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## The Urgency of Formulation of Responsive Criminal Law Policies to the Values of the Madura Carok Tradition in the Framework of Restorative Justice and Legal Pluralism in Indonesia

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**Abstract:** The tradition of *carok* in Madurese society is a practice of conflict resolution that is deeply rooted in the *values* of honor and self-respect. Although socio-culturally *carok* is understood as a form of defending one's dignity, this practice contradicts the national criminal justice system, which prioritizes the principles of legality and protection of the right to life. This disparity creates challenges in law enforcement, as the state often fails to accommodate local values in the formulation of criminal policies. This study aims to analyze the urgency of formulating criminal policies that are responsive to the values of the *carok* tradition, using restorative justice and legal pluralism as integrative solutions. The method used is normative jurisprudence with a legislative approach and the theories of legal pluralism and restorative justice. The analysis shows that the new Criminal Code (Law No. 1 of 2023) through Article 2 has recognized the existence of customary law, but it has not yet fully addressed sociocultural challenges such as *carok*. A reformulation of criminal policy is needed that not only emphasizes repressive aspects but also accommodates community-based resolutions through penal mediation and the role of customary leaders. With this approach, it is expected that reconciliation between state legal values and local wisdom will occur to create substantive justice rooted in the social reality of the community.

**Keywords:** Carok, Restorative Justice, Legal Pluralism, Criminal Law, Local Culture

**Abstrak:** Tradisi carok dalam masyarakat Madura merupakan praktik penyelesaian konflik yang mendalam dalam nilai-nilai kehormatan dan harga diri. Meskipun secara sosio-budaya carok dipahami sebagai bentuk pertahanan martabat, praktik ini bertentangan dengan sistem peradilan pidana nasional yang mengutamakan prinsip legalitas dan perlindungan hak hidup. Ketidakcocokan ini menimbulkan tantangan dalam penegakan hukum, karena negara seringkali gagal mengakomodasi nilai-nilai lokal dalam penyusunan kebijakan pidana. Studi ini bertujuan untuk menganalisis urgensi penyusunan kebijakan pidana yang responsif terhadap nilai-nilai tradisi carok, dengan menggunakan keadilan restoratif dan pluralisme hukum sebagai solusi integratif. Metode yang digunakan adalah yurisprudensi normatif dengan pendekatan legislatif, serta teori pluralisme hukum dan keadilan restoratif. Analisis

menunjukkan bahwa Kitab Undang-Undang Hukum Pidana Baru (UU No. 1 Tahun 2023) melalui Pasal 2 telah mengakui keberadaan hukum adat, namun belum sepenuhnya mengatasi tantangan sosiobudaya seperti carok. Diperlukan reformulasi kebijakan pidana yang tidak hanya menekankan aspek represif tetapi juga mengakomodasi penyelesaian berbasis komunitas melalui mediasi pidana dan peran pemimpin adat. Dengan pendekatan ini, diharapkan akan terjadi rekonsiliasi antara nilai-nilai hukum negara dan kebijaksanaan lokal untuk menciptakan keadilan substansial yang berakar pada realitas sosial komunitas.

**Kata Kunci:** Carok, Keadilan Restoratif, Pluralisme Hukum, Hukum Pidana, Budaya Lokal.

## INTRODUCTION

*Carok* is a form of conflict resolution deeply rooted in the value system of Madurese society, particularly about male pride and honor (Syaputra, 2024). This tradition carries symbolic meaning that transcends mere physical violence, as it relates to the social existence of individuals within the structure of traditional society (Mawaidi, 2021). When someone feels humiliated or their dignity is hurt, *Carok* is seen as a morally acceptable means of defense within the community (Mutmainnah, 2023). However, in the context of positive criminal law, this action is classified as murder or serious assault as stipulated in Articles 338 and 351 of the Criminal Code. The tension between state law and customary law creates a gap in the fulfillment of the community's sense of justice (Robekha, 2024).

