

## Customary Court Authority in Resolving Minor Violations: A National Legal Perspective

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### ABSTRACT

*This study analyzes the authority of customary courts in resolving minor violations within Indonesia's national criminal law framework using a normative juridical approach. Findings show that customary courts apply restorative justice through reconciliation, apology rituals, and compensation based on community deliberation, resulting in higher conflict resolution effectiveness and reduced recidivism. However, the national legal system places customary authority in a subordinate position because customary settlements are considered valid only when aligned with state law and approved by law enforcement actors. This creates structural asymmetry where customary mechanisms are culturally successful but legally constrained. The study concludes that harmonization is necessary by granting customary courts primary jurisdiction over minor violations while ensuring procedural safeguards and supervisory oversight from state courts. Such integration would reduce courtroom congestion, strengthen access to justice, and preserve cultural identity within national criminal law development.*

**Keywords:** access to justice, customary court, legal pluralism, minor violations, restorative justice

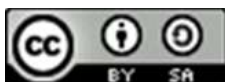
### INTRODUCTION

Customary dispute resolution has historically served as the primary legal mechanism for maintaining order within indigenous communities across Indonesia, particularly in cases classified today as minor violations. These violations often involve disputes over insults, minor theft, property damage, land boundaries, marital obligations, and social disturbances, all of which are culturally embedded and resolved through consensus-based social restitution rather than punitive sanctions. The persistence of these traditional systems is evidence that customary courts have functioned not only as forums for legal adjudication but also as institutions of cultural maintenance and social equilibrium.<sup>1</sup>

Even after the formation of the Indonesian nation state, customary courts continued to operate in regions where social identity and kinship still shape community order. The national criminal justice system formally recognizes restorative justice as an approach to resolving minor crimes, yet its implementation remains procedural and centrally controlled, unlike customary courts that treat reconciliation, apology rituals, and compensation as core elements of justice. This divergence demonstrates the existence of two distinct legal philosophies: one that privileges individual responsibility

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<sup>1</sup> Fitriyono, R. A. et al., "The Role of Customary Criminal Law in Resolving Cases Involving Children," ACOSEC (2024)



toward the state and another that sees wrongdoing as a disruption of social relationships requiring collective restoration.<sup>2</sup>

Minor violations resolved through customary courts carry moral, cultural, and economic components, which are rarely captured by statutory criminal law focused mainly on deterrence and formal sentencing. Studies show that in communities where customary courts actively intervene, repeat violations are significantly lower because restoration of dignity and social trust becomes a core outcome of the legal process. These results underscore the notion that resolution mechanisms rooted in cultural identity are often more effective in resolving interpersonal conflict than state punishment for misdemeanors.<sup>3</sup> Despite this, customary courts remain structurally vulnerable within the national legal framework. The Criminal Code allows sentencing for minor violations through simplified procedures, yet customary settlements are recognized only insofar as they do not conflict with state law. This conditional recognition places customary authority in a subordinate position, limiting its independent legal legitimacy. The problem is not only the absence of explicit recognition but also the lack of integration mechanisms that allow customary rulings to acquire formal legal force equal to district court decisions.

Legal fragmentation further emerges due to inconsistencies in secondary legislation. Some regional regulations, such as in Aceh and Papua, grant formal authority to customary courts, while others recognize customary dispute settlement only as an alternative approach that must still be confirmed by state officials. These inconsistencies produce an unclear hierarchy of legal authority, raising the question of whether customary courts are merely cultural mediators or actual judicial entities capable of exercising adjudicative power over minor violations. This problem becomes increasingly relevant as Indonesia reforms its legal system under the new Criminal Code, which prioritizes restorative justice without clearly specifying whether and how customary forums can function as primary settlement institutions. Customary courts are also closely tied to the cultural protection of children and vulnerable groups when handling minor offenses. In many indigenous jurisdictions, children who commit violations are not exposed to stigma or punishment but rather are rehabilitated through moral guidance, learning obligations, and communal involvement. This contrasts with the national system where children may still enter criminal procedures even for low severity offenses, increasing long term risks of stigmatization and social marginalization. Hence, the authority of customary courts plays a preventive function that complements the goal of restorative justice in national legislation.<sup>4</sup>

