

Reconstructing Restorative Justice Through Customary Criminal Law In Indonesia's Juvenile Justice System

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Abstract

Indonesia has formally incorporated restorative justice into the juvenile justice system, yet diversion continues to operate largely as a procedural mechanism for terminating proceedings rather than as a means of achieving substantive restoration. Existing scholarship has generally examined diversion and customary dispute settlement as separate fields, leaving unresolved the prior conceptual question of what may legitimately be integrated from customary criminal law into the state justice system. This study addresses that gap by arguing that such integration should concern restorative values and deliberative mechanisms, rather than customary sanctions or the wholesale transplantation of customary norms. Employing normative legal research through statutory, conceptual, legal-anthropological and comparative approaches, the study analyses the philosophical, constitutional, and sociological foundations of restorative justice for children, examines customary criminal law as a manifestation of living law, and compares the Indonesian framework with indigenous-informed juvenile justice approaches in New Zealand, Canada, Australia and South Africa. The study identifies substantive convergence between customary settlement and restorative justice, while also revealing three under-examined risks: the ceremonial capture of customary forums, asymmetries of bargaining power affecting victims and children, and the absence of enforceable minimum procedural safeguards. Its principal contribution is the Integrated Customary Restorative Justice Model (ICRJM), a three-pillar, five-stage framework that subjects customary participation to normative verification, formal ratification, and post-agreement monitoring. Theoretically, the model advances a living law-based account of restorative justice in which social legitimacy is treated as a condition of, rather than merely a correlate of, restorative effectiveness.

Keywords: *Child Protection; Diversion; Juvenile Justice Reform; Legal Pluralism; Living Law.*

1. INTRODUCTION

Contemporary criminal law scholarship describes a shift from a retributive to a restorative paradigm. The shift is commonly framed philosophically: crime is reconceptualised as harm to persons and relationships rather than merely as an offence against the state, such that the appropriate legal response emphasizes repair rather than retribution.¹ For children in conflict with the law, the argument is particularly compelling because formal criminal proceedings may

¹ Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated*, 2015.

expose a developing person to stigmatisation, social marginalisation, and psychological harm beyond that contemplated by the sanction itself. Yet this philosophical account does not explain why legal systems that have formally embraced restorative justice may continue to produce substantially retributive outcomes. This unresolved tension between normative commitment and practical operation, rather than the familiar normative case for restoration itself, constitutes the starting point of this study.

Indonesia is an instructive case because its formal commitment to restorative juvenile justice is well established. Article 28B paragraph (2) of the 1945 Constitution guarantees every child the right to survival, growth, and development, as well as protection from violence and discrimination, while Article 28D paragraph (1) guarantees fair legal certainty. Indonesia ratified the Convention on the Rights of the Child in 1990. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System subsequently established diversion as a principal mechanism for implementing restorative justice, while later sectoral instruments extended restorative approaches across the investigative, prosecutorial, and adjudicative stages.² The central problem, therefore, is not the absence of normative commitment to restorative justice, but the gap between that commitment and substantive realisation. Recent socio-legal scholarship helps explain this gap where. Studies of diversion practice report that its effectiveness remains constrained by institutional capacity and the persistence of a custodial legal culture, with diversion consequently functioning in some cases as a means of terminating proceedings without necessarily producing substantive restoration.³ Research concerning the return of children to parental care similarly suggests that keeping a child outside custodial institutions does not by itself define the restorative obligations owed to either the child or victim; formal statutory compliance may therefore coexist with inadequate substantive supports.⁴ The international evidence warrants similar caution. Recent meta-analytic research on restorative justice programmes in juvenile justice reports statistically significant but comparatively modest effects on reoffending, while reporting stronger effects on victim-related outcomes.^{5,6} Earlier research has likewise demonstrated variation in recidivism outcomes according to the form of restorative intervention employed. Two consequences follow. First, restorative justice should not be evaluated exclusively through actuarial measures such as recidivism; its relational repair and victim-oriented objectives require corresponding criteria. Second, no comparably developed body of outcome evidence currently underpins Indonesian diversion. Claims concerning its effectiveness therefore depend substantially on doctrinal analysis and localised empirical studies, A limitation that should constrain rather than inflate conclusions about the operation of restorative juvenile justice in Indonesia. The resource that the Indonesian system has left least exploited is customary criminal law. Article 18B paragraph (2) of the 1945 Constitution

² “Article 1 Point 7, Article 6 and Article 7, Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System; Attorney General Regulation Number 15 of 2020; Indonesian National Police Regulation Number 8 of 2021; Supreme Court Regulation Number 1 Of ” (n.d.).

³ Daud Rismana et al., “The Legal Effectiveness of Juvenile Diversion: A Study of the Indonesian Juvenile Justice System,” *Khazanah Hukum* 7, no. 2 (2025): 190–205, <https://doi.org/10.15575/kh.v7i2.44162>.

⁴ Rismana et al.

⁵ Catherine S. Kimbrell, David B. Wilson, and Ajima Olaghere, “Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness,” *Criminology & Public Policy* 22, no. 1 (n.d.): 161–95.

⁶ Jeff Bouffard, Maisha Cooper, and Kathleen Bergseth, “The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders,” *Youth Violence and Juvenile Justice* 15, no. 4 (2017): 465–80.

recognises indigenous communities and their traditional rights, while Article 2 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code recognises law living in society within specified constitutional and legal limitations.⁷ These provisions have been interpreted as providing space for legal pluralism within the national criminal law framework.⁸ Yet the space remains largely unoccupied in juvenile practice, because no instrument specifies how a customary forum may lawfully participate in diversion, which of its norms may be applied to a child, or what happens to a customary settlement that the state has not ratified.

Four clusters of scholarship bear on this problem, and each is strong in one respect and silent in another.

The first cluster is normative-doctrinal work on diversion. Marlina positions diversion as the principal child-protection instrument of the juvenile justice system;⁹ Suharto and Munajat map its statutory architecture and its dependence on shared understanding among enforcement officers;^{10,11} Aprilianda and Krisna and Nur and colleagues interrogate the sanctioning typology available for children;¹² and Ristama and Nugroho argue that diversion should be extended toward transformative justice because it addresses individual conflicts without confronting their structural causes.¹³ Their common strength lies in the precision about with which they map the statutory framework; their shared limitation is that the statute itself remains the principal unit of analysis, leading implementation failures to be attributed mainly to resource constraint institutional understanding rather than to deficiencies in the design of the diversion framework.

The second cluster is empirical and socio-legal. Rismana and colleagues test the effectiveness of diversion; Wahyudi and colleagues expose the ambiguity of post-diversion arrangements; and Marlina and Mulyadi, studying gampong institutions in Aceh, demonstrate that community forums can supply a bottom-up legitimation of child protection that state procedure alone cannot generate.¹⁴ This work demonstrates a persistent gap between normative design and actual practice, but much of it remains context-specific. Moreover, where functioning community mechanisms are identified, they are generally documented as empirical practices rather than examined in terms of the normative conditions under which the state should recognise them.

The third cluster concerns customary law and legal pluralism. Ismail and colleagues argue for the revitalisation of customary institutions within the criminal law system;¹⁵

⁷ “Article 18B Paragraph (2), the 1945 Constitution of the Republic of Indonesia; Article 2 Paragraph (1), Law Number 1 of 2023 Concerning the Criminal Code” (n.d.).

⁸ Achmad Irwan Hamzani Sami’an Sami’an and Nur Khasanah, “Restorative Justice and Legal Pluralism in Indonesia: Implications for Atrocity Crimes and Global Criminal Justice Reform,” *International Criminal Law Review* 26, no. 2 (2026): 217–49.

⁹ Marlina, *Peradilan Pidana Anak Di Indonesia: Pengembangan Konsep Diversi Dan Restorative Justice*, 2012.

¹⁰ Gilang Ramadhan Suharto, “Restorative Justice Peradilan Pidana Anak Di Indonesia,” *Lex Crimen IV* 1 (n.d.).

