



## LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**Restorative Justice-Based Criminal Law Policy Reformulation: A Comparative Study of Implementation in ASEAN Countries**

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**ABSTRACT**

This study analyzes criminal law policy reformulation, focusing on restorative justice in ASEAN countries. Restorative justice emerges as an alternative paradigm to traditional criminal justice systems that emphasize retribution and punishment, by shifting the focus to repairing social damage, restoring victims, and reintegrating offenders. By conducting a comparative study of policies and practices in ASEAN countries, this research uncovered implementation models, implementation challenges, and socio-cultural factors that influence the effectiveness of restorative justice. The findings indicate that despite differences in the level of adoption and implementation, restorative justice has become

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an important element in criminal justice system reform in the ASEAN region. Local cultural values such as deliberation and social balance serve as a foundation that strengthens the implementation of restorative justice, but challenges remain related to comprehensive legislation, institutional capacity, and a shift in the mindset of law enforcers. This study suggests reformulation of criminal law policy through integrating restorative justice into formal legal structures, strengthening institutional capacity, and contextual adjustment to local cultural values.

**Keywords:** Restorative, Criminal Law, ASEAN, Policy Reform, Comparative Study

## 1. INTRODUCTION

Traditional criminal justice systems that focus on retribution and punishment are increasingly criticized for their inability to meet the needs of victims, rehabilitate offenders, and restore social balance (Braithwaite, 2002). Restorative justice has emerged as an alternative paradigm that emphasizes the importance of restoring the harm caused by crime through a process that involves all affected parties (Zehr, 2015). This approach does not simply focus on establishing guilt and imposing punishment, but also seeks dialogue between victims, perpetrators, and the community to reach a restorative agreement (Amsori, 2022).

The ASEAN region's rich diversity of legal systems and cultures offers an interesting laboratory for examining how restorative justice principles have been adopted, transformed, and applied in various contexts. Some ASEAN countries have a tradition of community-based conflict resolution that is in line with restorative justice, while others still rely heavily on retributive approaches in their criminal justice systems (Lubis, 2020).

This research aims to comparatively analyze the application of restorative justice in criminal law policies in ASEAN countries, identify best practices, implementation barriers, and formulate suggestions for improving criminal law policies that are more sensitive to the needs of victims, perpetrators, and communities. This research is expected to contribute to the development of theoretical and practical frameworks in integrating restorative justice into the criminal justice system in the ASEAN region (MZ et al., 2024).

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Criminal justice systems in ASEAN countries are currently facing many problems, ranging from prison overcapacity, slow court processes, to high rates of reoffending. In Indonesia, for example, the prison occupancy rate reached 202% in 2023, resulting in unfit conditions for prisoners (Directorate General of Corrections, 2023). Thailand experiences similar issues with an occupancy rate of 224%, the highest in Southeast Asia (Agustin, 2024).

Restorative justice is recognized worldwide as a promising method to address the shortcomings of traditional criminal justice systems. United Nations Economic and Social Council Resolution No. 2002/12 on “Basic Principles for the Use of Restorative Justice Programs in Criminal Matters” has encouraged member states to design restorative justice programs within their legal systems (United Nations, 2002). Several countries in ASEAN have responded by integrating elements of restorative justice in their justice system reforms, although the level of adoption and implementation varies (Marlina 2010).

## **2. RESEARCH METHODS**

### **a. Research Approach**

This research uses a qualitative approach with a comparative study design to analyze the application of restorative justice in criminal law policy in ASEAN countries. This approach was chosen because it allows in-depth exploration of the social, cultural, and legal contexts that influence the implementation of restorative justice in each country (Purnamasari, 2025).

### **b. Scope of Research**

This study covers six ASEAN countries selected based on variations in legal systems and levels of restorative justice adoption, namely Indonesia, the Philippines, Thailand, Malaysia, Singapore, and Vietnam. The period studied is from 2010 to 2024, which covers significant times in the development of restorative justice policies in the ASEAN region (Surachman & Maringka, 2015).

