

Integrating Tradition into Legal Reform: Reconstructing the Role of Reconciliatory Customary Judges in Diversion Processes within the Interplay of Islamic, Customary, and National Law

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Abstract: Juvenile cases in conflict with the law are ideally resolved through diversion, a restorative mechanism that prioritizes recovery, avoids stigmatization, and encourages participatory dialogue among stakeholders. However, in practice, diversion implementation in Indonesia often encounters systemic and cultural barriers, especially when relying solely on formal legal institutions. This study explores the role of Reconciliatory Customary Judges (RCJs) in Tana Toraja as culturally embedded mediators and reconstructs their potential function within the national diversion framework. Using a mixed-methods approach, the research combined qualitative interviews with customary leaders (to parenge), religious figures, and law enforcement actors, alongside quantitative surveys conducted among community members. The empirical findings reveal that RCJs hold significant social legitimacy, drawn from their alignment with tongkonan kinship systems and aluk todolo norms of deliberation (*musyawarah*). Their mediation practices reflect Islamic principles of reconciliation (*sulh*) and complement the restorative justice goals of the Juvenile Criminal Justice System (UU-SPPA). The study identifies a legal pluralism in practice, wherein Islamic, customary, and national legal traditions converge. RCJs have proven effective in resolving community conflicts and are trusted across generational lines, making them ideal mediators in diversion cases. The results call for the institutionalization of RCJ roles across diversion stages, including police, prosecution, and judiciary levels, to enhance cultural responsiveness, legal legitimacy, and social restoration. This research offers a transformative framework for integrating localized wisdom into national legal reform. By recognizing RCJs as formal diversion mediators, Indonesia can bridge gaps between normative aspirations and socio-cultural realities, promoting a restorative justice system that is legally sound, culturally resonant, and constitutionally grounded.

Keywords: Diversion; Reconciliatory Customary Judge; Legal Pluralism; Restorative Justice; Tana Toraja.

Abstrak: Kasus anak yang berhadapan dengan hukum idealnya diselesaikan melalui mekanisme diversi, yaitu pendekatan restoratif yang mengedepankan pemulihan, menghindari stigmatisasi, dan mendorong dialog partisipatif antar pihak terkait. Namun, dalam praktiknya, pelaksanaan diversi di Indonesia sering kali menghadapi hambatan sistemik dan kultural, terutama ketika hanya mengandalkan institusi hukum formal. Penelitian ini mengeksplorasi peran Hakim Adat Pendamai (HAP) di Tana Toraja sebagai mediator yang berakar kuat dalam budaya lokal, sekaligus merekonstruksi potensi fungsinya dalam kerangka diversi nasional. Dengan menggunakan pendekatan metode campuran (mixed-methods), penelitian ini memadukan wawancara kualitatif dengan para pemimpin adat (to parenge), tokoh agama, dan aparat penegak hukum, serta survei kuantitatif yang dilakukan kepada masyarakat setempat. Temuan empiris menunjukkan bahwa HAP memiliki legitimasi sosial yang tinggi, yang berasal dari keterkaitannya dengan sistem kekerabatan tongkonan dan norma musyawarah berbasis aluk todolo. Praktik mediasi yang dilakukan oleh HAP mencerminkan prinsip-prinsip perdamaian dalam hukum Islam (*sulh*), serta selaras dengan tujuan keadilan restoratif dalam Sistem Peradilan Pidana Anak (UU-SPPA). Studi ini mengungkap adanya praktik pluralisme hukum, di mana tradisi hukum Islam, adat, dan nasional saling berinteraksi. HAP terbukti efektif dalam menyelesaikan konflik masyarakat dan dipercaya lintas generasi, menjadikannya mediator yang ideal dalam proses diversi. Hasil penelitian ini mendorong pelembagaan peran HAP dalam seluruh tahapan diversi, termasuk pada tingkat kepolisian, kejaksaaan, dan peradilan, guna meningkatkan responsivitas budaya, legitimasi hukum, dan pemulihannya sosial. Penelitian ini menawarkan kerangka transformasi untuk mengintegrasikan kearifan lokal ke dalam reformasi hukum nasional. Dengan mengakui HAP sebagai mediator formal dalam mekanisme diversi, Indonesia dapat menjembatani kesenjangan antara idealitas normatif dan realitas sosiokultural, serta mendorong sistem keadilan restoratif yang sah secara hukum, berakar pada budaya lokal, dan dijamin oleh konstitusi.

Kata kunci: Diversi; Hakim Adat Rekonsiliator; Pluralisme Hukum; Keadilan Restoratif; Tana Toraja.

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Introduction

The idea of decentralization becomes relevant as an effort to grant greater authority to regional governments in handling social and political affairs, including the resolution of juvenile cases. This model allows local governments to adopt forms of local governance rooted in customary structures or traditional authority, which can strengthen restorative justice approaches such as diversion through the involvement of traditional leaders and local institutions.¹

Diversion serves as an alternative dispute resolution mechanism for children in conflict with the law, operating outside formal judicial proceedings.² Based on the ideas of restorative justice, it prioritizes rehabilitation above punishment in an effort to reconcile the needs of communities, offenders, and victims while minimizing stigmatization.³ The success of diversion's implementation hinges on collaborative engagement among stakeholders, particularly community actors.⁴ Yet, empirical evidence reveals persistent shortcomings in achieving its objectives.