The incompatibility between the values in the *Carok* tradition and the national criminal law system poses a challenge to the enforcement of fair and effective law in areas that still uphold customary values (Hendrawan, 2024). In practice, *Carok* perpetrators are often sentenced to criminal penalties based on a legalistic approach, without considering the cultural background and social structure where the act took place (Tanzillah, 2021). This leads to dissatisfaction with the formal legal system, which is perceived as failing to understand the local context. The existence of the *Carok* tradition shows that the state legal system is not yet fully present in the legal consciousness of the Madurese indigenous community (Dartiningsih, 2022). The absence of space for recognition or dialogue between customary law and national criminal law makes the community prefer customary settlements over formal legal channels (Firdaus, 2021). This imbalance has led to a crisis of legitimacy for the state's criminal law in the eyes of the community.

The importance of a restorative justice approach has emerged as a response to the failure of the retributive legal system to resolve conflicts based on local culture (Mufidah, 2022). This approach focuses on restoring social relations between perpetrators, victims, and the community, rather than merely punishing. In the *Carok* tradition, the application of restorative justice can open up space for dialogue and reconciliation between conflicting parties without negating cultural aspects. Indonesian National Police Regulation No. 8 of 2021 stipulates that restorative justice can be applied in cases that meet the principles of voluntariness, proportionality, and active involvement of the parties (Beremanda, 2023). This provision reflects the national legal commitment to accommodate non-litigious conflict resolution, which is oriented towards participatory justice. However, the implementation of this principle is still limited and has not reached serious or complex cases such as *Carok*.

Restorative justice requires the involvement of local values in formulating the conflict resolution process so that the results are in line with the expectations and understanding of the community (Afifah, 2024). In Madura, conflict resolution without the involvement of traditional leaders, community leaders, and extended families is considered socially invalid. Thus, even though the perpetrator has been legally punished, the conflict may continue because there has been no cultural reconciliation. Legal processes that disregard this social structure

worsen inter-family relations and create a cycle of repeated violence. The application of restorative justice that respects local wisdom can serve as a bridge between the formal legal system and traditional values (Yustiana, 2024). Reintegrating perpetrators into the community through mediation and consensus-based resolution provides a more peaceful solution. This principle has been applied to a limited extent in the juvenile criminal justice system as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Chandra, 2023).

The concept of legal pluralism is an important foundation in efforts to recognize the existence of a living and developing legal system in society (Sugitanata, 2023). John Griffiths in his theory distinguishes between weak and strong legal pluralism. Weak legal pluralism occurs when state law recognizes the existence of another legal system, but still makes it subordinate to official law. In contrast, strong legal pluralism recognizes the existence of non-state law as an autonomous entity that has its social authority (Sukmana, 2024). In the Indonesian context, legal pluralism is reflected in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia (Mariane, 2024)." This recognition provides a constitutional basis for accommodating local value systems such as *Carok* into the national criminal law system.

Constitutional Court Decision Number 31/PUU-V/2007 emphasizes that customary law is a legitimate part of the national legal system that must be considered in formulating policies. In the decision, the Court stated that the state cannot ignore the existence and practice of customary law that is still alive in society. Customary law is considered a relevant source of law in the formation and implementation of positive law in Indonesia (Irawan, 2025). This view urges that the national legal system is not homogeneous and centralistic, but rather respects local diversity which is the nation's wealth. In the context of *Carok*, this recognition opens up space to make local values a consideration in formulating a more responsive criminal law approach. The diversity of legal systems is not considered a threat, but rather a potential for building contextual justice.

Criminal law cannot be separated from the social structure and values of the society where the law is applied (Damanik, 2024). In Madurese society, the concept of honor and self-respect has a central position, even exceeding the value of life itself. This view forms a mindset that violations of honor deserve to be repaid directly and in kind. *Carok* is not merely an act of violence but is considered the final expression of unresolved injustice (Razy, 2024). A state legal system that assesses this act only from a formal aspect without understanding the sociological aspect will fail to touch the root of the problem. A non-adaptive criminal law approach will only widen the gap between the state and indigenous peoples.