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#### **c. Data Collection Methods**

Data was collected through a combination of the following methods:

- 1) Document study, including laws and regulations, government policies, research reports, and scholarly publications related to restorative justice in ASEAN countries.
- 2) Semi-structured interviews with key stakeholders, including policy makers, legal practitioners, academics, and representatives of civil society organizations from each of the countries studied. A total of 36 informants (6 from each country) were interviewed over the period November 2023 to March 2024.
- 3) Direct observation of restorative justice practices in the field, including offender-victim mediation processes, family conferences, and community-based resolution mechanisms in the three countries (Indonesia, Philippines, and Thailand).

#### **d. Data Analysis**

Data were analyzed using the comparative thematic analysis method with the help of NVivo 14 software:

- 1) Coding the data based on predetermined themes as well as themes that emerged during the analysis process.
- 2) Identifying patterns, similarities, and differences in restorative justice approaches in the countries studied.
- 3) Triangulation of data from multiple sources to enhance the validity of the findings.
- 4) Interpretation of findings in the context of theoretical and contextual frameworks.

#### **e. Analysis Framework**

To analyze restorative justice models in ASEAN countries, this study adopts the analytical framework developed by Van Ness and Strong (2010), which includes four dimensions: (1) level of formalization, (2) level of participation, (3) outcome

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focus, and (4) integration with the formal justice system. This framework allows for the identification of variations in the implementation of restorative justice and the factors that influence it.

Data collection was conducted through a literature study. Primary legal materials consisted of laws and regulations, secondary legal materials consisted of books, journals, and legal research results, and tertiary legal materials consisted of legal dictionaries and encyclopedias. The data were analyzed qualitatively using the descriptive-analytical method to provide a complete picture of the relationship between the KPK, the Attorney General's Office, and the Police.

### **3. DISCUSSION**

#### **Development of Restorative Justice Policies in ASEAN Countries**

##### **a. Indonesia**

Indonesia has made great progress in implementing restorative justice, especially in the juvenile justice system. Law No. 11/2012 on the Juvenile Justice System adopts the principle of restorative justice and requires diversion for juvenile cases with a sentence of less than 7 years. Furthermore, Supreme Court Regulation No. 4/2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System provides technical direction for judges in implementing the diversion process. In 2018, the Indonesian National Police issued Police Regulation No. 6/2019 on Criminal Investigation, which expands the application of restorative justice to certain adult cases. The Attorney General's Office has issued Attorney General Regulation No. 15 of 2020 on Discontinuation of Prosecution based on Restorative Justice. However, the application of restorative justice to adult cases remains minimal and highly dependent on the discretion of law enforcement. Interviews with legal practitioners indicate that without a comprehensive legal foundation, the implementation of restorative justice in adult cases tends to be selective and inconsistent.

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#### **b. Philippines**

The Philippines has a solid legal foundation for restorative justice through Republic Act No. 10389 (2012), which established the Restorative Justice Council to design and implement restorative justice programs. For juvenile offenders, Republic Act No. 9344 (Child Justice and Welfare Act of 2006) and its amendment, Republic Act No. 10630 (2013), expressly implement restorative approaches and diversion (Prasetya, Renggong, and Hasan, 2021). The uniqueness of the Philippines lies in its formal incorporation of the barangay (village) justice system and restorative justice methods. The Katarungang Pambarangay (Barangay Justice System) provided for in the Local Government Code of 1991 offers a community-based mediation mechanism that conforms to the principles of restorative justice (Nachrawy, and Tuwaidan, 2022). Information from the Philippines Department of Social Welfare and Development reveals that by 2023, approximately 65% of cases involving children were resolved through diversion and other restorative means, indicating a significant adoption rate.

#### **c. Thailand**

Thailand has demonstrated its dedication to restorative justice by implementing Family Group Conferencing in the juvenile justice system since 2003. The Juvenile Justice Act B.E. 2553 (2010) expressly accommodates the restorative justice approach in the juvenile justice system. In adult cases, the Probation Department of Thailand has formulated the Restorative Justice Conference program since 2013, which was further strengthened by the Restorative Justice Act B.E. 2562 (2019). This regulation provides a solid legal basis for the application of restorative justice at the pre-trial and post-trial phases. According to information from the Thai Probation Department, by 2022, more than 18,000 cases had been handled through restorative justice conferences with an agreement ratio of 87% and a compliance rate of 92%.

