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## **Assessing the Conformity of Customary Sanctions for Durian Theft in Mandailing Natal: A *Maqasid al-shari'ah* and Restorative Justice Perspective**

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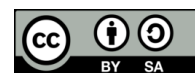
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### **ABSTRACT**

*This study examines the conformity of customary sanctions for durian theft (mangapus tarutung) in Rao-rao Lombang, Mandailing Natal, with Islamic criminal law, restorative justice principles, and legal pluralism. Using a qualitative case-study approach, data were collected through semi-structured interviews with hatobangon, the village head, naposo nauli bulung representatives, and victims, supported by literature and document analysis on Islamic law, customary law, 'urf, maqasid al-shari'ah, masalahah, and restorative justice. The findings show that the offense is best classified as ta'zir, with a fine of IDR 1,000,000 functioning as compensation and deterrence, legitimized through communal consensus and 'urf. While the sanction aligns proportionally with maqasid al-shari'ah and avoids mafsadah, restorative elements remain incomplete due to limited attention to immaterial harms, documentation, and post-sanction reintegration. This study recommends procedural harmonization through clearer proportionality guidelines, improved record-keeping, and referral mechanisms to strengthen restorative effectiveness while preserving accountability within customary legal practice. These reforms encourage community trust, victim healing, offender responsibility, and sustainable local justice.*

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## INTRODUCTION

Legal pluralism in Indonesia is a structural condition that presents the simultaneity of norms between state law, religious law, and customary law coexisting in social practices (Djawas et al., 2024). Customary law has an important function as a mechanism for conflict resolution at the local level, particularly in cases that touch on everyday social relations (Arizona, 2023), such as land disputes (Wiguna, 2024), marriage issues (Jumarim et al., 2024), inheritance (Ismail et al., 2024), and petty theft such as fruit or livestock (Tumadi et al., 2025). Customary resolutions often prioritize the restoration of social relations, compensation, fines, and restorative sanctions rather than repressive punishment alone (Erniwati et al., 2025; Habi et al., 2024). It is important to study how customary decisions work, the reasons for the sanctions imposed, and the consequences of the decisions for the victims, perpetrators, and the community. Focusing on cases of durian theft, which is economically significant for rural households but trivial according to formal criminal law, opens up space for analysis to examine the proportionality of sanctions and the objectives of punishment at the community level.

The debate over the compatibility of customary practices with Islamic criminal law doctrine involves a number of analytical tools such as *maqasid al-shari'ah* and *maslahah*, as well as recognition of *'urf* or local customs. Rural Muslim communities often integrate Islamic values with local customs in practice (Hasibuan et al., 2024), so that case resolutions contain elements of both informal sharia and customary law (J. M. Yusuf & Yuslem, 2023; N. Yusuf et al., 2025). In addition, the restorative justice approach emphasizes victim recovery, perpetrator responsibility, and social reintegration, values that are in line with *maqasid al-shari'ah* when viewed from the perspective of maintaining *maslahah* (Andiko et al., 2024; Rosman et al., 2025). Considering all of this, concrete case studies that record the process, actors, and reasons for sanctions at the village level provide empirical evidence that is important for assessing the extent to which these customary practices are in line with or contradict the principles of Islamic law and restorative values.

The case studied took place in Rao-rao Lombang Village, Mandailing Natal Regency in December 2024, and is known locally as the practice of “*mangapus tarutung*” (durian theft). A customary hearing was held at the village head's residence, attended by customary leaders (*hatobangon*), the village head, and community representatives, including *naposo nauli bulung* (NNB/local youth). In this case, the perpetrator was fined IDR 1,000,000 per fruit stolen. Because this case involved only one durian fruit, the amount of the fine imposed was relatively small but had significant meaning for the parties involved. The process of customary decision-making, consideration of local norms, and the mechanism for implementing sanctions were recorded through interviews, making this case a relevant empirical source for analyzing the interaction between customary norms, local Islamic values, and the principles of restorative justice.

This study combines the theories of legal pluralism, *maqasid al-shari'ah* and *maslahah*, 'urf, restorative justice, and Islamic criminal law to analyze the phenomenon under study. Legal pluralism explains the coexistence and interaction between state law, religious law, and customary law (Chua et al., 2023). *Maqasid al-shari'ah* or the objectives of sharia and *maslahah* serve as benchmarks for evaluating legal actions based on efforts to preserve religion, life, reason, lineage, and property (Kamali, 2025). The concept of 'urf legitimizes local customs as long as they do not conflict with basic sharia principles (Dupret, 2021). Restorative justice emphasizes restoration of damage, protection of victims, perpetrator responsibility, and social reintegration (Gavrielides, 2020). Then, in Islamic criminal law, the dichotomy between *hudud*, *qisas*, and *ta'zir* helps place customary fines in the category of non-hudud punishments so that they are evaluated based on proportionality and preventive and restorative purposes (Tallenbach, 2015). The combination of these theories allows for a normative and normative-empirical analysis of the extent to which these customary decisions fulfill *maqasid al-syari'ah* and social interests.