¹¹ Makhrus Munajat, “Sistem Diversi Dan Restorative Justice Dalam Peradilan Pidana Anak Di Indonesia,” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 50, no. 2 (2016): 565–86.

¹² Nurini Aprilianda and Liza Agnesta Krisna, “Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warni,” *Jambura Law Review* 5, no. 1 (n.d.).

¹³ Yoga Ristama and Hibnu Nugroho, “Diversion Process as a Transformative Reform of the Criminal Justice System for Children in Conflict with the Law,” *Jurnal IUS Kajian Hukum Dan Keadilan* 14, no. 1 (2026): 57–73.

¹⁴ Marlina and Mahmud Mulyadi, “Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh,” *Cogent Social Sciences* 10, no. 1 (2024).

¹⁵ Dian Ekawaty Ismail, Avelia Rahmah Y. Mantali, and Mohamad Rivaldi Moha, “The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice,” *Jambura Law Review* 5, no. 2 (2023): 220–34.

Badu and Kaluku examine customary settlement of narcotics offences committed by children;¹⁶ Junaidi analyses the *tepung tawar* tradition as a restorative procedure; Ramli and colleagues examine the interaction of state, custom and Islamic law in Acehese minor-dispute resolution; and Lubis reconstructs the *Surat Tumbaga Holing* as a structured source of Mandailing customary law.^{17,18} Collectively, this literature provides substantial evidence that customary forums *can* perform restorative functions in the resolution in criminal and community disputes. It does not establish the conditions under which the state *should* give such resolution legal effect, and it rarely distinguishes customary values from customary sanctions.

The fourth cluster is international restorative justice theory. Zehr conceptualises restoration as the repair of harm through the participation of those affected; Braithwaite's reintegrative shaming explains why disapproval that is followed by readmission reduces reoffending; Daly cautions against the idealisation of restorative practice; and Umbreit and Armour survey its global diffusion.^{19,20,21} These theoretical accounts, however, were developed largely within legal systems in which the state remains the dominant source of formal legal authority. Consequently, "community" is often conceptualised as a resource mobilised within a state-designed restorative process rather than as an autonomous normative order possessing its own claims to authority. This distinction is consequential: Wood and Tauri show that New Zealand's family group conference, despite its frequent portrayal as an indigenous-inspired model, continues to operate within a framework in which the state retains substantial decision-maker authority.²²

Read together, these four strands of scholarship reveal a common omission rather than a substantive disagreement. No study to date treats customary criminal law as a *design component* of the juvenile diversion framework: the doctrinal literature analyses diversion without custom, the anthropological literature analyses custom without diversion, and the international literature analyses restoration without legal pluralism. This study addresses that omission by examining how customary restorative values and deliberative mechanisms can be incorporated into juvenile diversion without reproducing customary sanctions wholesale or compromising constitutional and child-rights safeguards. The gap is therefore not merely conceptual: it helps explain why a legal order that formally recognises both restorative justice and living law has yet to establish a coherent normative mechanism connecting them. Table 1 sets out the position comparatively.

¹⁶ Lisnawaty Wadju Badu and Julisa Aprilia Kaluku, "Restorative Justice in the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children," *Jambura Law Riview* 4, no. 2 (2022): 313–27.

¹⁷ Junaidi, "The Restorative Justice Approach in the Tepung Tawar Tradition: How Do Customary Rules Resolve Criminal Cases?," *Udayana Journal of Law and Culture* 10, no. 1 (2026): 26–51.

¹⁸ Misran Ramli et al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism," *Samarah* 8, no. 2 (2024): 872–90, <https://doi.org/10.22373/sjkh.v8i2.15924>.

¹⁹ Zehr, *Little Book of Restorative Justice*; John Braithwaite, *Crime, Shame and Reintegration*, n.d.

²⁰ Kathleen Daly, "Restorative Justice: The Real Story," *Punishment & Society* 4, no. 1 (2002): 55–79.

²¹ Mark S. Umbreit and Marilyn Peterson Armour, "Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community," *Washington University Journal of Law & Policy*, 2011, 65–89.

²² William R. Wood and Juan Tauri, "Revisiting New Zealand's 'Gift to the World': Demythologising Youth Justice Family Group Conferencing in Aotearoa New Zealand," *Contemporary Justice Review* 28, no. 2 (2025): 220–44.

Table 1. Comparative matrix of previous research and the position of this study

Cluster	Representative studies	Contribution	Limitation	Position of this study
Normative-doctrinal studies of diversion	Marlina (2012); Suharto (2015); Munajat (2016); Aprilianda & Krisna (2022); Ristama & Nugroho (2026)	Precise mapping of the statutory architecture of diversion and of sanctioning options for children	The statute is both object and measure of analysis; failure is read as an implementation deficit rather than a design defect	Treats the design of the diversion mechanism itself, not only its application, as the object of reform
Empirical and socio-legal studies	Rismana et al. (2025); Wahyudi et al. (2025); Marlina & Mulyadi (2024)	Demonstrate the distance between the restorative norm and enforcement practice; identify community legitimization	Predominantly single-site; document community mechanisms without specifying terms of state recognition	Converts the observed community capacity into an explicit and conditional recognition mechanism
Customary law and legal pluralism studies	Ismail et al. (2023); Badu & Kaluku (2022); Ramli et al. (2024); Junaidi (2026); Lubis (2026)	Show that customary forums already resolve offences through restoration and reintegration	Largely descriptive; do not distinguish customary values from customary sanctions, nor set admissibility criteria	Distinguishes values and mechanisms from sanctions and supplies a four-part verification test
International restorative justice theory	Zehr (2015); Braithwaite (1989); Daly (2002); Umbreit & Armour (2011); Kimbrell et al. (2023)	Conceptual and evaluative rigour; comparative evidence on programme effectiveness	Developed in monist settings; treat community as a convened resource rather than a normative order	Introduces legal pluralism as a variable internal to restorative theory rather than as context
Comparative indigenous juvenile justice	Wood & Tauri (2025); Muchtar et al. (2024); Yeong & Moore (2020); Diala (2017)	Expose the gap between indigenous framing and indigenous authority in state-run restorative programmes	Rarely translated into concrete statutory design proposals for Indonesia	Extracts transferable design lessons and translates them into a national reform model

Source: compiled by the author.

The novelty of this study is a single claim developed in three registers. Philosophically, it treats customary criminal law not as a precursor or analogue of restorative justice but as an autochthonous form of it, which implies that the reception of restorative justice in Indonesia is a matter of recognition rather than importation. Theoretically, the study develops the Integrated Customary Restorative Justice Model (ICRJM) as its principal contribution, integrating restorative justice theory, living law theory, and legal pluralism theory within the juvenile justice framework. The model advances restorative theory by treating social legitimacy as a necessary condition of restorative effectiveness. Practically, it converts that condition into a legal-policy design specifying how customary institutions may participate in diversion without displacing the rule of law, human rights or the best interests of the child. The three registers are not separate findings but successive statements of the same proposition at different levels of abstraction.

Three questions structure the analysis. First, what are the philosophical, constitutional and sociological foundations of restorative justice in the settlement of juvenile criminal cases in Indonesia, and how do they compare with international juvenile justice

standards? Second, in what respects does customary criminal law, as living law, converge with and diverge from restorative justice, and what are the limits of its integration? Third, what reconstruction model of restorative justice based on customary criminal law can be formulated as *ius constituendum* for the Indonesian juvenile justice system?

This is normative legal research directed at legal norms, principles, doctrines and constructions. It is chosen because the object of study is not only the identification of applicable positive norms (*ius constitutum*) but the formulation of a reform model (*ius constituendum*).²³ Four complementary approaches are employed, each linked to a specific research question rather than applied uniformly across the entire analysis.