In recent years, there has been growing concern regarding the erosion of customary authority due to expansion of state policing and the dominance of formal criminal courts. The widespread assumption that formal justice ensures better accountability has sometimes overshadowed empirical evidence that excessive formalization increases case backlogs, prolongs conflict, and reduces victim participation in decision making. Meanwhile, customary courts maintain high community involvement, victim satisfaction, and conflict closure. This tension highlights the need for critical evaluation of whether national legal reforms should strengthen customary authority instead of replacing it. The legal position of customary courts also

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<sup>2</sup> Priambada, B. S., "The Urgency of Restorative Justice Regarding Customary Criminal Violations," *Pena Justisia* 22 (2023).

<sup>3</sup> Wiessner, Polly, "The Role of Third Parties in Norm Enforcement in Customary Courts," *PNAS* 117, no. 51 (2020): 32320–32328

<sup>4</sup> Anggreini, R., & Bahreisy, B., "Optimizing Aceh's Traditional Institutions to Provide Legal Protection for Children in Legal Conflict," *Acta Law Journal* 3, no. 1 (2024)

intersects with international discourses on indigenous rights. While global legal frameworks promote indigenous autonomy and access to justice, domestic systems often impose strict conditions that limit indigenous courts. Consequently, customary justice must navigate between cultural legitimacy and legal subordination, raising philosophical questions about the meaning of justice in a pluralistic society and whether a national legal framework should accommodate multiple sources of legal legitimacy. This positions the authority of customary courts not as a local anomaly but as a central issue in the construction of national legal identity.<sup>5</sup>

Research assessing the role of customary courts in resolving minor violations is still limited and dispersed by regional focus. Prior studies include Fitriyono et al. on the role of customary criminal law in resolving cases involving children, Priambada on the urgency of restorative justice in customary violations, and Wiessner on third party norm enforcement in customary courts in Papua New Guinea. Each contributes significantly but does not fully assess customary court authority from a national perspective nor explore the implications for harmonization with the Indonesian justice system. The knowledge gap therefore lies in the absence of a comprehensive national legal analysis addressing how customary courts should be positioned within the architecture of national criminal justice. This study offers novelty by framing customary authority as a structural component of national justice rather than a localized exception and aims to analyze the alignment between customary authority and the national legal system to formulate a juridical perspective on resolving minor violations through legal pluralism.<sup>6</sup>

## METHODS

This study adopts a normative juridical method by examining legal norms governing the authority of customary courts through statutory interpretation, doctrinal analysis, and conceptual studies on restorative justice and legal pluralism. The approach focuses on primary legal materials including the Criminal Code, local regulations recognizing customary institutions, and national policies concerning restorative justice, complemented by secondary legal materials from academic literature. The method is suitable because the research problem relates to the legal positioning of customary authority within the national justice system rather than empirical case measurement. To reinforce legal interpretation, the research also applies a comparative conceptual framework between state justice and customary restorative mechanisms, tracing normative intersections and potential conflict of competence in resolving minor violations. The analytical stage emphasizes legal coherence and policy implications to determine whether customary court authority can be harmonized with national legal development, particularly under the current shift toward restorative justice in criminal law reform.<sup>7</sup>

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<sup>5</sup> Cipriani, D., *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Routledge, 2016)

<sup>6</sup> Afifah, N. N., "Perbandingan antara Pendekatan Keadilan Restoratif dan Pendekatan Hukuman Adat dalam Kasus Tindak Pidana Ringan," *Syntax Idea* 6, no. 6 (2024)

<sup>7</sup> Herlius, F., "Kaidah Hukum Adat dalam Penuntutan Demi Keadilan Berbasis Kearifan Lokal," *Perspektif* 27, no. 2 (2022): 94–103.