## LITERATURE REVIEW

A number of studies on customary law in Indonesia show that customary dispute resolution mechanisms often prioritize material and non-material compensation to restore community harmony. Mutawali (2022) notes that contemporary Donggo society still applies customary law, including punishment by iron and whipping, to address criminal cases such as rape, theft, and adultery, the forms of which differ from the provisions of the Criminal Code (*Kitab Undang-undnag Hukum Pidana/KUHP*) despite sharing a similar spirit and categories of punishment with the principles of Islamic law. Habi et al. (2024) on violations of the *sumbang besak* customary law in Babeko Village, Jambi, emphasize the important role of restorative values in local customary practices, where dialogue and reconciliation mechanisms that prioritize recovery for victims, perpetrators, and communities are considered to produce fair and sustainable resolutions.

Other studies show more severe normative and practical variations in some communities. Mabrursyah et al. (2024) found that *Rejang* customary law in Rejang Lebong Regency contains various normative provisions, including categories such as *cepalo mato*, *cepalo mulut*, *cepalo tangan*, *cepalo kaki*, and *cepalo telingo*, and applies harsher sanctions such as flogging and village cleansing for serious offenses such as adultery or cases of immorality involving kidnapping, thus demonstrating how local norms regulate social behavior. Meanwhile, Tumadi et al. (2025) found that picking fruit without permission is often considered normal due to economic pressures and religious misconceptions, even though it constitutes *ghasb* and contradicts the Civil Code (*Kitab Undang-undang Hukum Perdata/KUH Perdata*). Therefore, they recommend contextual *ijtihad* and community measures such as sharing

agreements, voluntary distribution, and educational sanctions. These studies confirm that the legitimacy of customary sanctions depends on community consensus, transparency of the process, and the ability of sanctions to restore social relations.

Literature at the intersection of Islamic law and restorative justice indicates a meeting point when the objectives of sharia are understood in terms of *maqasidiyyah*. Andiko et al. (2024) note that the practice of restorative justice in customary courts in Rejang Lebong places deliberation and reconciliation at the heart of the process, where compensation is adjusted to the demands of the victim and the consent of the perpetrator and is often accompanied by a customary fine, the amount of which takes into account the perpetrator's ability to pay. In terms of *maqasid al-shari'ah*, this approach is relevant to efforts to prevent hatred and revenge. The findings of Luthfi et al. (2024) and Fauzi (2024) reinforce the legitimacy of 'urf in Islamic family law as long as it does not conflict with the principles of sharia and is able to guarantee benefits and support the implementation of Islamic law, while the study by Djalaluddin et al. (2023) on *ta'zir* in Islamic criminal law confirms that flexible sanctions other than *hudud* open up space for restorative and educational solutions.

Although studies on customary law, 'urf, *maqasid al-shari'ah*, and restorative justice have developed, there is still a gap in research on highly contextual micro-cases. Previous studies have tended to discuss general patterns or theoretical categories without examining in depth local practices such as *mangapus tarutung* cases and specific fines. The novelty of this study lies in its empirical analysis of a durian theft incident (*mangapus tarutung*) that occurred in December 2024 in Rao-rao Lombang Village, through interviews with *hatobangon*, village heads, and NNB representatives, which aims to examine the compatibility of the customary decision, namely a fine of IDR 1,000,000 for one durian fruit, with the criteria of *maqasid al-shari'ah*, *maslahah*, 'urf legitimacy, and the principle of restorative justice.

The research question is formulated as follows: to what extent are customary decisions in the case of *mangapus tarutung* in Rao-rao Lombang consistent with Islamic criminal law doctrine, particularly when assessed through the principles of *maqasid al-shari'ah* and *maslahah*? Does the fine of IDR 1,000,000 imposed on the perpetrator fulfill the principles of restorative justice in terms of victim recovery, perpetrator accountability, and social reintegration? How do the roles of 'urf, *hatobangon*, village head, and NNB influence the legitimacy and implementation of sanctions? The objectives of this study are to analyze the compatibility of customary decisions with Islamic legal doctrine through the framework of *maqasid al-shari'ah* and *maslahah*, evaluate the effectiveness and restorative nature of customary sanctions, and explain the dynamics of legal pluralism in the practice of dispute resolution in these communities and its implications for the recognition of customary law in Indonesia.