In the dynamics of indigenous communities, conflict resolution is not enough with just criminalization, but requires a social recovery process that involves the community. *Carok* is often not resolved in court because the underlying conflict is collective and involves the good name of the extended family. If the state legal process ignores the role of the community, the conflict has the potential to spread and give birth to new *Carok* as a form of continued revenge. This situation shows the importance of a resolution system that prioritizes reconciliation, apologies, and restoration of relations between groups. Restorative justice which is based on the local context is the most relevant approach to resolving this kind of conflict. Within the framework of legal pluralism, the state must provide space for these values to coexist with the national legal system.

The *Carok* tradition, if understood superficially only as violence, will always be positioned within a narrow criminal framework. However, when examined in the context of social values and structures, *Carok* reflects the absence of conflict resolution mechanisms under local culture (Zaman, 2023). The state cannot turn a blind eye to the fact that formal criminal law often fails

to address substantive issues felt by Indigenous peoples. Recognition of customary law does not mean legitimizing violence, but opening up space to understand social reality more humanely and contextually. This is where the importance of formulating criminal law policies that are not merely repressive, but transformative and dialogical lies. This effort will strengthen the legitimacy of state law while maintaining the sustainability of local values.

The relationship between restorative justice, legal pluralism, and the *Carok* tradition must be placed within the framework of criminal law reform that is socially just. The formulation of criminal law policies that ignore local values will always face social resistance. On the other hand, policies that are built based on dialogue and recognition of diversity will be more acceptable and effective in creating order. In a multicultural society like Indonesia, law cannot stand alone without involving an understanding of the local context. The *Carok* tradition is a reflection of the need for justice that is by the values of society. Therefore, the formulation of new criminal law must include a restorative approach and recognition of legal pluralism as its basic principles.

## METHOD

This study uses a normative juridical method, which is a legal research method based on the study of applicable positive legal norms and legal concepts developed in theory and practice. The main focus of this method is to examine primary and secondary legal materials to answer the problems that have been formulated, particularly regarding the urgency of formulating criminal law policies that are responsive to the values of the *Carok* tradition in Madura within the framework of restorative justice and legal pluralism. The approaches used in this research are the legal regulation approach and the conceptual approach. The legal regulation approach is used to analyze relevant legal provisions, such as Article 18B(2) of the 1945 Constitution of the Republic of Indonesia, which recognizes and respects customary law communities and their rights, Law No. 1 of 2023 on the Criminal Code (New KUHP), particularly Article 2, which provides space for the recognition of customary law, as well as Indonesian National Police Regulation No. 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice. Meanwhile, the conceptual approach was carried out by examining relevant legal concepts such as the theory of legal pluralism (John Griffiths) and the theory of restorative justice, which form the basis for the development of an inclusive and contextual criminal law system. Through this approach, this study not only compares legal texts with social realities but also explores the relevance and implementability of legal norms in the context of societies with distinctive legal cultures, such as the Madurese society.

## RESULT AND DISCUSSION

### Existence and Relevance of *Carok* Tradition Values in Resolving Criminal Conflicts in Madurese Society

The *Carok* tradition in Madura is a form of conflict resolution that is deeply rooted in the social structure of the community. This practice is not merely seen as physical violence, but rather as a mechanism for upholding honor or self-respect, which is considered more important than life itself. In many cases, *Carok* can be categorized into two types: planned *Carok* and spontaneous *Carok*. Planned *Carok* is carried out after a deliberation process within the family or among traditional leaders, who then decide that the conflict can only be resolved through combat. Spontaneous *Carok*, on the other hand, typically occurs due to a sudden emotional outburst triggered by perceived insults to personal or family dignity. In both cases, there is a strong underlying motive: to preserve and uphold honor that has been tarnished.

The most dominant motive in the practice of *Carok* is revenge for actions deemed to have damaged honor, such as issues of infidelity, insults, or acts perceived as undermining family dignity. Honor, within the Maduran cultural context, is a fundamental value that supersedes



considerations of positive law. When someone feels insulted, they feel morally and socially obligated to restore their honor through *Carok*, not through formal legal channels. In Madurese society, people who choose to remain silent after their honor has been violated are often considered weak and have lost their self-respect. This norm has been passed down from generation to generation, forming a separate value system that reinforces the social legitimacy of *Carok*. In many cases, the surrounding community even provides moral support to the perpetrator, not the victim.