Previous studies found that challenges limiting the effectiveness of diversion include limited community tolerance that supports

the efficiency of achieving diversion,⁵ the lack of involvement of traditional leaders as mediators, restrictive legal frameworks,⁶ and inadequate accountability mechanisms for non-compliant law enforcement officials.⁷ Compounding these issues, punitive interventions contribute to high rates of recidivism among youth.⁸

The issue of legal pluralism also arises in some countries, where traditional or customary laws coexist with formal legal systems, occasionally leading to conflicts in governance.⁹ This condition becomes particularly relevant in the context of diversion, where the inclusion of indigenous dispute resolution mechanisms often clashes with rigid state legal procedures.

A qualitative study in Australia highlights systemic barriers, revealing that practitioners often have heavy workloads and time constraints, forcing them to make rushed decisions, undermining their ability to assess cases or fully engage in diversion's restorative follow-up. While diversion programs have

⁵ Eprina Mawati Si Boro and others, 'Efektivitas Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia', *JURNAL EKONOMI, BISNIS DAN HUMANIORA (EKSISHUM)*, 4.1 (2024), doi:10.63494/eksishum.v4i1.130.

⁶ Muliani S and others, 'Reformulasi Syarat Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia', *Jurnal Pembangunan Hukum Indonesia*, 5 (2023), pp. 358–73, doi:10.14710/jphi.v5i2.358-373.

⁷ Dedy Sumardi, Mansari Mansari, and Maulana Albaba, 'Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012', *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, 11 (2022), p. 248, doi:10.22373/legitimasi.v11i2.16010.

⁸ Rachael Green and others, 'Police Decision-Making with Young Offenders: Examining Barriers to the Use of Diversion Options', *Australian & New Zealand Journal of Criminology*, 53 (2019), p. 000486581987973, doi:10.1177/0004865819879736.

⁹ Haryanto Haryanto, Muhammad Mukhlis, and Daud Rismana, 'The Role and Authority of the Deputy Regional Head According to Islamic Principles within the Framework of Regional Government Law', *JURIS (Jurnal Ilmiah Syariah)*, 24 (2025), p. 13, doi:10.31958/juris.v24i1.12678.

¹ Muhammad Mukhlis and others, 'Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasah', *Al-Istinbath: Jurnal Hukum Islam*, 9 (2024), pp. 505–26, doi:10.29240/jhi.v9i2.9709.

² Siti Zubaedah, Andi Tira, and Almusawir Almusawir, 'Implementation of Diversion on Examining the Process of Children in Conflict with the Law', *Jurnal Ilmiah Peuradeun*, 11 (2023), p. 221, doi:10.26811/peuradeun.v11i1.777.

³ Diah Hariyanto and Gde Made Swardhana, 'optimalisasi pelaksanaan diversi dalam sistem peradilan pidana anak yang berorientasi pada restorative justice di kota denpasar', *Jurnal Legislasi Indonesia*, 18 (2021), p. 394, doi:10.54629/jli.v18i3.787.

⁴ Arief Syahrul Alam and Ani Purwati, 'Diversi Sebagai Wujud Kebijakan Pemidanaan Dalam Sistem Peradilan Pidana Anak Di Indonesia', *De Jure: Jurnal Hukum Dan Syar'iah*, 7.2 (2015), doi:10.18860/j-fsh.v7i2.3524.

theoretical support, they noted that their implementation is perceived as more time-consumed than conventional punitive measures—a critical disincentive in resource-strapped systems.¹⁰ In response, traditional leaders have emerged as critical actors in advancing diversion's restorative goals, safeguarding children's rights, and promoting social cohesiveness through conflict resolution that is considerate of cultural differences. Indigenous communities in Indonesia, for instance, have maintained local restorative justice systems based on traditional standards for a long time, resolving offenses committed by community members without reliance on formal judicial intervention.¹¹

The Toraja people of Indonesia reflect this dynamic. Their sociocultural identity is anchored in *tongkonan*—a traditional communal house symbolizing ancestral authority, collective ownership, and cultural continuity¹²—and *aluk todolo*, an indigenous spiritual belief system governing communal harmony.¹³ Central to Toraja social governance is the concept of *kalimatun sawa* (Arabic: “mutual agreement”), which promotes interfaith tolerance and coexistence (Wahyudi, 2024). These traditions are operationalized through informal institutions

¹⁰ Green and others, ‘Police Decision-Making with Young Offenders: Examining Barriers to the Use of Diversion Options’.

¹¹ Zulfia Hanum Alfi Syahr and others, ‘The Role of Indigenous Peoples, Social Workers, and the Syar’iyah Court in Diversion of Children Perpetrators of Jinayah’, *Al-Manahij: Jurnal Kajian Hukum Islam*, 17.1 (2023), doi:10.24090/mnh.v17i1.7349.

¹² Nurhakki Nurhakki, Ahmad Sultra Rustan, and Muhammad Taufiq Syam, ‘The Habituation of Tongkonan Communication as Adhesives for Religious Harmony in Toraja People’, *Jurnal Adabiyah*, 21.1 (2021), doi:10.24252/jad.v21i1a10.

¹³ Marcelina Sanda Lebang Pakan, Maria Heny Pratikno, and Welly E Mamosey, ‘Rumah Adat “Tongkonan” Orang Toraja Kabupaten Tana Toraja Propinsi Sulawesi Selatan’, *Holistik*, 11.22 (2018).

like the *to parenge* (customary leaders) and *Hakim Adat Pendamai* (Reconciliatory Customary Judges) who resolve disputes via consensus-driven deliberation. As custodians of customary law, Reconciliatory Customary Judge (RCJ) wield significant moral authority, mediating civil and criminal conflicts while preserving transgenerational social norms.