## METHOD

This research is qualitative in nature with a case study approach that focuses on the *mangapus tarutung* case in Rao-rao Lombang Village, Mandailing Natal Regency (Priya, 2021). The primary data sources are semi-structured interviews with *hatobangon*, village heads, NNB representatives, victims, and community witnesses who were present during the traditional deliberations. Secondary data sources include Islamic law literature, Indonesian customary law books, reputable journal articles, capterbooks related to restorative justice and *maqasid al-shari'ah*, as well as national regulations such as Supreme Court Regulation No. 2 of 2012 (Perma 2012), the Criminal Code, Law No. 1 of 2023 (New Criminal Code), and other regulations relevant to placing local practices in the context of legal pluralism. Dependence on verbal confirmation was overcome by interviewing a variety of informants and comparing them with secondary sources to mitigate memory bias or single interpretations (Baldwin et al., 2022).

Data analysis was conducted using qualitative-descriptive methods, combining content analysis and thematic analysis techniques. The methodological steps involved transcribing interviews, repeatedly reading all materials, initial coding, grouping codes into themes, and then formulating main categories linking customary practices with the criteria of *maqasid al-shari'ah*, the concept of *maslahah*, the *ta'zir* framework, and the principle of restorative justice (Özden, 2024). The empirical findings were then critically compared with normative arguments in Islamic legal literature and customary law studies to formulate a comprehensive assessment of the appropriateness, proportionality, and function of customary sanctions. This study notes the limitation of the lack of administrative documents and addresses it through source triangulation (Schlunegger et al., 2024). The entire process complies with research ethics, including participant consent, anonymization, and identity protection to maintain the credibility and integrity of the findings (Bos, 2020).

## RESULTS & DISCUSSION

### ***Chronology and Mechanism of the Mangapus Tarutung Customary Decision***

In Rao-rao Lombang Village, Tambangan Subdistrict, Mandailing Natal Regency, durian trees are an important component of household land management, with almost every family planting at least one tree, while some households manage dozens to around fifty trees. During the peak harvest season, each tree can produce between 10 and 30 fruits per night, so even though the price per fruit is relatively low at around IDR 10,000–20,000, the accumulated harvest each night provides a significant and relatively stable seasonal income for households (Saiful, 2025). The practice of guarding the fruit (called *manjago tarutung*) has become a nightly routine, where residents guard the orchards from evening until early morning and sell the fruit to collectors in the morning. However, the fatigue of the guards, which leads to them falling

asleep under the *sopo* (small hut), opens the door to *mangapus tarutung*, so that local economic conditions and the *manjago* pattern form the structural background for the cases reported at the end of December 2024 (Ansori, 2025).

The incident of *mangapus tarutung* that became the subject of this study began when the owner of the garden, who was guarding the *sopo* and had fallen asleep due to exhaustion, woke up and saw someone picking durian fruit right under the place where he was guarding. This verbal report was immediately conveyed to the *hatobangon* and the village head. A decision was quickly made to hold a traditional deliberation at the village head's house for verification and resolution. Verification was factual, based on the owner's statement and the perpetrator's confession. Physical checks in the orchard were limited due to the time of discovery in the early morning and the conditions of the location, so the assessment relied on the victim's verbal testimony and the perpetrator's confession. The decision to bring the case to the customary court shows the community's preference for quick and consensual resolution, as well as prioritizing relatively immediate recovery over a longer formal process (Irfan, 2025). *Hatobangon* explained that the deliberation facility was chosen for practical reasons, namely to recover losses and maintain social harmony, as well as contextual reasons such as the distance from formal service centers, which made the state judicial process considered time-consuming and potentially disruptive to the local family structure (Komis, 2025).

The actors present at the deliberation included the *hatobangon* as the traditional mediator, the village head as the facilitator and provider of informal administrative legitimacy and the meeting location, NNB representatives as youth representatives and social supervisors, victims, perpetrators, and a number of community members as witnesses. Each role was functional in nature: the *hatobangon* formulated customary references and provided normative guidance, the village head facilitated the consensus-building process, while NNB ensured that the decision was accepted and complied with by the younger generation and highlighted the learning dimension of the sanctions. The decision-making process is carried out repeatedly through hearing the statements of victims and witnesses, followed by negotiations on the amount of compensation and fines that take into account the value of the fruit, the economic conditions of the perpetrator, and the expectations of the victim. The fines imposed are not solely intended to compensate for losses but also to provide a deterrent effect that remains humane and strengthens social order (Irfan, 2025). However, the dynamics of local power influence the outcome of consensus, where respected figures often play a decisive role. Thus, even though the procedure is collective, the preferences of influential figures can be a determining factor in the final decision (Ansori, 2025).