## RESULTS AND DISCUSSION

### **The Juridical Position of Customary Court Authority in Minor Violations within the National Criminal Law System**

The authority of customary courts in resolving minor violations must be examined first through the structure of national criminal law that maintains the supremacy of formal judicial institutions while simultaneously opening limited space for nonjudicial settlement mechanisms. Although restorative justice is increasingly promoted in Indonesia's criminal law reform, it remains predominantly designed and executed in a state centered framework where the prosecutor's office and police retain full control over whether a case qualifies for nonlitigation settlement. In contrast, customary courts operate on cultural legitimacy rather than state delegation, and their competence is rooted in indigenous social contracts, genealogical leadership, and community consensus. The legal consequence of this difference is that customary courts may successfully resolve a case socially but lack formal legal force unless a state institution ratifies the outcome. This creates a structural tension because the law recognizes restorative principles yet does not fully acknowledge the adjudicative autonomy historically exercised by customary institutions. The ambiguity becomes even more visible when legal actors at the national level consider customary settlements as a complement to criminal law rather than a valid forum for justice in their own right, resulting in inconsistent enforcement across regions depending on the willingness of police or prosecutors to accept customary resolutions.<sup>8</sup>

The Criminal Code and procedural law also influence the legal status of customary courts by prioritizing written norms and codified procedure over oral traditions and flexible community deliberation. While Article based recognition of restorative justice helps to reduce unnecessary criminalization for low severity offenses, implementation remains conditioned on the principle of legality and the hierarchy of courts, meaning customary decisions are legally valid only if they do not contradict statutory law and if authorities consider the community settlement sufficient. This conditional framework produces an asymmetrical power relationship where customary courts are allowed to function only as long as their results conform to formal judicial expectations. The duplication of authority generates a hierarchy in which the state remains the ultimate legal arbiter regardless of local cultural legitimacy. It also reflects legal positivism prioritizing enforceability and predictability over the relational, consensus based model of justice practiced by indigenous communities. In practical terms, customary courts become symbolic institutions lacking coercive legal authority, even though empirical evidence consistently demonstrates that customary settlements for minor violations result in faster resolution, greater acceptance among victims and offenders, and lower potential for conflict escalation compared to the formal criminal process.<sup>9</sup>

The growing adoption of restorative justice in national criminal law raises the question of whether this development should logically strengthen rather than weaken customary legal authority. Restorative justice emphasizes community participation, offender reintegration, victim involvement, and social harmony, all of which are embedded historically in customary adjudication practices. Yet the current legal structure treats restorative justice as a modification of formal procedure instead of an opening to legal pluralism. As a result, the national system symbolically embraces the

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<sup>8</sup> Priambada, B. S., "The Urgency of Restorative Justice Regarding Customary Criminal Violations," *Pena Justisia* 22 (2023)

<sup>9</sup> Mulyani, S., "Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang Undang Dalam Perspektif Restoratif Justice," *De Jure* 16, no. 3 (2016)

values of customary courts while practically limiting their jurisdiction. The core issue lies in the lack of legal synchrony between state law and customary institutions, creating uncertainty for citizens, law enforcement, and customary authorities in determining which mechanism should take precedence in minor violations. The absence of procedural bridges means customary courts cannot independently issue decisions with full binding legal consequences even when the community considers the dispute resolved. This undermines not only the autonomy of customary institutions but also the effectiveness of restorative justice that the Criminal Code claims to promote.<sup>10</sup>

The national perspective must therefore move toward structural harmonization rather than conditional tolerance. Customary court authority cannot remain subordinate if Indonesia seeks to build a legal system that supports cultural identity, conflict prevention, and access to justice for communities distant from formal courts. Recognition alone is insufficient without jurisdictional clarity, procedural compatibility, and enforcement mechanisms that safeguard customary decisions from dismissal by state institutions. National law must provide a coherent basis for integrating customary adjudication within the criminal justice architecture, particularly for minor violations where restorative resolution is significantly more effective than punitive retribution. Without legal harmonization, customary courts will continue to operate only socially rather than legally, and the criminal justice system will continue experiencing excessive case accumulation that could have been prevented by empowering community based justice. In this context, strengthening customary authority is not only a cultural imperative but a strategic legal reform to build a pluralistic and accessible justice system.<sup>11</sup>