Nonetheless, despite diversion's formal endorsement under Law No 11/2012 (UU SPPA) and Supreme Court Regulation No 4/2014, national policy still lacks explicit guidance on how Reconciliatory Customary Judges (RCJs) should apply Sharia principles—such as *islah* (reconciliation) and *rahmah* (mercy)—in mediation panels. Although community participation is enshrined in principle, RCJs frequently operate informally, without a clear legal mandate or “Sharia-inspired” procedural manual to steer their involvement at each stage of the diversion process. Embedding *maqāṣid*-based mandates—e.g. *hifz al-nafs* (protection of life) and *hifz al-‘aql* (protection of intellect)—in joint ministerial decrees or PERMA guidelines would ensure that adat mediation also fulfills Islamic ethical objectives, not merely local custom.¹⁴

Moreover, normative–empirical research shows that, absent technical regulations, customary deliberations proceed in isolation from formal courts and from *fiqh* procedural norms. Comparative studies reveal that when diversion protocols explicitly integrate *‘adl* (justice) and *maṣlaḥah* (public interest) into referral, hearing and reporting stages, outcomes attain both legal recognition and moral authority. Drafting a standardised code—citing both adat rules and fatwa-informed guidelines—would enable

¹⁴ Hadi Sucipto and others, ‘Transformation of Public Trust in Restorative Justice by the Prosecutor’s Office: An Islamic and Social Law Approach in the Contemporary Era’, *MILRev: Metro Islamic Law Review*, 3 (2024), pp. 364–87, doi:10.32332/milrev.v3i2.9938.

supervising judges to review and endorse RCJ decisions consistently, thereby harmonising customary, Islamic and national procedures.¹⁵

Empirical fieldwork further confirms that Sharia-compliant, rule-based involvement of RCJs delivers superior results. In pilot communities across Jambi and South Sulawesi—where mediators reference Qur'an 5:8 on justice and Hadith on compassion—compliance with diversion agreements reaches 90 per cent, and youth recidivism falls by nearly 40 per cent, far surpassing national averages where RCJs lack formal roles. These figures underscore the rehabilitative power of culturally and religiously embedded mediation, demonstrating the urgent need to enshrine RCJs' dual mandate—adat and Sharia—in Indonesia's official diversion protocols.

This study examines the role of RCJ in resolving conflicts through customary judicial institutions. By analyzing how RCJs bridge traditional justice frameworks with formal legal systems, this study proposes a reconceptualized model for mediator involvement—one that shifts diversion's implementation from law enforcement-centric approaches to community-driven, culturally embedded practices.

Method

This study adopts an empirical legal research design¹⁶ combined with a prescriptive-analytical approach to explore how legal pluralism—Islamic, customary, and national law—interacts in the implementation

¹⁵ Sucipto and others, 'Transformation of Public Trust in Restorative Justice by the Prosecutor's Office: An Islamic and Social Law Approach in the Contemporary Era'.

¹⁶ Jason M. Chin and Kathryn Zeiler, 'Replicability in Empirical Legal Research', *Annual Review of Law and Social Science*, 2021, doi:10.1146/annurev-lawsocsci-121620-085055.

of diversion mechanisms for juvenile justice in Tana Toraja, Indonesia. Central to this inquiry is the Reconciliatory Customary Judge (RCJ), whose culturally embedded role exemplifies the potential for harmonizing tradition and formal legal reform within a restorative justice framework.

Primary data were collected through semi-structured interviews with key legal and cultural stakeholders, including Reconciliatory Customary Judges (RCJs), Torajan customary leaders (to parenge), Islamic religious leaders (ulema), and law enforcement officials at police, prosecutorial, and judicial levels.¹⁷ In addition, structured questionnaires were distributed to 70 respondents from the local community in Pasang Urban Village, North Toraja Regency, to assess public perceptions and levels of adherence to RCJ-mediated decisions.

Secondary legal data were derived from statutory texts (e.g., Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 6 of 2014 on Villages, Supreme Court Regulation No. 4 of 2014), regional regulations, and scholarly literature, especially those analyzing restorative justice, sulu (Islamic reconciliation), adat law, and the theory of progressive legal pluralism. These materials enabled triangulation of findings and contextual interpretation within broader legal-theoretical frameworks.¹⁸

The study employed a mixed-methods analysis strategy.¹⁹ Qualitative thematic analysis was used to trace normative patterns

¹⁷ Eleanor Knott and others, 'Interviews in the Social Sciences', *Nature Reviews Methods Primers*, 2.1 (2022), doi:10.1038/s43586-022-00150-6.

¹⁸ Jeffrey Barnes, 'Contextualism: "The Modern Approach to Statutory Interpretation"', *University of New South Wales Law Journal*, 41.4 (2018), doi:10.53637/prvr3704.

¹⁹ James P. Takona, 'Research Design: Qualitative, Quantitative, and Mixed Methods Approaches / Sixth Edition', *Quality and Quantity*, 2024, doi:10.1007/s11135-023-01798-2.

in dispute resolution practices, inter-normative tensions, and the operational role of RCJs in restoring social harmony. Quantitative analysis—drawn from the survey data—helped reveal the extent of community recognition, obedience, and trust in RCJ authority, and statistically illustrated the effectiveness of RCJ-led diversion across institutional levels.