The customary deliberations in Rao-rao Lombang did not produce formal minutes; the available documentation is limited to the collective memory of the participants and the oral notes of the village head and NNB representatives. Informants confirmed that a sanction in the form of a fine of IDR 1,000,000 for

one durian was imposed (Irfan, 2025; Komis, 2025), but no written proof of payment was submitted to the researchers, thus limiting independent verification of the implementation of the sanction. Compliance with the decision appears to be high due to the enforcement of social coercion, public stigma, and community pressure, but the absence of written records raises accountability issues should disputes continue. In line with the observations of Widjanto et al. (2025), they found that customary procedures prioritize consensus over administrative formalities. Witnesses stated that although there were no minutes as in court, all parties present knew and accepted the decision led by the *hatobangon* and subsequently demanded payment of the fine as a way to resolve the issue so that it would not drag on (MY & BR, 2025). These findings are consistent with previous studies, such as that of Mutawali (2022), who describes the adaptation of customary sanctions according to the context of the Donggo community, as well as the research of Habi et al. (2024), which emphasizes the restorative elements in determining compensation and reconciliation in Babeko Village, both of which show the customary orientation towards restoring social relations.

The legal implications of customary deliberation practices and fines in Rao-rao Lombang must be analyzed within the framework of national positive law. The normative provisions on theft in Article 362 of the Criminal Code still serve as a reference for the elements of the crime of theft, even though the amount of the fine specified is historical and does not reflect contemporary economic values. The interpretation of nominal sanctions therefore often depends on administrative adjustment mechanisms (Rusdiana et al., 2024). Criminal law reform through Article 476 of the New Criminal Code transfers and reformulates the provisions on theft along with updated criminal penalties and fine categories, so that the weighting of normative penalties for theft must also be viewed in the context of this law, which will come into effect in 2026. Judicial administrative instruments such as Perma 2012 confirm the technical parameters for minor crimes and the formula for adjusting fines, including the maximum nominal limit (Martha et al., 2024), so that the evaluation of customary fines (for example, a fine of IDR 1,000,000 for one durian) needs to take these adjustment parameters into account.

The constitutional frameworks also provide space for the recognition of customary law, as stipulated in Article 18B Paragraph (2) of the 1945 Constitution, as long as customary practices do not conflict with legislation and the principles of the rule of law (Arifin et al., 2025). This is reinforced by the provisions of Article 2 Paragraphs (1) and (2) of the New Criminal Code, which recognize the laws that exist within communities (Masyhar et al., 2025; Rozah & Yudistira, 2025). Resolution through customary deliberation has practical legitimacy, but its consequences differ from formal channels, particularly in terms of verification, accountability, and protection of victims' rights (Rusdiana et al., 2024). The appropriate approach from a juridical perspective is a dual reading, namely recognizing the local effectiveness and restorative value of

customary deliberation while applying the rules of positive law in assessing proportionality, legality, transparency in the implementation of sanctions, and victims' access to rights enforcement mechanisms in the event of further disputes (Yulia et al., 2023; Zein et al., 2025). This approach requires that policy studies and recommendations consider the compatibility of sanctions with the norms in the New Criminal Code, the technical parameters of Perma 2012, and the principles of accountability and victim protection that are the benchmarks of the rule of law.

### **Conformity of Customary Decisions with Islamic Criminal Law through Maqasid al-Shari'ah**

Theft (*al-sarq*) in Islamic criminal law is positioned as one of the *hudud*, a category of criminal acts whose penalties are mentioned textually in the Qur'an, with the most explicit reference in Surah al-Ma'idah verse 38, which commands the cutting off of the thief's hand as a lesson in a specific context (Martha et al., 2024). The *fuqaha'* detail the substantive and procedural requirements before the *hudud* punishment can be applied, including the existence of *nisab* (minimum value threshold) for the stolen goods, clear ownership of the goods, taking from a safe place (*hirz*), not originating from public property or prohibited relatives, and meeting strict standards of proof, such as valid confessions or acceptable witness evidence, as well as subjective requirements for the perpetrator, namely being of sound mind and having reached puberty (Martha et al., 2024).

Regarding *nisab* itself, the *madhhabs* differ in their opinions. The *Shafi'iyah* and some *Hanbaliyah* scholars say the minimum value is equivalent to a quarter of a *dinar* (4.25 grams of gold), ten *dirhams* (1.511 grams of gold) according to some *Hanafiyah* and *Hanbaliyah* views, and other variations according to *Malikiyah*, so the evaluation of the nominal value must refer to the criteria of the *madhhab* and the local context of the valuation of goods (Helmina et al., 2024). The *Ijtihad* of 'Umar ibn al-Khattab also implies that *hudud* punishments are not imposed for minor theft or theft driven by necessity, so many *fuqaha'* emphasize the strict application of these conditions and encourage a shift to the realm of *ta'zir* if the elements of *hudud* are not met (Arrasyid et al., 2023).