#### **d. Singapore**

Singapore takes a pragmatic approach to restorative justice, with a primary focus on juvenile and youth cases. The Children and Young Persons Act, amended in 2019,

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strengthened the use of Family Group Conferencing and other diversionary options for juvenile cases. Community Mediation Centers established under the Community Mediation Centers Act of 1997 provide a forum for the mediation of communal conflicts, including some types of minor offenses. However, for serious cases, the retributive approach is still dominant. The Singapore Prison Service has developed a Victim-Offender Mediation program that facilitates dialogue between offenders and victims, particularly at the post-conviction stage. This program, although limited in scope, demonstrates recognition of the values of restorative justice in the context of sentencing and rehabilitation.

**e. Vietnam**

The Penal Code 2015 (effective 2018) demonstrates a paradigm shift by adopting elements of restorative justice, such as consideration of offender-victim reconciliation as a mitigating factor and encouraging restitution as part of the judicial process. Offender-victim mediation pilot programs have been implemented in several provinces since 2018 with support from UNICEF and UNODC, demonstrating the Vietnamese government's interest in further exploring restorative justice approaches.

**Models of Restorative Justice Implementation in ASEAN Countries**

**a. Offender-Victim Mediation Model**

This model is applied in all countries studied, with variations in the level of formalization and coverage of cases. In Indonesia and Malaysia, offender-victim mediation is often conducted informally by police or community leaders, while in Singapore and Thailand, the model is implemented through more structured programs with standardized protocols and training for mediators. An evaluation of the offender-victim mediation program in Thailand showed a high level of satisfaction from both victims (86%) and offenders (78%), and a reconciliation rate of 82% (Department of Probation Thailand, 2021). However, the main challenges are limited outreach and reliance on victims' willingness to participate.

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**b. Family Conference Model**

This model dominates restorative justice practices for juvenile cases in the Philippines, Thailand, and Indonesia. Family conferences involve not only the offender and victim, but also their families and supporters, as well as community representatives. Case studies in the Philippines show that family conferencing is highly effective in the Filipino cultural context, which emphasizes the role of family and community. Agreement rates reached 92% and recidivism rates of juvenile offenders who underwent family conferencing were 50% lower compared to those processed through the conventional justice system (Juvenile Justice and Welfare Council Philippines, 2022).

**c. Community-Based Settlement Model**

This model is prominent in Indonesia (village deliberation), the Philippines (Katarungang Pambarangay), Malaysia (kampong adat), and Vietnam (community-level mediation). Community-based settlements integrate traditional mechanisms with modern restorative justice principles. The advantages of this model are accessibility, cultural legitimacy, and the potential for sustainability, as it uses resources and structures that already exist in the community. However, challenges include standardization of practices, protection of individual rights, and the risk of local elites dominating the decision-making process.

**d. The Circle of Punishment Model**

This model is the least implemented in ASEAN, with only a few pilot projects in Thailand and the Philippines. The sentencing circle involves the wider community in the process of determining consequences for offenders, often with the participation of judges or formal justice officials. An evaluation of the pilot project in Thailand suggests that the model has the potential to bridge formal and informal systems, but requires intensive training and a paradigm shift among legal professionals.

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## **Factors Affecting Restorative Justice Implementation**

### **a. Legal and Policy Factors**

The existence of an explicit legal framework is a determining factor in the level of restorative justice implementation. Thailand and the Philippines, with specific laws on restorative justice, show greater levels of implementation than countries with more limited or ambiguous regulations. In addition to the existence of laws, clarity of operational procedures and linkages with the formal justice system are also very important. Countries with clear procedures, such as Thailand, show more consistent implementation than those with more abstract procedures.

### **b. Institutional Factors**

Institutional capacity to support restorative justice practices varies widely among ASEAN countries. Thailand and Singapore show greater investment in personnel training, protocol development, and supporting infrastructure. The commitment of judicial leadership is also a critical factor. In Indonesia, for example, leadership in the Supreme Court that supports restorative justice has driven a series of internal regulations that strengthen implementation, although the national legal framework is not yet comprehensive.