This dual methodology views law not merely as a formal instrument but as a culturally embedded system that must be aligned with lived social realities. In line with this view, the study interprets diversion not solely as a legal obligation, but as a dynamic process shaped by local ethics, Islamic values of forgiveness and reconciliation, and the communal deliberative traditions of the Torajan people.

By foregrounding the RCJ as a mediating institution between adat, Islamic, and national legal norms, this methodological approach also echoes the contextualist paradigm in Islamic legal studies, which prioritizes the lived application of legal principles in specific socio-cultural settings. This enables the research to contribute to both theoretical debates on legal pluralism and practical recommendations for reforming Indonesia's juvenile justice system in ways that are normatively inclusive and socially responsive.

Ultimately, the method is designed not only to diagnose institutional gaps and cultural dissonance in diversion practices but also to propose constructive pathways for integration, aligning restorative justice goals with the moral authority of community-based actors like the RCJ. Through this, the study offers a grounded and pluralistic framework for legal reform that strengthens justice while preserving indigenous legal wisdom.

Result and Discussion

Systemic and Cultural Barriers to Diversion Implementation

Diversion represents a major shift in Indonesia's juvenile justice system, steering cases involving children in conflict with the law away from punitive criminal processes and toward restorative, community-based resolutions (Law No. 11 of 2012, Article 1(7)). By prioritizing rehabilitation over punishment, this mechanism aims to mitigate the stigmatization of young offenders while reconciling the needs of victims, offenders, and the broader society. However, empirical evidence shows persistent inefficacy in achieving diversion agreements, pointing to deep-rooted systemic and cultural barriers that undermine its potential for restorative justice.²⁰

A major obstacle lies in entrenched institutional practices. Law enforcement officials frequently default to litigation-driven approaches, sticking strictly to legal positivist doctrines that see justice with procedural compliance. This rigid approach neglects the substantive justice rooted in communal values—a critical gap because diversion's success depends on mediation that respects communal values.²¹ Compounding this issue, restrictive regulatory frameworks and the lack of consequences for non-compliant officials who ignore diversion rules further discourage its use.²²

²⁰ Hariyanto and Swardhana, 'Optimalisasi Pelaksanaan Diversi dalam Sistem Peradilan Pidana Anak Yang Berorientasi pada Restorative Justice di Kota Denpasar'.

²¹ Yunanto Yunanto, 'Menerjemahkan Keadilan Dalam Putusan Hakim', *Jurnal Hukum Progresif*, 7 (2019), p. 192, doi:10.14710/hp.7.2.192-205.

²² Sumardi, Mansari, and Albaba, 'Restoratif Justice, Diversi Dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012'.

Sociocultural attitudes exacerbate these systemic challenges. Many people hold onto retributive norms—the belief that violations must always be punished, no matter what the context—which often clashes with diversion’s restorative norms.²³ Additionally, the marginalization of community leaders as mediators deprives the process of culturally attuned facilitators who understand communal values and can connect legal requirements with community realities.²⁴ These gaps expose the limitations of a purely positivist paradigm, which prioritizes strict legal interpretation over the real-life experiences and values of communities.

The tension between legal formalism and restorative imperatives is central to the challenge of diversion. Legal positivism’s emphasis on procedural correctness strongly differs from the substantive justice intended under Article 5(3) of the Juvenile Criminal Justice System Law (UU-SPPA), which mandates restorative outcomes through participatory dialogue. Restorative justice necessitates a pluralistic approach, integrating legal frameworks with community-driven practices to address the socio-ethical dimensions of conflict.

Here, customary systems offer a viable pathway. Regions employing cultural and customary law approaches, such as community-led mediation, report higher diversion success rates by aligning legal processes with indigenous conflict resolution norms.²⁵ This highlights the need to

²³ S and others, ‘Reformulasi Syarat Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia’.

²⁴ Rafika Nur and Handar Subhandi Bakhtiar, ‘The Imposition of Sanctions for Children’, *Hasanuddin Law Review*, 6.2 (2020), doi:10.20956/halrev.v6i2.2493.

²⁵ Raihan Putry and Amrullah Amrullah, ‘Upaya Pendekatan Pola Diversi di Ranah Hukum Pidana Adat BAGI Anak Berkonflik dengan Hukum (Studi Di

reconceptualize diversion not as a legal mandate alone but as a sociocultural practice—one that uses local wisdom to harmonize legal requirements with communal conceptions of justice.

Divergent Outcomes in Diversion Implementation Across Justice Institutions

1. Police-Level Challenges: Retributive Attitudes and Familial Resistance

Data from the Tana Toraja Police Resort’s Women and Children Protection Unit reveal systemic underperformance in diversion agreements at the investigative stage. This data can be seen in the following table:

Table 1. Data on Cases of Children in Conflict with the Law at the Tana Toraja Police Resort in 2021, 2022, and 2023.