Empirical facts from the chronology in the context of the *mangapus tarutung* case in Rao-rao Lombang show that the case did not meet a number of formal elements for *hudud* punishment to be imposed, including the economic value of the stolen fruit, the condition of *hirz* or taking from a safe place, clear ownership, and strict standards of proof, such as valid confessions or multiple witness evidence. The evidence in the field was mostly in the form of a single oral testimony and a confession in a situation with limited physical verification, so that the material and procedural aspects of *hudud* were not fulfilled. Therefore, in terms of Islamic criminal law, this case is more appropriately

classified not as *hudud*, which requires strict evidence and procedures, but rather falls within the realm of *ta'zir* law (Martha et al., 2024). A comparison with Mutawali's (2022) research shows a consistent pattern, namely that communities formulate local sanctions that differ from *hudud* provisions but are in line with the spirit of maintaining order, which confirms that many everyday cases do not meet strict *hudud* criteria, so the community chooses alternative mechanisms. Similar findings by Tumadi et al. (2025) contextualize fruit theft in Kuala Tungkal as a case handled through a *ta'zir* approach.

*Ta'zir* is a category of punishment that is discretionary (*taqriri*) and gives the ruler or certain authorities the power to determine the form and severity of punishment based on public interest and context (Tellenbach, 2024). The case of *mangapus tarutung*, in which a fine of IDR 1,000,000 was imposed for one durian, can be understood as a form of local *ta'zir* intended to provide compensation, deterrence, and social restoration. *Ta'zir* theoretically requires that punishment be proportional, prevention-oriented, and take into account the perpetrator's ability so as not to cause new *madarrah* (negative impacts) (Tellenbach, 2024). Analysis of the Rao-rao Lombang practice shows that the community assesses these aspects, but field notes indicate the potential for proportionality to be inconsistent depending on the economic capacity of the perpetrator. This is in line with the study by Djalaluddin et al. (2023), which emphasizes the flexibility of *ta'zir* as a space for restoration and education, and reminds us of the need for corrective mechanisms so that punishment does not become a source of new injustice. Research by Erniwati et al. (2025) and Rosman et al. (2025) also shows that customary sanctions of a *ta'zir* nature at the community level play a role in maintaining social harmony.

*Ta'zir* legitimizes customary sanctions as long as their objectives are in line with the public interest and do not violate the basic principles of sharia. Danial's research in another context shows variations in *ta'zir* practices, including fines, physical punishment, ostracism, and other social sanctions, all of which play a role in maintaining harmony but raise ethical and practical questions when not balanced by clear procedural regulations (Danial, 2023). The practice of *ta'zir* at the community level raises issues of procedural legitimacy, namely who has the authority to impose punishment, how evidence is presented, and whether there is a guarantee of the right to appeal. Field findings in Rao-rao Lombang show that community consensus is the source of legitimacy, led by the *hatobangon* and supported by the village head, but without written documentation and formal operating standards. A comparative study by Habi et al. (2024) shows that customary restorative mechanisms are often efficient in social recovery but are prone to inconsistency and the influence of authoritative figures. Therefore, although local *ta'zir* can fulfill the objectives of prevention and restoration, without procedural guidelines and oversight, it risks becoming arbitrary or disproportionately burdensome for perpetrators.

Normative analysis places customary *ta'zir* as an instrument that has the potential to complement the formal criminal justice system in the context of

legal pluralism, particularly for everyday conflicts with local impacts. But this interoperability requires clear boundaries (Danial, 2023; Erniwati et al., 2025). Customary decisions must not diminish the minimum rights guaranteed by state law or imply imprisonment that violates formal criminal procedures (Wulandari et al., 2022). Previous studies by Mabrusyah et al. (2024), which found harsh sanctions in other communities, reveal a spectrum of customary practices, ranging from moderate and restorative to repressive and harsh. The Rao-rao Lombang case is classified as moderate but lacks formal documentation, so when it intersects with articles of the Criminal Code or state judicial mechanisms, it can cause verification problems. Therefore, customary *ta'zir* must be positioned as a subsidiary solution that complements rather than replaces the role of formal law, with minimum accountability standards so that human rights and the principle of justice are protected.

The *maqasid al-shari'ah* approach assesses every legal action through the objectives of sharia, such as the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), reason (*hifz al-'aql*), lineage (*hifz al-nasl*), dan property (*hifz al-mal*) (Kamali, 2025). Customary rulings that focus on the recovery of the victim's property, the prevention of hostility, and the maintenance of social order, from the perspective of *maqasid al-shari'ah*, can be seen as consistent with the objectives of protecting property and maintaining social order (Husairi et al., 2024). However, *maqasid al-shari'ah* also requires efforts to balance punishment, prevention of *madarrah*, and social welfare (Alias et al., 2025). If the fine is so burdensome that it threatens the perpetrator's livelihood, then it contradicts the principle of *maslahah*. A comparison with the findings of Toha Andiko et al. shows that the practice of restorative justice in customary law is often in line with *maqasid al-shari'ah* when it places reconciliation and restoration as its main objectives (Andiko et al., 2024). Therefore, normative assessments must consider the ultimate effect on the welfare of the community, not just the formality of punishment.