### **Customary Courts and Restorative Justice Mechanisms in Minor Violations**

Customary courts demonstrate restorative justice not as an alternative legal method but as the primary paradigm for resolving minor violations. In indigenous legal philosophy, justice is achieved when relationships, reputation, and collective harmony are restored rather than when offenders receive punishment from the state. The steps of customary resolution typically include acknowledgment of wrongdoing, apology rituals, symbolic offerings, and compensation defined through community deliberation rather than predetermined sentencing guidelines. The victim has a central role in negotiating the form of reparation and receives respect and symbolic closure, unlike the national criminal process where violations are framed as actions against the state rather than against the victim. This indicates that customary courts integrate morality and collective responsibility more deeply than the adversarial model of criminal law, producing decisions that focus on reconciliation rather than retribution.<sup>12</sup>

Restorative outcomes in customary adjudication are also consistent with empirical patterns of conflict reduction. Communities with active customary enforcement generally demonstrate higher compliance with agreed sanctions compared with formal sentencing because offenders view sanctions as a moral and social obligation rather than a legal punishment. In households and small communities, the presence of elders and kinship pressure increases the effectiveness of enforcement and reduces stigmatization and recidivism, particularly for youth offenders. In contrast, state courts often separate offenders from their communities and generate status labels

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<sup>10</sup> Badu, L. W., & Kaluku, J. A., "Restorative Justice in the Perspective of Customary Law," *Jambura Law Review* 4, no. 2 (2022)

<sup>11</sup> Mansur, T. M., & Abdullah, M. A., "Kajian Yuridis Peradilan Adat di Aceh," *Journal of Indonesian Adat Law* 2, no. 3 (2018)

<sup>12</sup> Badu, L. W., & Kaluku, J. A., "Restorative Justice in the Perspective of Customary Law," *Jambura Law Review* 4, no. 2 (2022).

such as “criminal,” which contribute to long term social exclusion. The significance of customary courts therefore extends beyond individual conflict and contributes to community cohesion and local security governance.<sup>13</sup>

To highlight conceptual differences between restorative justice in customary courts and the criminal justice system, the table below presents a structured comparison.

**Table 1 Comparison of Restorative Justice Mechanisms in Customary Courts and State Criminal Justice**

| Dimension           | Customary Courts                         | State Criminal Justice                 |
|---------------------|--|--|
| Justice orientation | Restoration of relationships             | Punishment and deterrence              |
| Legal philosophy    | Collective responsibility                | Individual liability                   |
| Role of victim      | Central in decision and outcome          | Limited procedural involvement         |
| Role of offender    | Reintegration and moral accountability   | Penal responsibility to the state      |
| Decision-making     | Consensus through community deliberation | Judge-centered adjudication            |
| Social effect       | Reconciliation and closure               | Stigmatization and potential exclusion |
| Enforcement         | Cultural obligation and kinship pressure | Coercive power of the state            |
| Recidivism trend    | Lower due to reintegration               | Higher due to stigma                   |

The evidence above shows that customary courts align more closely with restorative justice than the state system does, even though restorative justice is now promoted in the new Criminal Code. The contradiction is that the national system embraces restorative values while still structuring justice around the supremacy of state adjudication. Consequently, the restorative model becomes procedural rather than philosophical because the power to approve or reject settlement results remains with the police and prosecutors rather than the community. This creates a situation where customary institutions are symbolically recognized but practically restrained from exercising full judicial autonomy.<sup>14</sup>

### **Harmonization of Customary Court Authority within a National Legal Perspective**

Harmonizing customary authority with national criminal law requires a structural rather than symbolic approach because recognizing customary justice only as an optional alternative creates legal uncertainty for law enforcement and communities. Ideally, customary courts should have autonomous legality in minor violations as long as due process, voluntariness, and victim protection are guaranteed. The key challenge is designing a legal mechanism that acknowledges both cultural legitimacy and legal certainty. This requires integrating three domains: jurisdictional boundaries determining which cases customary courts may handle, enforcement mechanisms ensuring decisions are respected by national institutions, and procedural safeguards preventing decisions that violate constitutional rights. Current legislation does not yet provide a single formal gateway for validating customary decisions, leading to