### **c. Socio-Cultural Factors**

Traditional cultural values have a significant influence on the acceptance of restorative justice. Countries with strong traditions of deliberation and social harmony, such as Indonesia and the Philippines, show greater resonance with restorative justice principles. However, some traditional values may also inhibit certain aspects of restorative justice. For example, strong social hierarchies may limit equal participation in dialog processes, while patriarchy may inhibit the participation and empowerment of female victims.

### **d. Resource Factors**

The availability of human and financial resources was a common challenge in all countries studied. Restorative justice programs require investment in facilitator

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training, development of supporting infrastructure, and ongoing implementation support. Thailand and Singapore, with more substantial budget allocations, demonstrated more sustainable programs, while in other countries, restorative justice programs often relied on temporary international donor funding.

## **Impact and Effectiveness of Restorative Justice Implementation**

### **a. Impact on Victims**

Research in Thailand and the Philippines shows high levels of victim satisfaction with restorative justice processes compared to conventional justice systems. A longitudinal study by Thailand's Department of Probation (2021) found that 86% of victims who participated in restorative justice conferences reported feeling "satisfied" or "very satisfied" with the process and outcomes, compared to only 34% of victims in similar cases processed through conventional courts. Qualitative research in Indonesia revealed that victims who participated in offender-victim mediation reported feeling empowered, having the opportunity to be heard, and having their questions about the crime answered (Wardani & Hiariej, 2022). However, the study also identified that without adequate preparation and support, some victims experienced revictimization during the process.

### **b. Impact on Perpetrators**

Recidivism data from Thailand shows that offenders who participated in restorative justice programs had a 27% lower recidivism rate compared to offenders in similar cases processed through conventional channels after a two-year follow-up period (Department of Probation Thailand, 2022). In the Philippines, restorative justice programs for juvenile offenders showed a 50% reduction in recidivism compared to conventional approaches (Juvenile Justice and Welfare Council Philippines, 2022). A qualitative study in Malaysia found that restorative justice processes facilitated the development of offenders' empathy towards victims and a deeper understanding of the

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impact of their actions, which are important factors in the prevention of recidivism (Rahman & Razak, 2023).

#### **c. Systemic Impact**

The implementation of restorative justice has had a positive impact on the criminal justice system in several ASEAN countries. In Thailand, the use of restorative justice conferences has reduced the number of cases coming to court by 22% between 2015-2022, contributing to a reduction in case backlogs and a more efficient use of judicial resources (Supreme Court of Thailand, 2023). In Indonesia, the implementation of diversion in the juvenile justice system has reduced the number of children in detention by 60% between 2014-2023, although there are still significant variations between regions (Ministry of Law and Human Rights of Indonesia, 2023).

#### **d. Challenges in Measuring Effectiveness**

Despite these positive indications, this study identified several challenges in measuring the effectiveness of restorative justice programs in ASEAN:

- 1) Lack of adequate baseline data and control groups for comparison.
- 2) Variations in the definition and operationalization of "success" of restorative justice programs.
- 3) Lack of long-term monitoring and evaluation mechanisms.
- 4) Difficulty in isolating the impact of restorative justice from other variables in the criminal justice system.

These findings highlight the importance of developing a comprehensive and contextualized evaluation framework to measure the effectiveness of restorative justice in the ASEAN region.

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## **Comparative Analysis of Restorative Justice Models in ASEAN**

### **a. Comparison of Level of Formalization**

The level of formalization of restorative justice practices varies significantly among ASEAN countries. Based on the analysis of legal frameworks and practices in the field, countries can be classified as follows:

- 1) High Formalization: Thailand and the Philippines with specific laws and standardized operational procedures for restorative justice practices.
- 2) Medium Formalization: Indonesia and Singapore, with legal recognition of restorative justice practices but without a comprehensive framework, especially for adult cases.
- 3) Low Formalization: Malaysia and Vietnam, with practices that are largely informal or in the pilot stage.

Analysis shows that higher levels of formalization are associated with more widespread and consistent implementation, but also risk reducing flexibility and responsiveness to local needs. Thailand has successfully balanced formalization with flexibility through clear guidelines that allow for contextual adaptation.