The concept of *maslahah* requires an assessment of the usefulness of a legal policy, whether the sanctions imposed are effective in improving security, reducing recidivism, and maintaining social harmony (Ariyanti & Supani, 2024), so that *maslahah* functions as a functional benchmark for the legitimacy and effectiveness of sanctions in the eyes of the community. Empirical evidence shows that customary fines can meet these criteria in the short term. For example, a study by Mansur et al. (2020) found that customary fines were effective in reducing violations of *khalwat* (seclusion) in Banda Aceh. In the context of the *mangapus tarutung* case, fines were seen to compensate victims for material losses and provide a deterrent effect, thereby temporarily fulfilling the retributive and preventive elements of *maslahah*. However, research by Tumadi et al. (2025) highlights that fruit picking is often influenced by economic pressures without social intervention or structural preventive measures, such as distribution or yield management agreements. Monetary sanctions alone do not necessarily prevent recurrence because the root economic causes are not

addressed. Therefore, from a *maslahah* perspective, customary sanctions must be integrated with prevention policies and social programs so that their long-term benefits are tangible and do not create new *madarrah* for perpetrators or social instability.

'Urf or local customs, has been recognized in Islamic law as a secondary source of law that can provide practical nuances to the application of norms as long as they do not conflict with sharia *nass* ('urf *sahih*) (Irawan et al., 2025; J. M. Yusuf & Yuslem, 2023). The practice of *mangapus tarutung*, the mechanism of *manjago tarutung*, and the customary deliberations in Rao-rao Lombang demonstrate how 'urf traditionally shapes behavioral expectations and social sanctions. The findings of Luthfi et al. (2024) on the legitimacy of 'urf in marriage disputes reinforce that local customs can be recognized as long as they do not violate sharia principles. In the case of fruit theft, as long as the sanctions and procedures do not violate basic principles of justice and do not require *haram* practices, then 'urf can be the basis for legitimacy (Tumadi et al., 2025). It should be noted that the recognition of 'urf must be accompanied by an evaluation of *maqasid al-shari'ah* and *maslahah*; traditional customs that are detrimental to collective welfare or contrary to *maqasid al-shari'ah* cannot be used as normative justification (Alias et al., 2025; Najib, 2020). The practice in Rao-rao Lombang appears to meet the requirements of accepted 'urf sharia, but it must be accompanied by controls so that the custom does not turn into an arbitrary practice that ignores the rights of vulnerable parties.

### **Evaluation of Customary Sanctions with the Principles of Restorative Justice**

Restorative justice places the restoration of losses and the reconstruction of social relations as the main objectives of criminal justice, rather than mere retribution or exclusion (Wulandari et al., 2025). This approach requires procedures that facilitate dialogue between victims and perpetrators, accountability of perpetrators, and community involvement in reintegration plans (Gavrielides, 2020). Braithwaite (2020) adds the concept of reintegrative shaming, which emphasizes the difference between destructive exclusion and corrective shame followed by reintegration efforts, namely expressions of condemnation paired with steps to accept the perpetrator back into the community if improvement occurs, so that punishment or sanctions are understood within a corrective and restorative framework.

At the national policy level, the implementation of restorative justice is accommodated through Regulation of the Chief of the Indonesian National Police Number 6 of 2019 and Regulation of the Attorney General of the Republic of Indonesia Number 5 of 2020, which stipulate criteria such as the perpetrator not being a repeat offender and restrictions on certain offenses or amounts of loss, which are relevant parameters for assessing the feasibility of out-of-court settlements (Rusdiana et al., 2024). Restorative justice has also been officially integrated into the judicial regulatory framework, including Supreme Court

Regulation No. 1 of 2024 (Perma 2024) and Attorney General's Regulation No. 15 of 2020. The potential of restorative justice in the context of customary practices is highly dependent on procedural completeness, documentation, and follow-up mechanisms that ensure reintegration and protection of victims (Rochaeti et al., 2023).

The customary deliberation in the case of *mangapus tarutung* in Rao-rao Lombang and the fines imposed reflect elements of restorative justice, in which victims are given the opportunity to demand compensation, perpetrators are held accountable, and the community plays an active role. However, analysis shows that these customary practices focus more on material compensation than on procedural mechanisms of restorative justice, such as structured dialogue, symbolic restoration, or measurable reintegration plans. A comparison with studies by Habi et al. (2024) and Andiko et al. (2024) confirms that many customary mechanisms have restorative potential, but their effectiveness is highly dependent on the completeness of procedures, such as documentation and follow-up, which in the Rao-rao Lombang case are still weak.