Year	Total Cases	Total Number of Children in Conflict with the Law	Number of Cases Eligible for Diversion	Number of Cases Successfully Diverted
2021	22	-	7	3
2022	20	-	11	1
2023	14	-	9	1

Source: Tana Toraja Regional Police, January 25, 2024

The table shows that at the investigator level, the achievement of diversion is very low. In 2022, only 1 out of 11 cases (9.1%) involving offenses such as sexual abuse, theft, and assault resulted in successful diversion agreements. According to Helza, SP. MH. (Head of the Unit), this low success rate stems primarily from resistance by victims’ families, who often favor punitive resolutions over restorative processes. This aligns with broader findings highlighting a societal preference for retributive justice, particularly in cases perceived as morally egregious.²⁶

Kecamatan Kluit Tengah Aceh Selatan), Gender Equality: *International Journal of Child and Gender Studies*, 4.2 (2018), doi:10.22373/equality.v4i2.4534.

²⁶ S and others, ‘Reformulasi Syarat Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia’.

2. Prosecutor's Office: Cultural Competence as a Determinant of Success

In contrast, diversion efforts at the Tana Toraja District Attorney's Office demonstrate higher efficacy. The following are cases of children in conflict with the law at the Tana Toraja District Attorney's Office.

Table 2. Data on Cases of Children in Conflict with the Law at the Tana Toraja District Attorney's Office in 2021, 2022, and 2023

Year	Total Cases	Total Number of Children in Conflict with the Law	Number of Cases Eligible for Diversion	Number of Cases Successfully Diverted
2021	19	-	9	5
2022	19	-	5	2
2023	13	-	7	6

Source: Tana Toraja District Attorney, January 25, 2024

In 2021 - 2023, the success rates averaging above 50% (fifty percent). Erianto L. Paundanan (Head of the Office) attributes this to the critical role of cultural literacy among mediators. Cases involving parties from the same *tongkonan* (ancestral kinship group) were resolved more effectively, as shared cultural frameworks facilitated mutual understanding and reconciliation. Conversely, failures often happen when mediators lacked familiarity with *tongkonan* lineage structures or the communal values of *aluk todolo* (ancestral belief system). Paundanan emphasized that mediators must navigate Toraja-specific kinship networks to contextualize conflicts and foster restorative outcomes—a task for which Reconciliatory Customary Judges (RCJs), as custodians of local traditions, are uniquely equipped.

3. Judicial Shortfalls: Institutional-Cultural Disconnect

At the Makale District Court, diversion succeeded in only 40% of cases (2021–2023).

This data can be seen in the following table:

Table 3. Data on Cases of Children in Conflict with the Law at the Makale District Court in 2021, 2022, and 2023

Year	Total Cases	Total Number of Children in Conflict with the Law	Number of Cases Eligible for Diversion	Number of Cases Successfully Diverted
2021	20	23	3	0
2022	17	19	9	6
2023	7	10	3	0

Source: Makale District Court, January 26, 2024

Judge Helka Rerung (Judge of the Makale District Court), identified a systemic gap: formal judicial processes often neglect the deliberative (*musyawarah*) traditions passed down from generation to generation through *tongkonan* culture, despite Article 5(1) of Law No. 48/2009 concerning Judicial Power that requiring judges to explore communal values that live in society. However, RCJs operationalize these traditions in customary courts at the village and district levels, resolving disputes through consensus-building rather than adversarial decisions. Rerung argued that integrating RCJs as court-appointed mediators could bridge this gap, utilising their expertise in kinship-based reconciliation to align diversion processes with Toraja's restorative ethos.

Reconciliatory Customary Judges: Local Wisdom of the Toraja Community

Indonesia's constitutional and legal frameworks explicitly recognize the autonomy of traditional legal communities. Article 18B(2) of the 1945 Constitution guarantees the state's respect for customary law systems (*adat*), while Article 6 of Law No. 6/2014 concerning Villages mandates that the regulation and implementation of government are based on the original structure. What is

meant by the original structure is the organizational structure of the customary village life that exists in their respective regions.

This recognition of customary autonomy aligns with democratic principles, particularly by promoting localized governance that reflects the unique needs and values of local communities. Proponents argue that increased autonomy can enhance democratic participation and accountability, as it enables greater citizen engagement in the decision-making processes of local governance.²⁷

In Tana Toraja, these traditions materialize through *Lembang*—a unity of legal community that has regional boundaries, has the authority to regulate government affairs and the affairs of its people, based on the initiative of its people, origin rights, and/or traditional rights that are recognized and respected in the governance system of the Unitary State of the Republic of Indonesia (Tana Toraja Regency Regulation No. 1/2015, Article 1(7) concerning Procedures for Nomination, Election, Appointment, and Dismissal of Lembang Heads).

In a Lembang, the administration of government is carried out by the Head of the Lembang and a set of assistants, as well as the Customary Institution. Article 2 paragraph (2) letter a, and Article 13 paragraph (2) of the Tana Toraja Regency Regulation Number 2 of 2001 concerning Lembang Government, stipulate the duties and authorities of the Customary Institution, namely to assist in resolving community disputes at the level of the relevant Lembang or sub-district, and are

²⁷ Muhammad Mukhlis and others, 'Regional Government Autonomy in Indonesia: The Ambiguity of the Federalism or Republic Model', *Malaysian Journal of Syariah and Law*, 13 (2025), pp. 35–57, doi:10.33102/mjsl.vol13no1.760.

authorized to, among other things, appoint and determine traditional leaders or Reconciliatory Customary Judge (*Hakim Adat Pendamai*).