### **b. Comparison of Participation Models**

Models of participation in restorative justice practices also show interesting variations:

- 1) Direct/Face-to-Face Participation: Dominant in Thailand, the Philippines, and Indonesia, with offenders and victims meeting in person with professional facilitation.
- 2) Indirect Participation/Shuttle Diplomacy: More common in Singapore and Malaysia, where the mediator moves between the perpetrator and victim without a direct meeting.
- 3) Communal Participation: Prominent in Indonesia, the Philippines, and Vietnam, with active involvement of community members in the resolution process.

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The data suggest that direct participation models result in higher levels of satisfaction and more sustainable agreements, but require more intensive preparation and may not be appropriate for all types of cases or cultural contexts.

**c. Comparison of Outcome Focuses**

Analysis of the outcome focus of restorative justice programs revealed three main orientations:

- 1) Relationship Restoration: Dominant in Indonesia and Malaysia, with an emphasis on reconciliation and social harmony.
- 2) Material Compensation: More emphasized in Vietnam and partially practiced in the Philippines, with a focus on compensation and concrete reparations.
- 3) Balanced Approach: Applied in Thailand and Singapore, with equal attention to rapprochement and material damages.

Research shows that a balanced approach results in higher levels of satisfaction for all parties involved and more sustainable agreements in the long term.

**d. Comparison of Integration with the Formal Justice System**

The level of integration of restorative justice practices with the formal justice system varies among ASEAN countries:

- 1) High Integration: Thailand and Singapore, with restorative justice practices as a formal part of the judicial process, with clear lines between restorative and retributive systems.
- 2) Medium Integration: Indonesia and the Philippines, with restorative justice practices legally recognized but with less clear pathways for certain cases.
- 3) Low Integration: Malaysia and Vietnam, with restorative justice practices largely operating parallel to or outside the formal system.

Models with higher integration show greater reach and sustainability, but also risk being "colonized" by the values and practices of the formal justice system, which can reduce the transformative aspects of restorative justice.

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### **Restorative Justice-Based Criminal Law Policy Reformulation**

Based on the comparative analysis and research findings, the following recommendations are formulated for restorative justice-based criminal law policy reformulation that is contextual to ASEAN conditions:

#### **a. Reformulation of Legal Framework**

##### **1) Development of Comprehensive Legislation**

ASEAN countries need to develop comprehensive legislation that explicitly recognizes and regulates restorative justice practices in the criminal justice system. This legislation should include:

- a) A clear definition of restorative justice and guiding principles.
- b) Provisions that allow the use of restorative approaches at different stages of the criminal justice process (pre-prosecution, prosecution, sentencing, and post-conviction).
- c) Clear but not overly restrictive case eligibility criteria.
- d) Procedural safeguards to guarantee the rights of perpetrators and victims.
- e) Mechanisms to integrate restorative process outcomes into the formal justice system.

Thailand provides a good model with its Restorative Justice Act B.E. 2562 (2019), which can be adapted to the local context of other ASEAN countries.

##### **2) Harmonization with Material and Formal Criminal Laws**

Policy reformulation also requires harmonization of restorative justice provisions with the criminal code and criminal procedure law. This includes:

- a) Revision of provisions on termination of prosecution to accommodate settlement through restorative processes.
- b) Formal recognition of restorative agreements as a basis for sentence mitigation or alternatives to punishment.
- c) Integration of diversionary mechanisms not only for juvenile cases but also for certain categories of adult offenders.

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### 3) Development of Derivative Regulations

In addition to the main legislation, derivative regulations are needed that provide operational guidance for implementation, including:

- a) Standards and procedures for restorative justice processes.
- b) Qualifications and training of facilitators.
- c) Monitoring and evaluation mechanisms.
- d) Protection protocols for vulnerable participants.

### 4) Institutional Capacity Strengthening

- a) Development of Supporting Infrastructure
- b) Restorative justice implementation requires adequate supporting infrastructure, including:
  - (1) Restorative justice centers in each jurisdiction that provide facilitation, training, and technical support services.
  - (2) An integrated case management system that facilitates referral and tracking.
  - (3) Safe and secure facilities for restorative meetings.