Restorative justice emphasizes that victim recovery is not only a matter of money, but also the restoration of dignity, a sense of security, and public recognition of the loss (Gavrielides, 2020). The fine of IDR 1,000,000 in the case of *mangapus tarutung* in Rao-rao Lombang serves as material compensation for the lost fruit and thus addresses the victim's direct economic loss; but field practice reveals procedural weaknesses: there is no written evidence of payment and no mechanism to ensure immaterial recovery such as a formal apology, non-monetary restitution, or actions to restore a sense of security. Tumadi et al. (2025) highlight that fruit harvesting is often influenced by economic factors, therefore material compensation must be balanced with structural prevention programs to be effective in the long term. Habi et al. (2024) show that good customary practices include dialogue and reconciliation, elements that are less systematic in Rao-rao Lombang, so that the recovery of victims there is partial, i.e., material compensation is available but the psychological and symbolic dimensions are less accommodated.

Another principle of restorative justice also demands accountability from perpetrators, including acknowledgment of wrongdoing, reparative actions, and a commitment to behavioral change (Gavrielides, 2020). In the case of *mangapus tarutung*, the community decided on a fine as a form of material accountability. Several informants stated that fines were also intended to have a deterrent effect (Irfan, 2025). However, findings indicate a lack of mechanisms to ensure personal recognition and educational processes, such as no formal recording of facilitated apologies, no monitored recovery plans, and no graduated sanctions that combine education or community obligations. The study by Djalaluddin et al. (2023) on *ta'zir* emphasizes that sanctions other than *hudud* should be educational and restorative, which provides theoretical support for the development of customary sanctions in Rao-rao Lombang to be more guidance-oriented. In addition, Andiko et al. (2024) found that when customary

punishment emphasizes dialogue and agreement, perpetrators are more likely to accept substantive responsibility, a practice that still needs to be strengthened in Rao-rao Lombang so that responsibility does not become merely a payment without internalization of the mistake.

The ultimate goal of restorative justice is to reintegrate offenders into society without them bearing a permanent stigma (Gavrielides, 2020; Rusdiana et al., 2024). This requires monitoring programs, social support, and opportunities for reputation restoration. Social pressure and mutual agreement in the *mangapus tarutung* case served as informal mechanisms for reintegration, allowing offenders to resume their activities if the community accepted the settlement. However, the absence of monitoring mechanisms after sanctions were imposed, the lack of documentation, and dependence on the good faith of offenders made reintegration fragile. If perpetrators are unable to pay or experience prolonged rejection, the effects of stigma can turn into structural exclusion and deviate from the ideal of reintegrative shaming (Braithwaite, 2020). Comparisons with Rosman et al. (2025) and Wulandari et al. (2022) indicate that the success of customary reintegration is closely related to the existence of reconciliation rituals and community follow-up. The resolution of the *mangapus tarutung* case in Rao-rao Lombang shows potential, but requires a light formal mechanism with a written agreement and a recovery schedule for integration to truly occur, rather than merely an administrative resolution.

The practice of imposing customary sanctions in the case of *mangapus tarutung* in Rao-rao Lombang comprehensively contains elements of restorative justice, but its implementation is still partial. The most prominent practical gaps are an excessive focus on material compensation without mechanisms for immaterial recovery, a lack of educational accountability, and weak reintegration and monitoring procedures. The theoretical recommendation that emerges is to institutionalize a structured mediation process between victims and perpetrators that records agreements, and to apply restitution sanctions and educational or community service obligations in accordance with the perpetrator's capacity, which is in line with educational *ta'zir* (Djalaluddin et al., 2023). Creating simple documentation to facilitate monitoring and integrating preventive measures, such as profit-sharing agreements, is also important (Tumadi et al., 2025), thereby allowing customary law to maintain its normative autonomy while strengthening restorative effectiveness based on previous theory and empirical evidence.

### **Legal Pluralism and Policy Recommendations for Legal Harmonization**

The case of *mangapus tarutung* in Rao-rao Lombang confirms the practice of legal pluralism in Indonesia, namely the coexistence of state, religious, and customary norms that function pragmatically in the resolution of everyday disputes. Constitutional recognition of customary law communities provides a basis for practical legitimacy for local resolutions, as stated in the normative

framework that provides the basis for customary deliberative forums (Arifin et al., 2025; Rozah & Yudistira, 2025). The provisions of Article 362 of the Criminal Code and the provisions of Article 476 of the new Criminal Code classify theft as a criminal offense with certain penalties, while Perma 2012 provides technical guidelines on adjusting the limits of minor criminal offenses and the amount of fines so that cases with low economic value are often treated as minor cases and can be handled differently from serious criminal offenses (Martha et al., 2024; Rusdiana et al., 2024). An important implication is that customary settlements such as those that occurred in Rao-rao Lombang can function as a legitimate subsidiary mechanism in practice, but must be understood in the context of the limitations and guarantees of state law so as not to weaken the protection of victims' rights or lead to inconsistencies in law enforcement.