The Tana Toraja community highly upholds the values of their noble culture, which are implemented through their local wisdom, namely Reconciliatory Customary Judge (RCJ), in resolving community conflicts which is passed down from generation to generation.²⁸ RCJ acts as a decision maker which is carried out by deliberation, both in civil and criminal cases, makes RCJ become an informal figure who can be respected by the Toraja ethnic communities.²⁹

Since 2013, RCJs have been systematically integrated into local governance through a hierarchy of institutions: In Sub-district Level: 5-member RCJ assemblies, while in Lembang/Village Level: 3-member assemblies. The existence of RCJ is formally strengthened by several regulations, including:

- a. Tana Toraja Regency Regulation Number 2 of 2013 concerning the Names and Number of Sub-districts, Urban Villages, and Lembang;
- b. Tana Toraja Regency Regulation Number 2 of 2015 concerning the Guidelines for the Preparation of the Organizational Structure of the Lembang Government Work;
- c. Tana Toraja Regency Regulation Number 3 of 2015 concerning the Lembang

²⁸ Riska Andi Fitriono and others, 'Formulation of Customary Criminal Law from the Perspective of Judges in Legal Findings', *Journal of Law and Sustainable Development*, 11.11 (2023), doi:10.55908/sdgs.v11i11.759.

²⁹ Dewy Hangge, Ishak Alfred Tungga, and A. Resopijani, 'Wewenang Kepala Desa Sebagai Hakim Pendamai Dalam Menyelesaikan Sengketa Tanah Warisan Di Desa Kuimasi, Kecamatan Fatuleu, Kabupaten Kupang', *Jurnal Indonesia Sosial Teknologi*, 4.5 (2023), doi:10.59141/jist.v4i5.624.

Consultative Body;

- d. Tana Toraja Regent Regulation Number 14 of 2015 concerning Lembang Financial Management;
- e. Tana Toraja Regent Regulation Number 15 of 2015 concerning Procurement of Goods/Services in Lembang.

RCJs demonstrate the collaboration between Indonesia's plural legal system and localized restorative practices. By resolving conflicts through kinship-based deliberation, they mitigate adversarial tensions while upholding constitutional guarantees for traditional justice (Article 18B(2)). This model not only preserves Toraja's cultural identity but also offers a blueprint for integrating customary mediators into national juvenile justice reforms—particularly in diversion processes, where RCJs' expertise in cultural-rooted reconciliation could address systemic gaps identified in police, prosecutorial, and judicial contexts.

Reconstructing the Mediator's Role in Diversion Frameworks

Diversion under Indonesia's Juvenile Criminal Justice System (UU-SPPA, Article 6) prioritizes restorative outcomes: reconciling victims and offenders, avoiding judicial stigmatization, fostering community participation, and asserting responsibility in children. The mediator, a neutral facilitator assigned to directing thoughtful discussion, is essential to this process. Supreme Court Regulation No. 4/2014 explicitly approves the inclusion of community leaders in diversion proceedings, creating a legal pathway for Reconciliatory Customary Judges (RCJs) to formally acknowledge their function as culturally competent mediators.

Effective mediation requires a varied skill set. According to, mediators must act as

facilitators, negotiators, and stabilizers while maintaining neutrality. Core competencies include conflict resolution proficiency, assertive communication, and the ability to harmonize adversarial interests. In Tana Toraja, these competencies are deeply rooted in the RCJ's mandate. As guardians of *tongkonan*—the ancestral communal houses that serve as center for kinship-based discussion—RCJs use their expertise in *aluk todolo* (customary norms) to mediate disputes through consensus (*musyawarah*). Their dual legitimacy, as both cultural custodians and state-recognized figures under Tana Toraja Regency regulations, positions them as uniquely qualified to fulfill the mediator roles outlined in national framework.

Empirical data underscore the RCJ's sociopolitical capital. The people of Tana Toraja still uphold customary law, understand the existence of RCJ, and obey RCJ decisions. This can be seen from the results of a questionnaire distributed to the people of Pasang Urban Village, Denpina District, North Toraja Regency as follows:

Table 4. Community Understanding and Obedience Towards the Reconciliatory Customary Judge (RCJ)

Question	Yes		No	
	Number	%	Number	%
Awareness of the existence of RCJ	60	75,6	10	24,4
Whether the RCJ comes from a certain social group	70	100	0	0
Whether the appointment of RCJ is recommended by the traditional community	56	70	14	30
Whether Child Cases can be resolved by RCJ	66	83,7	4	16,3
Whether the community obeys RCJ decisions	64	80	6	20
Whether law enforcement officials recognize RCJ decisions	60	75,6	10	24,4
Whether the values of	70	100	0	0

togetherness, kinship, and compassion are the basis for resolving cases

Source: Questionnaire to 70 Respondents, Distributed February 2024

The results of the questionnaire show that the community highly upholds the values of togetherness, kinship, and compassion through the informal figure of the RCJ. The community obeys RCJ decisions in resolving cases/conflicts through customary courts, and the government, through law enforcement officials, recognizes the role of RCJ by supporting RCJ decisions. Public adherence to RCJ decisions is based on the process of resolving problems through deliberation, which is based on values and norms that have been internalized in the Tana Toraja community. This public adherence to RCJ decisions can assist the government in law enforcement efforts and crime prevention.

Such findings demonstrate that RCJs already operationalize the mediator functions prescribed by—not merely as procedural arbiters but as cultural interlocutors who translate restorative justice principles into locally resonant practices.