The **statutory approach** examines the constitutional provisions, the juvenile justice statute, the child protection statute, the 2023 Criminal Code, the 2025 Criminal Procedure Code and the prosecutorial, police and judicial regulations on restorative justice; it answers the first question by establishing what the positive order already requires and permits. The **conceptual approach** examines restoration, diversion, living law, legal pluralism and substantive justice; it serves the first and third questions by supplying the categories in which the reform model is expressed. The **legal anthropological approach** examines customary criminal law as a normative value system possessing historical and sociological legitimacy rather than merely as a social practice; it addresses the second research question by identifying which structural features of customary settlement may legitimately be incorporated into the formal juvenile justice framework. The **comparative approach** serves the second and third questions on two axes: internally, between formal juvenile procedure and customary settlement in Indonesia, and externally, between Indonesia and four jurisdictions in which indigenous mechanisms have been given a statutory role New Zealand, Canada, Australia and South Africa. The external comparison uses a common *tertium comparationis* of four variables: the locus of decision-making authority, the procedural safeguards attaching to the community forum, the type of remedy available, and the mode of supervision after agreement.

Legal materials comprise primary materials (the Constitution, statutes and implementing regulations, and the relevant international instruments), secondary materials (monographs and, in preference, peer-reviewed journal articles published between 2021 and 2026 in journals indexed in Scopus or Web of Science) and tertiary materials. The legal materials were collected through documentary and library research and analysed prescriptively through three successive techniques: doctrinal analysis using grammatical, systematic, historical and teleological interpretation; comparative analysis based on the four variables identified above; and legal reasoning through analogy with the comparator jurisdictions and abduction reasoning in construction the proposed model. Two limitations follow from this design and are acknowledged at the outset. The study is doctrinal and does not itself measure outcomes; and the customary practices it draws upon are described from the secondary literature rather than from fresh fieldwork. The propositions advanced in Part 2.3 are accordingly formulated so as to be empirically testable, and the concluding section identifies the research that would test them.

²³ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revi (Jakarta: Kencana, 2016).

2. ANALYSIS AND DISCUSSION

2.1. Philosophical, constitutional and international foundations of restorative justice for children

The classical paradigm treats a criminal offence as a wrong against the state, to be answered by punishment. The restorative paradigm treats it as a social conflict producing harm to victims, offenders, families and communities, to be answered by repair. The difference is not merely one of emphasis: it relocates the injured party from the margins of the process to its centre, and it makes the offender's accountability a relational rather than a purely retributive obligation.^{24,25}

Philosophically, this restorative orientation can be situated within the normative framework of Pancasila. The first principle may be understood as supporting values of moral responsibility, forgiveness, and reconciliation; the second affirms the dignity, including the dignity of the child as a legal subject entitled to protection; and the fourth emphasizes deliberation in collective decision-making, a principle that resonates with the participatory character of restorative justice. The congruence is genuine, but it should not be overstated. Philosophical compatibility explains why restorative justice is not alien to the Indonesian legal order; it does not by itself generate the institutional design through which restoration is delivered, and it is precisely at the level of institutional design that Indonesian practice has proved weakest.

Constitutionally, the foundation is threefold. Article 28B paragraph (2) establishes the child's right to survival, growth and development and to protection from violence and discrimination; Article 28D paragraph (1) guarantees fair legal certainty; and Article 18B paragraph (2) recognises indigenous communities and their traditional rights so far as they remain living and consistent with societal development and the principles of the unitary state. The third of these is usually treated as belonging to constitutional or agrarian law rather than to criminal procedure. Read together, these provisions provide a constitutional basis for examining the relationship between child protection and the recognition of living customary institution. Rather than necessarily constituting competing commitments, the two may operate complementary within juvenile justice, provided that customary participation remains consistent with constitutional rights and the best interests of the child. Internationally, the normative framework contains more detailed procedural safeguards than are commonly addressed in the domestic literature on juvenile restorative justice, making it a useful benchmark for evaluating the Indonesian framework. The Convention on the Rights of the Child requires the best interests of the child to be a primary consideration, requires deprivation of liberty to be a measure of last resort and for the shortest appropriate period, and requires that measures for dealing with children be available without resort to judicial proceedings wherever appropriate and desirable.²⁶ General Comment No. 24 of the Committee on the Rights of the Child develops that requirement, urging States to expand diversion and to ensure that a child's participation is genuinely voluntary and based on free and informed consent.²⁷ The Beijing Rules establish the framework for diversion at the earliest possible stage; the Riyadh Guidelines address prevention; the Havana Rules govern children deprived of liberty; and the Tokyo Rules provide the general standard

²⁴ Zehr, *Little Book of Restorative Justice*; John Braithwaite, *Crime, Shame and Reintegration*.

²⁵ Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*, n.d.

²⁶ "Articles 3, 37(b) and 40(3)(b), United Nations Convention on the Rights of the Child," (1989).

²⁷ "United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, CRC/C/GC/24." (n.d.).

for non-custodial measures, including the requirement that the offender consent to the measure and that supervision be proportionate and subject to review.²⁸ The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters require free and voluntary participation capable of withdrawal at any time, prohibit the use of participation as evidence of admission of guilt in subsequent proceedings, proportionate, and the existence of judicial supervision of agreements.²⁹

Measured against that standard, the Indonesian framework converges at the level of *aims* and diverges at the level of *safeguards*. Article 6 of the juvenile justice system law identifies objectives including reconciliation between the victim and the child, settlement outside the judicial process, avoidance of deprivation of liberty, community participation, and the cultivation of responsibility, all of which broadly correspond to internationally recognised restorative objectives. What the domestic instruments regulate far less densely is the procedural interior of the restorative encounter: the voluntariness of the child's participation and the child's capacity to withdraw, the availability of legal assistance during the deliberation itself, the proportionality of obligations agreed within the forum, and the evidentiary status of statements made there if the process fails. This is not a marginal omission. It is exactly the space into which customary participation would enter, and it is the reason why the integration proposed below must be accompanied by procedural minima rather than by encouragement alone.

Two theoretical resources explain the gap. The doctrine of *Parens patriae* provides a theoretical basis for the state's protective responsibility toward children and supports an approach in which punitive intervention operates as *ultimum remedium*, while guidance, rehabilitation, integration are prioritised as *primum remedium*. Friedman's account of the legal system suggests that legal outcomes emerge from the interaction of legal substance, legal structure, and legal culture. Applied to Indonesian juvenile justice, the framework directs attention to legal culture as an important explanation for the persistence of non-restorative practices despite the existence of an increasingly developed normative framework.³⁰ Friedman's framework, however, identifies legal culture as a determinant without indicating how a legal system might incorporate a competing normative order rather than merely await cultural change. That limitation is the analytical bridge to the next section: if legal culture is the binding constraint, and if the relevant culture is already organised into functioning normative institutions, then the reform question is institutional rather than educational.

2.2. Customary criminal law as living law: convergence, limits and comparative lessons

Ehrlich's proposition is that the law that actually governs conduct is frequently not the law contained in statutes, and that norms derive their force from acceptance and practice within associations rather than from enactment alone.³¹ Griffiths' distinction between strong and weak legal pluralism sharpens the point: strong pluralism describes a social field in which several normative orders coexist without hierarchy, whereas weak

²⁸ "United Nations Economic and Social Council Resolution 2002/12, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Paras. 7, 8, 13 and 15; United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes," (n.d.).

²⁹ "United Nations Economic and Social Council Resolution 2002/12, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Paras. 7, 8, 13 and 15; United Nations Office on Drugs and Crime" (n.d.).

³⁰ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, 1975.

³¹ Walter L. Moll, Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, Trans. Walter L. Moll, 1936.

pluralism describes a state that permits other orders to operate on terms it defines.^{32,33} Article 2 paragraph (1) of the 2023 Criminal Code is more consistent with a weak variant of legal pluralism: living law is recognised within the national legal order, but its legal effect remain subject to conditions defined by state law. That characterisation matters for what follows, because it means the design problem is not whether the state may regulate customary participation but how it should do so.