Traditional leaders and families play a critical role in encouraging or preventing *Carok*. In conflicts rooted in issues of honor, the decision to carry out *Carok* is often not an individual decision, but the result of an agreement within a specific social environment. Extended families or community leaders can act as mediators to calm emotions, but they often reinforce the intention to carry out *Carok* as a form of recognition of prevailing social values. This situation reveals that *Carok* cannot be understood solely as a personal criminal act but as a collective phenomenon influenced by value systems and social pressure. When traditional leaders support such actions, formal legal legitimacy becomes very weak in that community. As a result, the existence of state law often lacks effective enforcement power.

From the perspective of national criminal law, the practice of *Carok* directly contradicts the provisions of Article 338 of the Criminal Code on murder, which states: "Anyone who intentionally takes the life of another person shall be punished for murder with imprisonment for a maximum of fifteen years." If the *Carok* Act is executed with premeditation, it can be categorized as premeditated murder pursuant to Article 340 of the Criminal Code. This article states: "Anyone who intentionally and with prior planning takes the life of another person shall be punished for premeditated murder by either the death penalty, life imprisonment, or a fixed term of imprisonment not exceeding twenty years." In this case, there are no justifying or exculpatory reasons that can eliminate the criminal liability of the perpetrator of *Carok* in the eyes of the law. Indonesian criminal law emphasizes the principle of legality as stipulated in Article 1(1) of the Criminal Code: "No act may be punished unless it is based on criminal law provisions in legislation that existed before the act being committed."

The presence of state law that ignores the cultural context of local communities often creates tension between customary norms and positive legal norms. This inconsistency leads to state law being perceived as foreign and irrelevant in resolving conflicts based on local values, such as *Carok*. The principle of victim protection in the Indonesian legal system is often not well received by local communities that prioritize restoring the perpetrator's honor. This creates a dichotomy between formal justice and substantive justice in the eyes of the community. While state law prosecutes *Carok* perpetrators as murderers, the local community sees them as family heroes. This situation demonstrates a serious clash of values and poses challenges to the effective implementation of law in areas that still uphold customary values.

The lack of responsiveness of the formal legal system to local values has a direct impact on the emergence of social resistance to the supremacy of state law. This resistance does not always take the form of open action but can be an implicit rejection of legal intervention or non-compliance with legal procedures. Many people are reluctant to report conflicts to the authorities because they consider traditional resolutions to be fairer and faster. The lengthy and bureaucratic judicial process often does not meet the community's expectations in restoring the good name and honor of the family. This situation causes formal law to be increasingly shunned and viewed as a foreign entity. The community chooses to resolve conflicts themselves in ways they consider more relevant to local values, even at the risk of violating criminal law.

Criminalizing *Carok* perpetrators can have a counterproductive effect, leading to a loss of public trust in the state and law enforcement agencies. When the state's legal system fails to accommodate local aspirations and values, the community feels it has no place in the formal justice structure. *Carok* perpetrators who are severely punished are seen as victims of a system

that does not understand the cultural context. This situation leads to a continuing crisis of legal legitimacy. The community begins to view state law as favoring written rules without considering the sociocultural roots of the problem. As a result, the legal system loses its moral authority in the eyes of the indigenous community.

The absence of an approach sensitive to local traditions in the formulation of legal policy leads to widespread horizontal conflicts between groups or families. When the state is unable to resolve conflicts thoroughly and fairly from a local perspective, the potential for social resentment between families or communities remains open. Conflicts that are not comprehensively resolved risk recurring and spreading. This cycle of violence exacerbates social fragmentation and threatens local stability. Meanwhile, formal law is not flexible enough to address the root causes of conflicts based on values of honor. When the state fails to be a fair and adaptive mediator, the community seeks its alternatives, and *Carok* becomes the choice once again.

One of the long-term consequences of the legal system's unresponsiveness to local traditions is widespread cultural stigmatization. Madurese culture is often portrayed negatively because it is associated with violence, even though practices such as *Carok* are part of a complex value system. This stigmatization not only affects individuals but also the collective identity of the Madurese community. Such stereotypes worsen relations between local communities and the state and reinforce the exclusivity of cultural identity. When local culture is stigmatized and criminalized, the process of social integration with the state's legal system becomes increasingly difficult. The state should be able to adopt an approach that bridges positive legal values and local cultural values.