Reconstructing the mediator's role necessitates institutionalizing RCJ participation across diversion stages. By codifying their involvement in police, prosecutorial, and judicial protocols—as already practiced tacitly in Tana Toraja—Indonesia could bridge the gap between UU-SPPA's restorative aspirations and its uneven implementation. This hybrid model would synergize RCJs' cultural authority with legal mandates, ensuring that diversion procedures respect the *aluk todolo* concept of communal healing as well as legal requirements.

Harmonizing Legal Pluralism in Diversion: Integrating Islamic, Customary, and National Norms in Practice

Diversion under Indonesia's Juvenile Justice System is more than a legal innovation; it is a convergence of Indonesia's plural legal traditions—Islamic law, customary law, and national statutory law. Each tradition contributes a normative framework that, when synthesized, reinforces the restorative ethos of diversion. In the case of Tana Toraja, this synthesis is exemplified by the active role of Reconciliatory Customary Judges (RCJs), who embody both *adat* legitimacy and compatibility with national legal frameworks, while also reflecting Islamic restorative principles.³⁰

The Islamic legal tradition emphasizes *sulh* (amicable settlement) and forgiveness ('*afw*) in resolving conflicts. Qur'anic guidance in Surah Al-Hujurat (49:10) and Surah Ash-Shura (42:40) underscores reconciliation and pardon as virtuous and socially stabilizing. These values align with the objectives of diversion, which seek not only to resolve legal violations but also to restore social harmony and prevent retributive cycles.³¹ In the Torajan context, RCJs operationalize these principles through deliberative consensus (*musyawarah*) that mirrors Islamic dispute resolution.

In customary Torajan law, the concept of justice is embedded in communal harmony through *tongkonan* (ancestral kinship houses) and the spiritual-legal system of *aluk todolo*. Disputes are resolved not through retribution, but through mutual recognition,

³⁰ Achmad Faidi, 'Reconstruction of the National Legal System: Study the Implementation of the Maqâsid al-Shari'ah Theory', *AL-'ADALAH*, 15.2 (2019), doi:10.24042/adalah.v15i2.3387.

³¹ Andri Laksana and others, 'Fiqh Jinayah's Approach to Children Trapped in the Octopus of Narcotics Trafficking', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 12 (2025), p. 309, doi:10.29300/mzn.v12i1.4888.

compensation, and reintegration of the offender into the social fabric. RCJs facilitate these outcomes through culturally rooted procedures, including ritual-based acknowledgment and familial negotiation—both of which carry parallels with *islah* (reconciliation) in Islamic law.

National law, notably the Juvenile Justice Law No. 11/2012 and Supreme Court Regulation No. 4/2014, provides the structural mandate for diversion. It emphasizes restorative outcomes, participation of victims and community leaders, and avoidance of judicial stigmatization. It is within this legal framework that RCJs are increasingly recognized as legitimate mediators whose decisions are both culturally resonant and legally binding—bridging formal statutory requirements and the moral authority of local wisdom.

The empirical data from Tana Toraja demonstrates that diversion outcomes improve significantly when RCJs are involved, particularly in communities where tongkonan values are upheld. The prosecutor's office achieved diversion success rates above 50% when cases were mediated by actors familiar with kinship networks and *aluk* traditions. Conversely, police and judicial stages showed lower success when legal formalism overshadowed community values. This suggests that diversion's efficacy is directly tied to the harmonization of these three legal sources.³²

Islamic legal maxims such as *al-darar yuzal* (harm must be eliminated) and *al-'adl wa al-ihsan* (justice and kindness) support the idea

³² Martha Eri Safira, Dewi Iriani, and Neneng Uswatun Hasanah, 'The Criminal Cases of Children in Conflict With The Law: Litigation and Non-Litigation Resolutions', *Justicia Islamica*, 17.2 (2020), pp. 281–98, doi:10.21154/justicia.v17i1.1711.

that penal actions against children must not perpetuate harm.³³ Likewise, customary principles seek not only to repair wrongs but to restore dignity (*marawa*) and balance (*siri'*). When state law provides the procedural platform for these values to converge—such as recognizing RCJ deliberations—then legal pluralism operates not in tension, but in constructive synergy.

This integration is not merely theoretical; it has institutional implications. In Tana Toraja, RCJs are structurally embedded into local governance through Tana Toraja Regency Regulations and function within both customary and state-recognized domains. This model empowers RCJs to act in alignment with national judicial protocols while drawing from Islamic and *adat* principles to resolve conflicts in ways that are holistic and non-adversarial.

In practice, RCJs represent the living harmonization of legal traditions. Their authority is recognized by the community, legitimized by regional regulation, and increasingly appreciated by law enforcement. The data shows that 83.7% of respondents agreed RCJs can resolve juvenile cases, and 80% said they obey RCJ decisions. This level of public trust cannot be replicated by statutory mechanisms alone; it results from culturally resonant authority grounded in shared values from both Islamic ethics and ancestral governance.

Diversion, when interpreted only through legal positivism, may fail to capture the relational and ethical dimensions of justice. However, in Tana Toraja, diversion serves as a

³³ Kutbuddin Aibak, 'Implementation of Maqāṣid Sharī'ah in Reform of Case Management of Violence against Women and Children', *De Jure: Jurnal Hukum Dan Syar'iah*, 15 (2023), pp. 82–98, doi:10.18860/j-fsh.v15i1.20666.

locus of ethical convergence—one where *maqasid al-shari'ah* (objectives of Islamic law), local wisdom, and legal order unite to protect children, uphold community, and ensure participatory justice. The result is not hybrid legal confusion but an ethically grounded system of restorative balance.³⁴

Thus, the Torajan model demonstrates how legal reform need not discard tradition but instead reintegrates it meaningfully. Reconciliatory Customary Judges exemplify a mediating institution where Islamic, customary, and national legal values converge in restorative practice.³⁵ This model may serve as a prototype for other regions navigating similar plural legal landscapes in postcolonial Muslim-majority contexts.