A second qualification is equally important. Diala's critique of the concept of living customary law shows that what is applied in contemporary communities is rarely a pristine tradition; it is an adaptive practice shaped by colonial encounter, religious influence, market relations and internal contestation.³⁴ Applied to Indonesia, this means that an appeal to *hukum adat* cannot function as an appeal to an authoritative and internally consistent code. Rather, it refers to a living normative process whose content must be ascertained in its particular social and legal case. This need for contextual ascertainment provides a justification for normative verification, rather than for the exclusion of customary law from the formal justice system.

With those qualifications in place, the structural convergence between customary settlement and restorative justice can be stated economically. Across the archipelago, customary systems that differ profoundly in idiom share a recognisable procedural architecture. Minangkabau settlement under the philosophy of *adat basandi syarak, syarak basandi Kitabullah* proceeds through deliberation among *Ninik Mamak*, *Alim Ulama* and *Cadiak Pandai* and escalates gradually according to the principle of *bajanjang naiak batanggo turun*; Acehnese *gampong* settlement operates through the *Keuchik* and *Tuha Peut*; Batak and Mandailing settlement proceeds through *marhata* within the *Dalihan Na Tolu* structure, with the *Surat Tumbaga Holing* furnishing a written normative reference; Dayak settlement proceeds through customary hearings culminating in *jipen*; and Papuan mechanisms centre on compensation and peace-making between kin groups.^{35,36,37}

What is analytically significant for the present study is not merely the diversity of these practices, but the structural features they appear to share. These common features, rather than their culturally specific forms or terminology, provide the more defensible basis for considering integration into the formal juvenile justice framework. First, authority is *plural and composite*: no single official decides, and legitimacy is produced by the joint presence of kinship, religious and community authority. Second, the process is *graduated*: settlement is initially pursued at the closest relevant social level and escalates only when resolution cannot be achieved. This structure bears a functional resemblance to the subsidiarity logic underlying diversion, although the two operate within different normative and institutional settings. Third, remedies are *compound*, combining material compensation, symbolic acknowledgement and a service or ritual obligation, so that reparation and public acknowledgement are delivered in a single act. Fourth, closure is *followed by supervision*: acceptance back into the community is monitored socially rather than certified once and abandoned. The fourth feature is particularly relevant to

³² John Griffiths, "What Is Legal Pluralism," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55.

³³ Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96.

³⁴ Anthony C. Diala, "The Concept of Living Customary Law: A Critique," *The Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (2017): 143–65.

³⁵ Soerjono Soekanto, *Hukum Adat Indonesia*, 2008.

³⁶ "Aceh Qanun Number 9 of 2008 Concerning the Development of Customary Life and Customs" (n.d.).

³⁷ Riza Nizarli Zaituni and M. Yakub Aiyub Kadir, "Non-Penal Policy of Syariah Institutions in Preventing Juveniles from Narcotics Abuse in Aceh Province, Indonesia," *Jambe Law Journal* 4, no. 1 (2021): 21–41.

a limitation identified in the formal diversion framework: post agreement supervision and reintegration are less systematically developed than the procedures governing the conclusion of the diversion agreement itself. Customary practices of continuing social supervision may therefore offer a useful normative insight for strengthening post-agreement monitoring statutory diversion.

These structural features underwrite five substantive convergences with restorative justice: orientation toward victim recovery; deliberation as the primary instrument; the offender's accountability for consequences; the restoration of disturbed social relations; and reintegration as the endpoint of the process rather than as an afterthought.^{38, 39, 40} The convergence is real, and it is the empirical basis of the model developed below.

2.2.1. Three risks that the literature has under-examined

Convergence, however, is not sufficiency. Three risks attend the integration of customary mechanisms into juvenile diversion, and the existing Indonesian literature addresses none of them systematically.

The first is **ceremonial capture**. A customary forum may be convened, photographed and minuted while the substantive decision is made elsewhere, so that the community supplies legitimacy without exercising authority. This is precisely the pathology that Wood and Tauri identify in the New Zealand family group conference, where indigenous form coexists with state control of outcome.⁴¹ The risk is particularly acute in Indonesia because customary participation would be introduced into a procedure that is already administratively driven; without an explicit allocation of decision-making functions, customary institution may be absorbed as ceremonial components rather than recognised as meaningful sources of deliberative authority.

The second is **asymmetry of bargaining power**. A restorative agreement is defensible only if consent is genuinely free, yet in a customary forum, the child may be represented by a family that is itself involved in the kinship negotiation, while the victim may occupy a structurally weaker position in terms of status, gender, or economic power relative to the offender's family. Consent expressed in such a setting may be socially compelled. The Basic Principles anticipate this and require that participation be voluntary and revocable and that agreements be proportionate; the domestic instruments do not.⁴² Any workable model must therefore make the child's consent independently verified rather than presumed from the family's participation.

The third is **the absence of procedural minima and of enforceability**. A customary settlement that has not been formally recognised and ratified by the state may provide insufficient legal protection: the child may fulfil every obligation and still remain exposed to formal prosecution, while a victim whose compensation is not paid may lack an effective mechanism of enforcement. Conversely, an unregulated forum may impose obligations that are degrading, discriminatory or disproportionate to the wrong. Both failures have the same source, which is that the customary agreement currently has no defined legal status within the juvenile process.

³⁸ Ismail, Mantali, and Moha, "Revitalizing Traditional Institutions," *Jambura Law Review*, n.d., 224–29.

³⁹ Lisnawaty Kaluku W. and Julisa Aprilia, "Restorative Justice in The Perspective of Customary Law: A Solution to The Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review*, n.d., 318–22.

⁴⁰ Ariefulloh, "Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 19–36.

⁴¹ Wood and Tauri, *Revisiting New Zealand's 'Gift to the World'*, n.d.

⁴² "ECOSOC Resolution 2002/12, Paras. 7 and 13; Committee on the Rights of the Child, General Comment No. 24, Paras. 17–19." (n.d.).

2.2.2. Comparative lessons from four jurisdictions

Four jurisdictions have confronted the same problem, and their experience yields design lessons that Indonesian scholarship has largely left untranslated. New Zealand made the family group conference a statutory and largely mandatory gateway for youth offending in 1989, achieving comprehensive coverage but, as noted, without transferring decisional authority to Māori institutions. Canada anchors indigenous circumstances in sentencing through section 718.2(e) of the Criminal Code as interpreted in *R v Gladue* and *R v Ipeelee*, and its Youth Criminal Justice Act 2002 provides for extrajudicial measures and conferences; sentencing circles originated in this jurisdiction. Australia combines statutory youth justice conferencing with circle sentencing, and the available evaluation evidence is comparatively concrete: a New South Wales study found that participants in circle sentencing were 9.3 percentage points less likely to receive a custodial sentence than a matched comparison group and also showed lower rates of reoffending.^{43,44} South Africa legislated diversion comprehensively in the Child Justice Act 75 of 2008, prescribing levels of diversion, minimum standards for diversion programmes and a preliminary inquiry that screens every case, while its constitutional jurisprudence recognises living customary law as an evolving source subject to constitutional review.^{45,46}

Table 2. Comparative treatment of community and indigenous mechanisms in juvenile justice

Variable	New Zealand	Canada	Australia	South Africa
Legal basis of community participation	Family group conference established by statute as a general youth justice gateway	Extrajudicial measures and conferences under youth justice legislation; indigenous circumstances mandated in sentencing	Statutory youth justice conferencing; circle sentencing operating in designated local courts	Diversion comprehensively legislated, with prescribed levels and programme standards
Point of entry	Before charge and after a finding of guilt; conference precedes most court disposals	Police and prosecutorial screening; conferences may be convened at several stages	Police or court referral; circle sentencing operates at the sentencing stage	Preliminary inquiry screens every case before trial
Locus of decision	Consensus of participants, but the court retains final authority	Judicial, informed by indigenous circumstances and community submissions	Magistrate decides jointly with elders and community members	Prosecutor and magistrate, against statutory diversion criteria

⁴³ Steve Yeong and Elizabeth Moore, "Circle Sentencing, Incarceration and Recidivism, Crime and Justice Bulletin," *Sydney: NSW Bureau of Crime Statistics and Research*, 2022, 1–22.