Harmonization needs to be directed at two things at once, namely strengthening the procedural legitimacy of customary settlements and protecting human rights, which are the domain of positive law (Djawas et al., 2024; Zein et al., 2025). The practice of consensus and customary *ta'zir* sanctions provides speed and closeness of values, which are important advantages in kinship-based communities, but the absence of documentation, standards of proportionality, and access to formal channels opens the door to inconsistency or potential injustice (Febrianty et al., 2023). The policy recommendation is to develop minimum local guidelines, such as a template for minutes, a list of categories of violations and sanction options, and an agreement form developed jointly by village officials and customary leaders and consulted with the local District Court. Perma 2012 has provided operational space for the proportional handling of minor crimes, so local guidelines should be in line with these provisions so that customary decisions can be easily verified when necessary to increase accountability without revoking customary autonomy.

Substantive harmonization also requires the integration of Islamic legal principles, *maqasid al-shari'ah*, and *ta'zir* rules into customary practice guidelines (Asrawijaya, 2022). The practice of fines in Rao-rao Lombang has the potential to be shaped as educational and restorative *ta'zir* rather than merely retributive, with a layered sanction model, such as material restitution proportional to the loss, educational or social work obligations for perpetrators according to their abilities, and economic prevention programs with mechanisms for sharing harvests, mutual assistance in security, or community agreements to address root causes. The proposed practical instruments include proportionality guidelines that take into account the economic capacity of the perpetrator, a restorative conferencing model that formalizes dialogue between the victim and the perpetrator and produces a written agreement, and sanctions limits that prevent excessive punishment and provide remission options if the perpetrator fulfills their educational obligations. This approach is in line with the interpretation of *ta'zir*, which places *maslahah* and reintegration as the main objectives, while minimizing the risk of long-term social or economic *madarrah* (Djalaluddin et al., 2023).

In order for harmonization to be sustainable, supporting institutions are needed, including capacity building for traditional leaders through training in basic law, *maqasid al-shari'ah* and human rights, as well as clear referral mechanisms between customary settlements and formal courts, for example, criteria for cases that must be referred, and local oversight involving village elements and civil stakeholders to monitor the implementation of customary agreements. Special protection for vulnerable groups, such as children, women, and persons with disabilities, is needed to ensure that customary settlements do not reinforce inequality. Administratively, villages can adopt village regulations or internal guidelines that codify customary settlement practices compatible with national law, while respecting 'urf as long as it does not conflict with *maqasid al-shari'ah* and human rights, so that legal pluralism does not become a source of inconsistency but an asset in the enforcement of contextual and humane justice. Normative references to constitutional recognition of customary law communities and Supreme Court guidelines should form the basis for dialogue between local actors and policymakers.

## CONCLUSION

The study concludes that customary decisions in *mangapus tarutung* cases in Rao-rao Lombang show functional compatibility with the *ta'zir* doctrine in Islamic criminal law and with *maqasid al-shari'ah* in terms of property maintenance and social order. The social legitimacy of the decision is built through consensus and 'urf, while fines serve as compensation and short-term deterrence. This compatibility is conditional and partial because implementation faces significant weaknesses, a lack of systematic proportionality measurement, weak documentation and monitoring mechanisms, and a lack of educational elements that should be inherent in *ta'zir* and restorative justice practices. The practical implications require procedural harmonization that does not reduce customary autonomy, such as the development of minimum local guidelines covering written agreement templates, proportionality standards, and simple documentation formats. A combinative sanction design is also needed, such as proportional restitution combined with educational obligations or social work according to the perpetrator's capacity, as well as referral and monitoring mechanisms after settlement developed jointly with customary stakeholders and village officials.

Capacity building programs for customary leaders on *maqasid al-shari'ah* and human rights, as well as economic prevention interventions, such as profit-sharing schemes and collective guardianship, are also needed to address structural determinants and ensure that customary settlements remain restorative, accountable, and compatible with national law. The theoretical contribution of this research enriches the discourse on *ta'zir* as a remedial category based on *maslahah*, not a substitute for *hudud*, and affirms the role of 'urf as a source of local legitimacy that must be evaluated according to the

criteria of *maqasid al-shari'ah*. Restorative justice has proven to be a productive analytical framework for assessing the harmonization of norms in pluralistic societies. Methodologically, this study offers a replicable model of integrating layered interviews with juridical and normative analysis, while also opening up an agenda for further research on the standards of proportionality of *ta'zir*, mechanisms for documenting customary law, and the long-term impact of restorative interventions on social cohesion.

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