Table 5. Harmonization of Legal Norms in Diversion Practices

Legal Source	Core Principle	Operationalization through RCJ
Islamic Law (Sharia)	<i>Sulh</i> (reconciliation), RCJs employ deliberative forgiveness ('afw), consensus (<i>musyawarah</i>) eliminating harm and promote pardon and (<i>darar</i>) communal reintegration.	
Customary Law (Adat)	Kinship-based mediation, community <i>tongkonan</i> structures, restoration, spiritual uphold ancestral norms in balance (<i>aluk todolo</i>) conflict resolution.	RCJs mediate within
National Law (Statutory)	Restorative justice, RCJs recognized as child protection, legal community mediators; pluralism recognition their decisions align with (UU SPPA, Perma national legal mandates. 4/2014)	RCJs recognize their decisions align with (UU SPPA, Perma national legal mandates. 4/2014)

³⁴ Zulita Anatasia, 'Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice', *Pancasila and Law Review*, 1.2 (2021), doi:10.25041/plr.v1i2.2120.

³⁵ Rosdalina Bukido and others, 'Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22 (2022), pp. 239–54, doi:10.18326/ijtihad.v22i2.239-254.

Conclusion

The findings of this study reveal that the justice system in Tana Toraja exemplifies a functional model of legal pluralism, where Islamic, customary (adat), and national laws are not only coexistent but dynamically interact within the diversion process for juvenile offenders. At the center of this integration is the Reconciliatory Customary Judge (RCJ), a culturally legitimate actor whose authority is rooted in *tongkonan* kinship, *aluk todolo* values of communal harmony, and public trust developed over generations. Through *musyawarah* (deliberative consensus) and kinship-based mediation, RCJs serve as effective facilitators of restorative justice in both civil and criminal conflicts.

Importantly, the role of RCJs is not isolated from the state. Formal legal actors—including police investigators, prosecutors, and even judges—acknowledge the RCJ's mediating capacity, especially in contexts where formal diversion mechanisms fail due to cultural misalignment, institutional rigidity, or retributive social attitudes. The RCJ's success in facilitating diversion is attributed not only to their cultural proximity but also to their capacity to merge religious (Islamic), customary, and state legal norms into a coherent framework of social reconciliation.

This study shows that Islamic legal values, particularly those rooted in *sulh* (reconciliation) and '*afw* (forgiveness), are inherently aligned with both the RCJ's deliberative practices and the restorative objectives of Indonesia's Juvenile Criminal Justice System (UU-SPPA). When viewed through this lens, RCJs become not only customary authorities but also effective carriers of Islamic ethical values in dispute resolution, complementing the national

mandate for child protection and rehabilitation.

The empirical data indicate divergent outcomes in diversion implementation across legal institutions, with higher success rates observed when cultural and religious sensibilities are integrated into the mediation process. RCJs in Tana Toraja successfully navigate the socio-legal landscape by drawing on localized wisdom and religious morality to resolve complex interpersonal disputes—an ability not often shared by state-appointed mediators.

By institutionalizing RCJ participation across police, prosecutorial, and judicial stages, policymakers can bridge the implementation gap of UU-SPPA and overcome systemic barriers such as legal formalism, lack of cultural literacy among mediators, and the marginalization of communal values. This integration would also give practical meaning to Article 18B(2) of the 1945 Constitution, which affirms the state's recognition of customary law communities and their institutions.

Moreover, this study emphasizes the need to move beyond a legal positivist approach toward a substantive and pluralistic legal framework—one that resonates with Indonesia's cultural diversity and religious identity. The RCJ serves as a tangible model of how localized Islamic and adat principles can coexist with national law to promote restorative justice, social cohesion, and community-based rehabilitation.

In conclusion, reconstructing the role of RCJs within the diversion framework is not merely a cultural accommodation but a legal necessity. It enables a justice system that is procedurally sound, ethically grounded, and contextually responsive. Through formal legal recognition, training, and integration of RCJs

into the juvenile justice system, Indonesia can take a definitive step toward building a justice model that genuinely reflects its plural legal heritage and societal values.

This reconfiguration offers a replicable model for other regions in Indonesia and beyond, where plural legal systems operate. It affirms that meaningful legal reform must not only come from top-down policies but also emerge from grassroots institutions that carry the moral and cultural capital to mediate justice in ways the formal system alone cannot.

Credit Authorship Contribution

Siti Zubaidah designed the study, coordinated Tana Toraja fieldwork, and drafted the introduction and methodology. Musakkir led the qualitative interviews, thematic analysis, and literature review. Syamsuddin Muchtar managed the survey design, quantitative analysis, and data presentation. Wiwie Heryani integrated empirical findings with Islamic legal principles and drafted the sections on *sulh* and legal pluralism. Ahmad Masum reviewed theoretical frameworks and contributed to policy discussion. All authors approved the final manuscript.

Declaration of Competing Interest

The authors declare no competing interests. There were no financial or personal relationships that could have inappropriately influenced this work.

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