⁴⁴ Syamsuddin Muchtar, "Juvenile Criminal Responsibility in Justice Systems: A Comparative Study of Judicial Interpretations in Indonesia and Australia," *Jambe Law Journal* 7, no. 2 (2024): 371–94.

⁴⁵ Anthony C. Diala, "The Concept of Living Customary Law: A Critique," *The Journal of Legal Pluralism and Unofficial Law*, n.d., 150–58.

⁴⁶ Julisa Aprilia Kaluku, "Juvenile Criminal Responsibility in Muslim-Majority States: Between Sharia, State Law, and Restorative Justice," *De Jure: Jurnal Hukum Dan Syaria'h* 18, no. 1 (2026).

Variable	New Zealand	Canada	Australia	South Africa
Safeguards	Statutory entitlement to representation; conference outcomes subject to judicial review	Judicial supervision; reasoned consideration of indigenous circumstances	Eligibility limited by offence type and consent; outcomes recorded by the court	Minimum standards for programmes; accreditation; monitoring of compliance
Principal lesson for Indonesia	Statutory mandating produces coverage but not indigenous authority; form without power yields symbolic restoration	Community knowledge can be made legally relevant without displacing judicial responsibility	Joint decision-making by officials and elders is workable and is associated with reduced custodial outcomes	Diversion is credible only where minimum standards, accreditation and monitoring are legislated

Source: compiled by the author from the comparative literature cited in this section.

Three transferable design principles follow. First, community participation must rest on a *statutory gateway* rather than on the discretionary invitation of an individual investigator or prosecutor, because discretionary invitation reproduces the very unevenness that diversion was meant to cure. Second, the community forum must be subject to *prescribed minimum standards* composition, consent, representation, proportionality and record-keeping, since the South African experience shows that legislated safeguards are what distinguish structured diversion from informal disposal. Third, outcomes must be *supervised and recorded*, both because supervision is the condition of genuine reintegration and because a recorded outcome is the only basis on which the model can later be evaluated. To these must be added a cautionary principle drawn from the New Zealand critique: recognition without a transfer of decisional function produces indigeneity as decoration. A model that fails to allocate real authority to the customary forum will reproduce, in Indonesian form, the pathology that the comparative literature has already documented elsewhere.

2.3. The Integrated Customary Restorative Justice Model (ICRJM)

2.3.1. Design premise: what exactly is integrated

The preceding analysis permits a proposal, but only if the proposal begins with a limitation. Discussions of “integrating customary law” into criminal justice routinely leave unspecified what is to be integrated, and the ambiguity conceals a genuine disagreement. Three candidates must be distinguished. Firstly, customary **norms** are the substantive rules that define wrongs and prescribe sanctions. Second, customary **values** are the orientations that inform settlement: deliberation, restoration, accountability, social balance and reintegration. Third customary **mechanisms** are the institutional forms through which those values operate: the composition of the forum, the graduated escalation of settlement, the compound remedy and the community supervision that follows closure.

ICRJM integrates the second and the third. It does not integrate the first. Three reasons compel that restriction. Substantive customary norms are not uniform, are not published and are not always ascertainable in advance, so their direct application to a child would offend the principle of legality even where Article 2 paragraph (1) of

the 2023 Criminal Code admits living law in principle. Certain customary sanctions corporal, exclusionary, or those attaching stigma to a family line are incompatible with the dignity of the child and with the non-discrimination guarantee, and no verification procedure can render them admissible. And the state's competence to define offences and sanctions is precisely what the constitutional order reserves to the legislature. Values and mechanisms carry no such difficulty: they concern *how* a case is resolved rather than *what* conduct is prohibited or *which* sanction attaches to it. This distinction from the analytical core of the model and directly answers the question of what integration means in practice.

2.3.2. The three pillars and their functional interaction

ICRJM rests on three pillars, but the pillars are not a taxonomy of ingredients. Each answers a distinct question, and the model works only because of the way they constrain one another.

The **normative pillar** answers the question of whether a proposed restorative arrangement *may lawfully be undertaken*. It comprises Pancasila, the 1945 Constitution, the juvenile justice statute, the 2023 Criminal Code, the 2025 Criminal Procedure Code, the Convention on the Rights of the Child and the associated human rights instruments, together with those customary norms that satisfy the living law criteria. Its function is limitation: it defines the outer boundary within which any settlement must fall.⁴⁷

The **sociocultural pillar** answers the question *why such an arrangement may achieve substantive restoration*. It comprises the values of deliberation and consensus, kinship, mutual assistance, peace, reconciliation, social balance and reintegration. Its function is motivational which supplies the willingness to participate and to comply the formal legal procedure that may require but cannot produce.^{48,49}

The **institutional pillar** answers the question *who acts*. It comprises investigators, public prosecutors, juvenile judges, community counsellors and professional social workers on the state side, and customary institutions and customary, religious and community leaders on the community side, together with the victim, the child, and their respective families.⁵⁰

The interaction runs in a determinate direction. The normative pillar constrains the socio-cultural pillar: a value is admissible only in the form that survives constitutional and child-rights review, so that reconciliation may not be purchased at the cost of a child's dignity. The socio-cultural pillar supplies what the normative pillar cannot generate, namely the internal motivation of the participants; a legally impeccable diversion that no one believes in produces compliance without restoration. The institutional pillar is where the two meet, and it is therefore the point of failure. If institutional design does not allocate meaningful decisional functions to the customary forum, the socio-cultural pillar risks being reduced to ceremony, and the model may reproduce the symbolic pattern identified in Part 2.2. This is why the operational mechanism below assigns each actor a defined function at a defined stage rather than listing participants.

⁴⁷ "Article 18B Paragraph (2), the 1945 Constitution; Article 1 Point 7, Article 6 and Article 7, Law Number 11 of 2012; Article 2 Paragraph (1), Law Number 1 of 2023; Articles 3 and 37(b), Convention on the Rights of the Child, 1989." (n.d.).

⁴⁸ Walter L. Moll, *Eugen Ehrlich, Fundamental Principles of the Sociology of Law*, Trans. Walter L. Moll.

⁴⁹ satjipto raharjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, n.d.

⁵⁰ "Articles 6, 7, 8 and 14, Law Number 11 of 2012; Supreme Court Regulation Number 1 of 2024." (n.d.).

2.3.3. Operational mechanism: why five stages, and where customary law enters

The model proceeds through five stages. The number is not arbitrary: the process must pass four control points and one substantive event, and each stage exists to prevent a specific and identifiable failure. Removing any one produces a predictable pathology.

- **Stage I — eligibility screening.** The context is assessed against offence type, the child's age, the degree of harm to the victim, the suitability of a restorative response and the presence of a living customary institution in the relevant community. This stage prevents the routing of cases that are legally unsuitable into a community forum. It is called a state legal determination, and customary authorities do not participate in it.
- **Stage II — verification of customary norms.** The norms proposed for use must satisfy four cumulative requirements: consistency with Pancasila; the 1945 Constitution; respect for human rights; the guarantee of protection and the best interests of the child. This stage prevents the application of norms that are degrading, discriminatory or disproportionate, which categorized as an operational answer to Diala's observation that living custom that is contested and adaptive. Customary institutions enter here as the source and authenticator of the norm; the verification decision itself remains with the state official conducting the diversion.
- **Stage III — the customary restorative deliberation forum.** This is the substantive event rather than a control point. The forum convenes the child, the victim, both families, the community counsellor and the customary, religious and community leaders, and works toward acknowledgement of wrongdoing, apology, reparation, agreement and reintegration. Customary institutions lead this stage: they facilitate, they order the sequence of speaking according to local protocol, and they pronounce closure. Without this stage the process is negotiation, not restoration.
- **Stage IV — ratification of the agreement.** The agreement is reduced to writing and ratified by the competent official according to the stage of examination. This stage is indispensable because it constitutes the legal link between customary settlements and the formal juvenile justice process: ratification gives the agreement formal legal force that provides legal protection for the child against renewed proceedings which is concerning the same act, and establishing a basis for enforcing the victim's agreed entitlement. Customary leaders co-sign; they do not ratify.
- **Stage V — monitoring and social reintegration.** Implementation of the agreement, the victim's actual recovery, the child's conduct and the community's acceptance of the child are monitored jointly by law enforcement officers, community counsellors, customary institutions and families. This stage prevents the conflation of reaching an agreement with achieving restoration, and it translates the customary practice of continuing social supervision into a structured post-agreement obligation. It also generates the record without which the model cannot be evaluated.