Efforts to reform criminal law to be more inclusive of local wisdom are becoming increasingly urgent. Recognition of the existence of customary law has been affirmed in Article 18B paragraph (2) of the 1945 Constitution, which reads: "The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia." This constitutional mandate clarifies that customary law is not an entity separate from the national legal system, but an integral part of the Indonesian legal framework. However, this recognition must be followed by concrete mechanisms for resolving customary conflicts such as *Carok*. The national legal system is required to develop an approach that not only punishes but also understands and accommodates the socio-cultural dynamics of local communities.

### **The Urgency of Formulating Criminal Law Policies that are Responsive to Local Wisdom Values through the Restorative Justice Approach and the Principle of Legal Pluralism in the National Legal System**

The formulation of criminal policies that accommodate local values is an urgent need in Indonesia's multicultural legal system. The weakness of a repressive approach to crimes rooted in local traditions reveals a gap between state norms and community norms. In the context of a society such as Madura, handling *Carok* cases solely through a punitive approach often fails to address the deeper root causes of the problem. Such an approach is unable to break the cycle of violence because it ignores the values of honor and social relations that are embedded in the local cultural structure. The national criminal justice system needs to be more sensitive to cultural contexts to effectively fulfill its function of delivering substantive justice. Expanding the paradigm from mere punishment toward constructive and dialogic resolution is a crucial direction for legal reform.

A flexible and contextual criminal justice system is the foundation for legal reform in a pluralistic society. Flexibility does not mean disregarding legal principles but adapting their implementation to the social dynamics of society. In Law No. 1 of 2023 on the new Criminal Code, Article 2 recognizes the existence of customary law, as long as it does not conflict with

Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the international community. It demonstrates a strong legal basis for integrating local traditions into the national legal system. This recognition opens up opportunities to bridge state legal norms with cultural practices that are alive in society. Indigenous communities are no longer positioned as objects of law, but as subjects of law who have their wisdom in resolving conflicts.

The integration of *Carok* traditional values into the framework of restorative justice does not mean legitimizing violence, but rather shifting conflict resolution to a more constructive social dialogue. Restorative justice emphasizes the restoration of relationships between perpetrators, victims, and communities, not just punishment. In practice, this approach opens up space for Indigenous leaders and the families of victims and perpetrators to be directly involved in the resolution process. Mechanisms such as penal mediation can be a relevant tool, where negotiation and exchange of meaning are prioritized over the dominance of state law. The presence of facilitators from law enforcement agencies who understand local wisdom is essential to keep the process within the bounds of justice. Restorative justice also reduces the risk of revenge and strengthens social cohesion.

Inspiration for the application of restorative justice can be seen in Law No. 11 of 2012 on the Criminal Justice System for Children, which prioritizes diversion in the handling of children's cases. Diversion is the transfer of case resolution from the criminal justice process to outside the justice system using a restorative approach. Although the context is different, the principles promoted can serve as a model for the development of a similar system for customary law-based offenses. In diversion, peace and social responsibility are the main priorities, not just punishing the perpetrator. The application of similar principles in *Carok* cases will enable the strengthening of the values of peace and reconciliation. The role of law enforcement officials must be changed from enforcers to facilitators who mediate deliberative-based resolutions.

The existence of customary leaders in tradition-based conflict resolution must be formally recognized in the national legal system. Customary leaders not only understand the cultural and genealogical context of conflicts but also have the social legitimacy to calm the situation. In the penal mediation process, the role of customary leaders can bridge the gap between positive law and local values. They can ensure that substantive justice is achieved without violating national legal principles. Their involvement also reduces the burden on formal law enforcement institutions and accelerates conflict resolution at the community level. In the long term, strengthening the role of traditional leaders can reinforce a culture of peace and reduce the incidence of violence between individuals or groups.

