state criminal law with customary adjudication. Rather, it establishes a coordinated framework in which state institutions preserve public accountability while indigenous communities retain authority over restorative dimensions of reconciliation. Such a model avoids impunity because criminal responsibility remains recognized within formal legal institutions, yet it simultaneously acknowledges that social restoration constitutes an indispensable component of justice within indigenous societies. The integration of customary justice mechanisms into formal criminal proceedings therefore reflects a balanced synthesis between legality, restorative justice, and constitutional pluralism.

The broader implication of this study is that the future legitimacy of Indonesian criminal law depends upon its ability to engage meaningfully with the *living law* existing within indigenous communities. Failure to accommodate restorative indigenous mechanisms such as those practiced by the Arfak community risks producing legal alienation and weakening public trust in state institutions. Conversely, sincere recognition of indigenous restorative practices strengthens the legitimacy of national law by demonstrating respect for culturally embedded forms of justice. From a theoretical perspective, this study contributes to the development of integrative legal pluralism by moving beyond passive coexistence between legal systems toward substantive normative interaction. From a practical perspective, it provides concrete guidance for law enforcement institutions in managing the complex relationship between customary reconciliation and state criminal justice.

Ultimately, the Arfak model demonstrates that restorative justice rooted in indigenous traditions can coexist with constitutional criminal law while simultaneously enriching global discussions on criminal justice reform. The integration of Arfak customary principles into Indonesian criminal law does not represent a retreat from modern legality, but rather an effort to construct a more humane, culturally responsive, and socially legitimate system of justice capable of reflecting Indonesia's plural socio-legal realities.

Conclusion

This study demonstrates that the homicide settlement mechanism within the Arfak customary justice system embodies a restorative justice paradigm that is substantively compatible with Islamic criminal law, particularly the doctrines of *qīṣāṣ* and *diyāt*. In both Arfak customary law and Islamic jurisprudence, homicide is not merely understood as a violation against the state or an individual victim, but as a disruption of social and moral equilibrium that requires reconciliation, restoration, and collective responsibility. The Arfak practice of *bayar kepala* reflects significant parallels with the Islamic concept of *diyāt* as a compensatory mechanism intended to prevent prolonged hostility and restore communal harmony. Within the Shāfi'ī school, which historically dominates Indonesian Islamic legal thought, *diyāt* is recognized as a legitimate substitute for *qīṣāṣ* upon forgiveness by the victim's family, while the Ḥanbalī perspective further emphasizes reconciliation and public benefit (*maṣlaḥah*) as essential dimensions of justice. These convergences indicate that the restorative orientation of Arfak customary law aligns with the broader objectives of *maqāṣid al-sharī'ah*, particularly *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-ummah* (protection of communal cohesion). Moreover, comparative analysis reveals that the Arfak model shares important similarities with Māori reconciliation mechanisms in New Zealand, Aboriginal justice systems in Australia, Sentencing Circles in

Canada, and Gacaca courts in Rwanda, all of which prioritize communal restoration and conflict prevention over purely retributive punishment.

The study further argues that the future of Indonesian criminal law reform depends on its ability to accommodate *living law* within a constitutional and human rights-based framework. The recognition of customary law under the new Indonesian Criminal Code should therefore be interpreted as a form of managed legal pluralism, where state law and indigenous law coexist through institutional coordination rather than mutual exclusion. In this context, customary reconciliation mechanisms in homicide cases should not create impunity, but should be procedurally integrated into formal criminal proceedings through judicial consideration, prosecutorial discretion, and restorative sentencing approaches. Such integration enables the state to preserve public accountability while simultaneously recognizing the sociological legitimacy of indigenous justice systems. More broadly, this study contributes to global debates regarding the survival of indigenous legal traditions in the midst of national legal unification by demonstrating that local law can remain relevant when recognized as a living normative system rather than merely a symbolic cultural artifact. The Arfak experience confirms that the preservation of indigenous justice does not weaken national legal authority; instead, it strengthens the legitimacy of the legal system by grounding it in the cultural realities, Islamic legal values, and restorative traditions that continue to shape social life within plural societies.

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Interview

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- Traditional Leaders and Members of the Arfak Customary Council. Interview. Manokwari, Indonesia, December 11, 2025.
- Traditional Leaders and Members of the Arfak Customary Council. Interview. Manokwari, Indonesia, December 11, 2025.
- Deputy Chief of the South Manokwari Regional Police. Interview. South Manokwari, Indonesia, December 16, 2025.