The sequence is likewise not interchangeable. Eligibility must precede norm verification, because there is no point in verifying norms for a case that should not be diverted; norm verification must precede the forum, because the forum's legitimacy depends on the admissibility of the framework within which it deliberates; ratification must follow rather than precede the forum, because ratifying in advance would convert judicial supervision into a formality; and monitoring must follow ratification, because

only a ratified obligation can be enforced. Figure 1 represents the model and the relations among its elements.

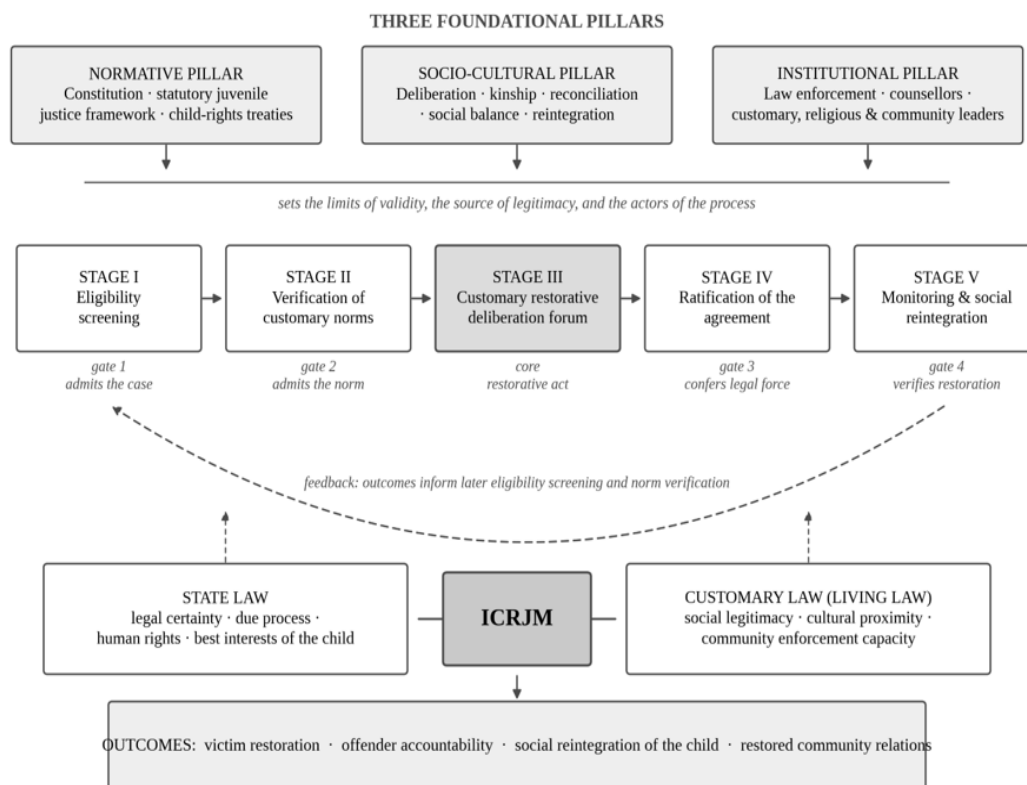


Figure 1. Conceptual framework of the Integrated Customary Restorative Justice Model (ICRJM)

Source: constructed by the author.

Table 3 compares the conventional diversion model with ICRJM. The third column states, for each aspect, the mechanism by which the difference is expected to affect the effectiveness of diversion; it is included because a comparative matrix that merely lists contrasts describes a model without explaining it.

Table 3. Conventional diversion and ICRJM compared, with the mechanism of expected effect

Aspect	Conventional diversion model / ICRJM	Mechanism by which effectiveness is affected
Basis of settlement	Formal and procedural / substantive and restorative	Shifts the measure of success from case closure to demonstrable repair, which changes what officials optimise for
Dominant actor	Law enforcement officers / officers together with the community	Joint decision-making raises the probability of compliance because obligations are owed to people the child must continue to live among
Role of the victim	Ancillary / principal participant	Direct participation is the variable most strongly associated with victim satisfaction in the comparative evidence

Aspect	Conventional diversion model / ICRJM	Mechanism by which effectiveness is affected
Role of the community	Limited / active and integrated	Supplies the supervisory capacity the state lacks at village level, at negligible marginal cost
Role of customary law	Unsystematic and informal / integrated through verification	Converts an unregulated practice into an admissible procedure, removing the risk of degrading or disproportionate obligations
Legitimacy	Legal / legal, social and cultural	Reduces the incentive for parties to abandon the agreement, because withdrawal now carries social as well as legal cost
Outcome	Termination of proceedings / restoration and reintegration	Reintegration addresses the stigma that formal processing generates and that termination alone does not remove
Supervision	Ends at the agreement / continues through monitoring	Detects non-compliance while intervention is still possible, and produces the data required for evaluation
Paradigm and orientation	State-based justice, legal certainty / community-based justice, substantive justice	Aligns the mechanism with the normative order that the participants actually recognise

Source: constructed by the author.

2.3.4. Theoretical implications: extending restorative justice theory

ICRJM supports a theoretical development that may be called a living law-based theory of restorative justice. Its central claim is that, in a legally plural society, the effectiveness of restorative justice is determined not only by the availability of positive norms but also by the degree of institutional integration between state law and the law living in society; where such integration is ceremonial rather than functional, restorative outcomes are likely to remain symbolic. The claim is best stated by showing what it adds to four existing bodies of theory.

Zehr. Zehr conceptualises restorative justice as the repair of harm through the participation of those affected, and his account presupposes that participants share a normative frame within which harm, apology and repair are legible. In a plural order that presupposition does not hold, because the frame is itself contested. ICRJM extends Zehr by adding a prior operation the identification and verification of the normative frame and thereby develops a theory of restorative *process* into one that also accounts for normative provenance.

Braithwaite. Reintegrative shaming requires a community with the standing both to express disapproval and to readmit; Braithwaite treats communitarianism as a macro-level variable conditioning that capacity. ICRJM specifies the institutional carrier of the variable. The customary institution is not merely a proxy for a diffuse community sentiment but a norm-bearing body with an identifiable membership, an internal procedure and a capacity to enforce. This converts a background condition of the theory into an operable element of institutional design.⁵¹

Ehrlich. Living law theory helps explain why state law may under performs, but it remains primarily descriptive: it offers no clear criterion for determining which

⁵¹ Braithwaite, "Crime, Shame and Reintegration," n.d., 84–97.

living norms warrant state recognition, and it is on this point that appeals to *hukum yang hidup* may remain rhetorically powerful yet legally indeterminate. The four-part verification test at Stage II supplies such a criterion, converting Ehrlich's descriptive sociology into a normative-doctrinal filter capable of being applied by a prosecutor or a judge.

Griffiths. Strong legal pluralism denies the centrality of the state; weak pluralism reduces custom to a permission granted by the state and revocable by it. ICRJM occupies a defensible middle position that may be termed *regulated pluralism*: the state retains control over admissibility which cases qualify, which customary elements may be recognised, and which agreements may be ratified while the customary order retains authority over the deliberative process, including facilitation, sequence and closure. The division is not a compromise between the two models but a distinct third position, in which each order governs the domain in which its competence is greatest.