Criminal law policies that are responsive to local culture must be developed taking into account the characteristics of the region and the social background of the community. The formulation of contextual criminal policies does not mean creating laws that are absolutely different in each region, yet it develop a legal framework that opens up space for local participation. The mechanism can be realized through regional regulations or guidelines for the implementation of criminal law that are adaptive to the customary context. For example, in areas with a high level of customary practices, a restorative approach can be the primary option before a case enters the litigation stage. Such flexibility will enhance the sense of justice for the community and strengthen the legitimacy of formal law. Justice will no longer feel foreign but will come from and for the community itself.

It is necessary to establish a local restorative justice facilitator institution that works across institutions and is based on community participation. These institutions can serve as intermediaries between indigenous communities, perpetrators, victims, and law enforcement officials. The existence of such institutions not only ensures accountability but also builds local capacity to manage conflicts independently. In the process, these institutions must have

operational guidelines that are in line with human rights principles and Pancasila values. The legality of this institution can be promoted through derivative regulations from the new Criminal Code or revisions to relevant laws. The facilitator institution must also be openly monitored to ensure that the process is fair and unbiased towards any party.

The synergy between law enforcement officials and Indigenous leaders is key to building a bridge between national legal norms and cultural values. This relationship needs to be built within a framework of equality and mutual respect for each other's functions. Customary leaders have an understanding of the root causes of social problems, while law enforcement officials bring the certainty and authority of the state. Collaboration between the two will accelerate the process of resolving cases and reduce friction between value systems. In many cases, officials find it difficult to understand the social dynamics of indigenous communities, making the role of customary leaders essential. Joint training and coordination forums between the two parties can be an effective strategy for uniting a holistic vision of justice.

The transformation of the criminal justice system towards a pluralistic restorative approach must be underpinned by state policies oriented toward social justice. The state must dare to acknowledge that a single approach cannot satisfy all legal situations in a diverse country like Indonesia. In this case, legal pluralism is a middle ground between legal unification and the fragmentation of customary law. This approach does not negate national law but adapts its implementation to existing socio-cultural realities. Policies oriented towards pluralism also encourage people not to be afraid to acknowledge their cultural identity in the legal process. This more inclusive approach will bring the legal system closer to the ideal of substantive justice.

Legal justice in Indonesia requires criminal policy directions that emphasize not only punishment but also social transformation. Criminal acts rooted in culture do not always have to be responded to with imprisonment but rather with approaches that heal social relations. In the long term, such policies will strengthen public trust in the law and prevent repeated retaliation. Criminal law reform based on restorative justice and legal pluralism opens up opportunities to create a more just, contextual, and humane legal system. The community is not only regulated but also heard and involved in the process of enforcing justice. True justice must be able to engage in dialogue with culture and make room for local wisdom as part of the solution.

## CONCLUSION

The tradition of *Carok* as a practice of conflict resolution is rooted in the values of honor of the Madurese community and cannot be fully approached with a conventional criminal paradigm that emphasizes punishment alone. An overly legalistic approach to law often fails to understand the socio-cultural complexities behind *Carok*, thereby exacerbating social tensions rather than resolving them. Therefore, a more contextual criminal law policy formulation is needed, one that acknowledges and respects local values as an integral part of the national legal system. The recognition of customary law in the new Criminal Code is a positive first step, but it must be accompanied by concrete efforts in its implementation. In this context, restorative justice and legal pluralism are integrative approaches that are not only oriented towards conflict resolution but also towards the restoration of social relations and the harmonization of state legal values with local wisdom. Justice is not only determined by the text of the law but also by its success in building public trust in a fair and humane legal process.

To support the implementation of this approach, the government needs to immediately initiate implementing regulations that specifically govern the application of restorative justice in culture-based conflicts such as *Carok*. These regulations must be designed with the involvement of traditional leaders, academics, and the legal community so that they authentically reflect local needs and values. In addition, law enforcement officials in the



regions need to be equipped with training on cultural sensitivity so that they can carry out their duties professionally without ignoring the social context of the communities in which they serve. These efforts will strengthen the quality of law enforcement while narrowing the gap between formal law and social practice. In the long term, it is also important to encourage the development of legal research based on local culture, especially in areas with strong value systems. Such research will serve as a scientific and practical foundation for shaping criminal policies that are relevant, fair, and sustainable within the framework of a diverse Indonesia.

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