<sup>13</sup> Bahreisy, B., Saputra, F., & Hidayat, H., “Penerapan Restorative Justice Melalui Lembaga Adat Terhadap Anak Yang Berkonflik Dengan Hukum,” *EKSEKUSI* 4, no. 1 (2022)

<sup>14</sup> Irwandi, I., “Penerapan Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Ringan di Aceh,” *AL-ILMU* 9, no. 1 (2023)

inconsistent outcomes across regions depending on how receptive police and prosecutors are to customary settlements.<sup>15</sup>

Strengthening customary court authority does not contradict national criminal law if harmonization is strategically framed. Restorative justice, now central in the Criminal Code, already prioritizes reconciliation and compensation for minor violations, which aligns with customary resolution structures. Therefore, rather than requiring customary settlements to obtain approval from the formal justice system, harmonization should operate through division of authority: customary courts should have primary competence for minor violations in communities where they function, while formal criminal courts serve as appellate and supervisory institutions only when due process is violated. This model would reduce court congestion, protect cultural identity, and enhance conflict resolution effectiveness without sacrificing constitutional values. Implementing such harmonization requires statutory recognition of customary judicial authority, formal enforcement of customary decisions, and clear procedural rules for interaction between customary forums and state courts.<sup>16</sup>

If Indonesia aspires to build an accessible and culturally grounded justice system, customary court authority must be treated as an integral component of national criminal law rather than a tolerated exception. A legal pluralism model where customary courts handle local social violations and formal courts focus on cases where community settlement fails would minimize legal fragmentation and reinforce community cohesion. The consequence of ignoring this reform is a continued gap between the legal system and social reality, where local justice is effective but not legally empowered and state justice is legally superior but socially disconnected. As long as minor violations are forced into formal criminal pathways, structural overload and public distrust will persist. Legal harmonization that embeds customary adjudication into national justice is therefore not only cultural recognition but an urgent structural reform.<sup>17</sup>

## CONCLUSIONS

The authority of customary courts in resolving minor violations demonstrates that indigenous forums are not merely cultural alternatives but function as effective justice institutions built on reconciliation, social responsibility, and collective harmony. Their mechanisms reduce conflict escalation, prevent stigmatization, and promote victim satisfaction through direct participation in determining reparative outcomes. However, their legal position remains constrained because national criminal law views them only as a supplementary mechanism operating under the supremacy of state courts. As long as customary adjudication is recognized conditionally, culturally effective resolutions cannot gain full legal status despite their proven success in maintaining community order and reducing recidivism.

To build an accessible and pluralistic justice system, Indonesia must move toward structural harmonization rather than symbolic acknowledgment of customary authority. The Criminal Code's restorative spirit should translate into jurisdictional clarity, formal enforceability of customary decisions, and procedural safeguards that protect constitutional rights without undermining indigenous legitimacy. Empowering customary courts to handle minor violations autonomously while maintaining

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<sup>15</sup> Hatta, M., "Mekanisme Penyelesaian Perkara Pidana Melalui Pengadilan Adat di Kota Lhokseumawe," *Cendekia* 2, no. 3 (2024)

<sup>16</sup> Rosy, K. O., Mangku, D. G. S., & Yulianti, N. P. R., "Peran Mediasi Dalam Penyelesaian Sengketa Tanah Adat," *Ganesha Law Review* 2, no. 2 (2020).

<sup>17</sup> Rado, R. H., Arief, B. N., & Soponyono, E., "Kebijakan Mediasi Penal Terhadap Penyelesaian Konflik Sara," *Law Reform* 12, no. 2 (2016).

supervisory oversight in cases of procedural abuse will strengthen the justice system as a whole, reduce the burden of formal courts, and support cultural resilience. The renewal of national criminal law must therefore treat customary justice not as an optional deviation but as a legitimate and integral pillar of Indonesia's legal development.

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