Friedman's framework is affected in a corresponding way. Where Friedman identifies legal culture as a determinant of legal effectiveness, ICRJM makes it more operational by institutionalising its normative carrier, so that legal culture is treated not merely as a residual explanation for failure but as an element of institutional design.^{52,53}

So stated, the theory is falsifiable, and three propositions follow that further research can test. First, diversion conducted through a verified customary forum will produce higher rates of full compliance with agreed obligations than diversion conducted administratively, because obligations are owed within a continuing social relationship. Second, victim satisfaction will vary with the degree of the victim's substantive participation in the forum rather than with the monetary value of the reparation obtained. Third, where the customary forum is convened but decisional functions remain wholly with state officials, outcomes are expected not to differ significantly from conventional diversion; an expectation formulated here as the ceremonial capture hypothesis and as the proposition most capable of challenging the model. Formulating the theory in this way responds to the concern that models of this kind are asserted rather than demonstrated.

2.3.5. Legal-policy implications

The model implies a determinate reform agenda rather than a general appeal for greater attention to custom. Six measures follow, ordered by instrument.

- **Amendment of the juvenile justice statute.** Law Number 11 of 2012 should be amended to insert a provision recognising the verified customary restorative forum as an approved form of diversion; to specify the minimum composition of the forum; to require the presence of a community counsellor and the availability of legal assistance to the child during the deliberation; to require the child's informed consent, revocable at any point; and to provide expressly that statements made in the forum may not be used as evidence of guilt if diversion fails.
- **A Government Regulation on minimum standards.** Following the South African precedent, an implementing regulation should prescribe minimum standards for customary restorative forums, a procedure for the accreditation and registration of the customary institutions competent to convene them, and a code of conduct addressing proportionality and the protection of the child's dignity.

⁵² Friedman, "The Legal System," n.d., 15–19.

⁵³ Philippe Nonet and Philip Selznick, "Law and Society in Transition: Toward Responsive Law," *New York: Harper & Row*, 1978, 73–88.

- **Supreme Court Regulation.** Supreme Court Regulation Number 1 of 2024 should be supplemented so that judges verify customary agreements against the four Stage II criteria before ratification, and so that a standard form of ratification order is available, stating the obligations assumed, the period of monitoring and the consequences of non-compliance.
- **Prosecutorial and police regulations.** Attorney General Regulation Number 15 of 2020 and Indonesian National Police Regulation Number 8 of 2021 should be harmonised with the amended statute on eligibility thresholds, and should adopt a common case-recording format so that outcomes at the investigative and prosecutorial stages are comparable.
- **A national inventory and a monitoring system.** A national inventory of customary institutions and restorative practices satisfying the applicable living law criteria should be developed with the participation of the communities concerned, while a monitoring information system should record agreements, compliance and subsequent offending. Without such a system the propositions in Part 2.3.4 cannot be tested and the reform cannot be evaluated.
- **Capacity building.** Customary, religious and community leaders who facilitate forums require training in child rights, in the limits of proportionality and in the recognition of coerced consent, while officers require training in customary procedure. A quadruple-helix arrangement involving government, universities, customary institutions, and civil society may provide an appropriate institutional mechanism for delivering such capacity building.

Taken together, these measures address the three risks identified in Part 2.2.1: the statutory gateway and the allocation of decisional functions address ceremonial capture; independent verification of consent and legal assistance address asymmetry of bargaining power; and minimum standards, ratification and monitoring address the absence of procedural minima and of enforceability. The scope of the model should also be stated honestly. It is designed for offences already within the eligibility range of diversion. It is not proposed for serious violent or sexual offences against children, where the asymmetry of power within a community forum is most acute and where the international standards counsel particular caution.^{54, 55}

3. CONCLUSION

Restorative justice for children in Indonesia rests on foundations that are philosophically congruent with Pancasila, constitutionally secured by Articles 28B paragraph (2), 28D paragraph (1) and 18B paragraph (2) of the 1945 Constitution, and juridically elaborated across the juvenile justice statute and the sectoral instruments. Compared with international standards, however, the domestic framework converges on aims while remaining comparatively underdeveloped in the safeguards governing the restorative process, including voluntariness, revocability, representation, proportionality, and the evidentiary status of statement made during the process. The deficiency is therefore not one of commitment but of procedural specification.

Customary criminal law living in Indonesian communities may be understood as an autochthonous form of restorative justice, and its convergence with restorative

⁵⁴ “Committee on the Rights of the Child, General Comment No. 24, Paras. 15–20. On the Distinct Treatment Required for Offences Involving the Sexual Exploitation of Children,” n.d.

⁵⁵ Septianita, Hesti Pujiyono, and Irma Cahyaningtyas, “Online Child Sexual Exploitation and Abuse as Organized Crime: Towards a New International Legal Framework,” *Litigasi* 27, no. 1 (2026).

principles is structural rather than merely thematic: authority is composite, settlement is graduated, remedies are compound, and closure is followed by supervision. That convergence has limits which this study has stated rather than minimised. Customary practice is adaptive and contested rather than codified; customary forums are vulnerable to ceremonial capture and to asymmetries of power affecting victims and children; and a customary settlement that the state has not ratified protects no one. Integration is therefore defensible in respect of customary values and mechanisms, and not in respect of customary sanctions.

The Integrated Customary Restorative Justice Model responds to those findings. Its contribution to legal theory is to add a legitimacy condition to restorative justice theory: it extends Zehr by requiring normative frame to be identified before repair begins, specifies the institutional carrier of Braithwaite's communitarian variable, translates Ehrlich's living law from a descriptive concept into an applicable admissibility test, and identifies a middle position between Griffiths' strong and weak pluralism in the form of regulated pluralism, under which the state governs admissibility while the customary order governs the deliberative process. Its contribution to juvenile justice reform is a five-stage mechanism in which each stage prevents an identifiable failure and in which customary institutions hold defined functions authenticating norms, leading the deliberation, co-signing the agreement and sharing supervision without acquiring the power to determine eligibility or to confer legal force. Its contribution to Indonesian legal pluralism is to show that Article 2 paragraph (1) of the 2023 Criminal Code can be operationalised through procedural design rather than through the substantive reception of customary offences.

Three consequences follow for legal policy. The juvenile justice statute should be amended to establish the verified customary forum as an approved form of diversion, with prescribed composition, consent and representation requirements and an express protection for statements made in the forum. Implementing instruments should follow: a Government Regulation on minimum standards and the accreditation of customary institutions; a supplement to the Supreme Court Regulation requiring verification of customary agreements against the four criteria and providing a standard ratification order; and harmonised prosecutorial and police regulations adopting a common recording format. A national inventory of qualifying customary norms and a monitoring system recording agreements, compliance and subsequent offending should be established, since without such a record the reform cannot be evaluated at all.

The study is doctrinal, and its central propositions are offered as testable rather than as established. Empirical and socio-legal research should therefore examine whether diversion conducted through a verified customary forum produces higher rates of full compliance than administrative diversion; whether victim satisfaction tracks substantive participation rather than the value of reparation; and, most importantly, whether outcomes differ where the forum is convened but decisional functions remain wholly with state officials. The last of these would refute the model, and for that reason it is the question with which further research should begin.