Singapore and Thailand demonstrate a model of systematic infrastructure development that can be adapted by other ASEAN countries.

## **b. Human Resource Capacity Building**

System reform requires investment in personnel capacity building, including:

- 1) Comprehensive training for restorative justice facilitators.
  - a) Sensitization and training for law enforcement, prosecutors, and judges.
  - b) Development of restorative justice curriculum in legal education.
  - c) Establishment of a network of restorative justice practitioners to share experiences and best practices.
- 2) Mindset Change and Organizational Culture

The biggest challenge in the implementation of restorative justice is the mindset change from a retributive to a restorative paradigm. This requires:

- a) Educational campaigns among legal professionals.

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- b) Supportive leadership from high-level judicial authorities.
- c) Organizational incentives for the use of restorative approaches.
- d) Establishment of restorative justice champions in every institution.

**c. Contextual Adaptation with Local Wisdom**

1) Integration with Traditional Mechanisms

Policy reformulation should accommodate and strengthen traditional dispute resolution mechanisms that are in line with restorative justice principles, such as:

- a) Village deliberation in Indonesia
- b) Katarungang Pambarangay in the Philippines
- c) Kampong adat in Malaysia
- d) Community mediation mechanisms in Vietnam

This integration must be done while maintaining human rights standards and protecting vulnerable parties.

2) Procedural Adaptation to Cultural Context

Restorative justice processes need to be adapted to the local cultural context, including:

- a) Recognition of the role of traditional or community leaders.
- b) Incorporation of traditional reconciliation rituals that are culturally meaningful.
- c) Modification of the process to accommodate local communication norms.
- d) Sensitivity to gender dynamics and social hierarchies in the local context.

3) Development of a Hybrid Model

Based on the experience of ASEAN countries, hybrid models that combine elements of formal and informal systems show the greatest potential for sustainability and effectiveness. This model includes:

- a) Professionally facilitated restorative processes that incorporate traditional practices.
- b) Involvement of community leaders alongside justice professionals.
- c) Formal legal frameworks that allow procedural flexibility for local adaptation.

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#### **d. Development of Monitoring and Evaluation Mechanisms**

##### 1) Establishment of Key Performance Indicators

To assess the effectiveness of policy reforms, it is necessary to establish key performance indicators that include:

- a) Process indicators (e.g., number of cases referred, participation rate)
- b) Short-term outcome indicators (e.g., level of agreement, participant satisfaction)
- c) Long-term impact indicators (e.g., recidivism rates, social reintegration)
- d) Systemic indicators (e.g., judicial efficiency, reduction in prison overcapacity).

##### 2) Development of Data Collection System

A comprehensive data collection system is required to support monitoring and evaluation, including:

- a) A unified database of restorative justice cases.
- b) Standardized mechanisms for documentation of processes and outcomes.
- c) Protocols for long-term follow-up studies.
- d) Inter-agency and cross-country data sharing platforms.
- e) Evidence-based Research

##### 3) Policy reformulation should be supported by ongoing research that includes:

- a) Impact evaluation of restorative justice programs.
- b) Cost-benefit analysis of restorative justice implementation.
- c) Comparative studies between countries to identify best practices.
- d) Participatory research involving victims, offenders, and communities.

#### **4. CLOSING**

This comparative study shows that restorative justice has become an important component of criminal justice system reform in the ASEAN region, albeit with varying levels of adoption and implementation. Restorative justice approaches show significant potential in overcoming the limitations of conventional justice systems, particularly in terms of victim recovery, offender rehabilitation, and strengthening social cohesion.

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Traditional cultural values in the ASEAN region, such as deliberation, social harmony, and community-based settlements, provide a cultural foundation that strengthens restorative justice practices. However, challenges remain in terms of a comprehensive legal framework, institutional capacity, mindset change of law enforcers, and procedural adaptation to the local context. Successful restorative justice models in the ASEAN region generally exhibit the following characteristics: (1) clear policy and legal support, (2) good integration with the formal justice system, (3) contextual adaptation to local cultural values, (4) adequate institutional capacity, and (5) a balanced approach to the needs of victims, offenders, and communities.

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