REFERENCES

- Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs (n.d.).
- Anthony C. Diala. "The Concept of Living Customary Law: A Critique." *The Journal of*

- Legal Pluralism and Unofficial Law*, n.d., 150–58.
- . “The Concept of Living Customary Law: A Critique.” *The Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (2017): 143–65.
- Aprilianda, Nurini, and Liza Agnesta Krisna. “Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warni.” *Jambura Law Review* 5, no. 1 (n.d.).
- Ariefulloh. “Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives.” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 19–36.
- Article 1 point 7, Article 6 and Article 7, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System; Attorney General Regulation Number 15 of 2020; Indonesian National Police Regulation Number 8 of 2021; Supreme Court Regulation Number 1 of (n.d.).
- Article 18B paragraph (2), the 1945 Constitution; Article 1 point 7, Article 6 and Article 7, Law Number 11 of 2012; Article 2 paragraph (1), Law Number 1 of 2023; Articles 3 and 37(b), Convention on the Rights of the Child, 1989. (n.d.).
- Article 18B paragraph (2), the 1945 Constitution of the Republic of Indonesia; Article 2 paragraph (1), Law Number 1 of 2023 concerning the Criminal Code (n.d.).
- Articles 3, 37(b) and 40(3)(b), United Nations Convention on the Rights of the Child, (1989).
- Articles 6, 7, 8 and 14, Law Number 11 of 2012; Supreme Court Regulation Number 1 of 2024. (n.d.).
- Badu, Lisnawaty Wadju, and Julisa Aprilia Kaluku. “Restorative Justice in the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children.” *Jambura Law Riview* 4, no. 2 (2022): 313–27.
- Braithwaite. “Crime, Shame and Reintegration,” n.d., 84–97.
- “Committee on the Rights of the Child, General Comment No. 24, Paras. 15–20. On the Distinct Treatment Required for Offences Involving the Sexual Exploitation of Children,” n.d.
- ECOSOC Resolution 2002/12, paras. 7 and 13; Committee on the Rights of the Child, General Comment No. 24, paras. 17–19. (n.d.).
- Friedman. “The Legal System,” n.d., 15–19.
- Gilang Ramadhan Suharto. “Restorative Justice Peradilan Pidana Anak Di Indonesia.” *Lex Crimen IV* 1 (n.d.).
- Howard Zehr. *The Little Book of Restorative Justice: Revised and Updated*, 2015.
- Ismail, Dian Ekawaty, Avelia Rahmah Y. Mantali, and Mohamad Rivaldi Moha. “The Concept of Revitalizing Traditional Institutions in the Criminal Law System to Realize Restorative Justice.” *Jambura Law Riview* 5, no. 2 (2023): 220–34.
- Ismail, Mantali, and Moha. “Revitalizing Traditional Institutions.” *Jambura Law Riview*, n.d., 224–29.
- Jeff Bouffard, Maisha Cooper, and Kathleen Bergseth. “The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile

- Offenders.” *Youth Violence and Juvenile Justice* 15, no. 4 (2017): 465–80.
- John Griffiths. “What Is Legal Pluralism.” *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55.
- Julisa Aprilia Kaluku. “Juvenile Criminal Responsibility in Muslim-Majority States: Between Sharia, State Law, and Restorative Justice.” *De Jure: Jurnal Hukum Dan Syar’iah* 18, no. 1 (2026).
- Junaidi. “The Restorative Justice Approach in the Tepung Tawar Tradition: How Do Customary Rules Resolve Criminal Cases?” *Udayana Journal of Law and Culture* 10, no. 1 (2026): 26–51.
- Kathleen Daly. “Restorative Justice: The Real Story.” *Punishment & Society* 4, no. 1 (2002): 55–79.
- Kimbrell, Catherine S., David B. Wilson, and Ajima Olaghere. “Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness.” *Criminology & Public Policy* 22, no. 1 (n.d.): 161–95.
- Lawrence M. Friedman. *The Legal System: A Social Science Perspective*, 1975.
- Makhrus Munajat. “Sistem Diversi Dan Restorative Justice Dalam Peradilan Pidana Anak Di Indonesia.” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 50, no. 2 (2016): 565–86.
- Mark S. Umbreit, and Marilyn Peterson Armour. “Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community.” *Washington University Journal of Law & Policy*, 2011, 65–89.
- Marlina. *Peradilan Pidana Anak Di Indonesia: Pengembangan Konsep Diversi Dan Restorative Justice*, 2012.
- Marlina, and Mahmud Mulyadi. “Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh.” *Cogent Social Sciences* 10, no. 1 (2024).
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Edisi Revi. Jakarta: Kencana, 2016.
- Ness, Daniel W. Van, and Karen Heetderks Strong. *Restoring Justice: An Introduction to Restorative Justice*, n.d.
- Nonet, Philippe, and Philip Selznick. “Law and Society in Transition: Toward Responsive Law.” *New York: Harper & Row*, 1978, 73–88.
- Ramli, Misran, Syamsul Rijal, Reni Surya, and Irhamni Malika. “State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism.” *Samarah* 8, no. 2 (2024): 872–90. <https://doi.org/10.22373/sjkh.v8i2.15924>.
- Rismana, Daud, Ali Maskur, Rifi Maria Laila Fitri Permonoputri, Hariyanto, and Hajar Salamah Salsabila Hariz. “The Legal Effectiveness of Juvenile Diversion: A Study of the Indonesian Juvenile Justice System.” *Khazanah Hukum* 7, no. 2 (2025): 190–205. <https://doi.org/10.15575/kh.v7i2.44162>.
- Ristama, Yoga, and Hibnu Nugroho. “Diversion Process as a Transformative Reform of the Criminal Justice System for Children in Conflict with the Law.” *Jurnal IUS*

- Kajian Hukum Dan Keadilan* 14, no. 1 (2026): 57–73.
- Sally Engle Merry. “Legal Pluralism.” *Law & Society Review* 22, no. 5 (1988): 869–96.
- Sami'an, Achmad Irwan Hamzani Sami'an, and Nur Khasanah. “Restorative Justice and Legal Pluralism in Indonesia: Implications for Atrocity Crimes and Global Criminal Justice Reform.” *International Criminal Law Review* 26, no. 2 (2026): 217–49.
- satjipto raharjo. *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, n.d.
- Septianita, Hesti Pujiyono, and Irma Cahyaningtyas. “Online Child Sexual Exploitation and Abuse as Organized Crime: Towards a New International Legal Framework.” *Litigasi* 27, no. 1 (2026).
- Soerjono Soekanto. *Hukum Adat Indonesia*, 2008.
- Syamsuddin Muchtar. “Juvenile Criminal Responsibility in Justice Systems: A Comparative Study of Judicial Interpretations in Indonesia and Australia.” *Jambe Law Journal* 7, no. 2 (2024): 371–94.
- Tauri, Wood and. *Revisiting New Zealand's 'Gift to the World'*, n.d.
- United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on Children's Rights in the Child Justice System, CRC/C/GC/24. (n.d.).
- United Nations Economic and Social Council Resolution 2002/12, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, paras. 7, 8, 13 and 15; United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes, (n.d.).
- United Nations Economic and Social Council Resolution 2002/12, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, paras. 7, 8, 13 and 15; United Nations Office on Drugs and Crime (n.d.).
- W., Lisnawaty Kaluku, and Julisa Aprilia. “Restorative Justice in The Perspective of Customary Law: A Solution to The Settlement of Narcotics Crimes Committed by Children.” *Jambura Law Review*, n.d., 318–22.
- Walter L. Moll. *Eugen Ehrlich, Fundamental Principles of the Sociology of Law*, Trans. Walter L. Moll, 1936.
- Wood, William R., and Juan Tauri. “Revisiting New Zealand's ‘Gift to the World’: Demythologising Youth Justice Family Group Conferencing in Aotearoa New Zealand.” *Contemporary Justice Review* 28, no. 2 (2025): 220–44.
- Yeong, Steve, and Elizabeth Moore. “Circle Sentencing, Incarceration and Recidivism, Crime and Justice Bulletin.” *Sydney: NSW Bureau of Crime Statistics and Research*, 2022, 1–22.
- Zaituni, Riza Nizarli, and M. Yakub Aiyub Kadir. “Non-Penal Policy of Syariah Institutions in Preventing Juveniles from Narcotics Abuse in Aceh Province, Indonesia.” *Jambe Law Journal* 4, no. 1 (2021): 21–41.
- Zehr. *Little Book of Restorative Justice; John Braithwaite, Crime, Shame and Reintegration*, n.d.