

Legal Politics of Handling Children as Perpetrators of Criminal Acts: A Comparison of Indonesia and the Philippines from the Perspective of Customary Law and Children's Rights

Raodiah^{1*}, Dian Eka Kusuma Wardani², Nurmiati Muhiddin³, Princess Alyssa D. Tee-Anastacio⁴

^{1,2,3}, Faculty of Law, Universitas Sawerigading, Makassar, Indonesia.

⁴, Our Lady of Fatima University, Valenzuela, Philippines.

 : hj_raodia@yahoo.com
Corresponding Author*



Abstract

Introduction: The treatment of children as perpetrators of criminal acts has become a significant issue in the development of modern law, particularly with regard to the protection of children's rights and the integration of local values. Indonesia and the Philippines, as countries with different legal traditions, present an important dynamic for study.

Purposes of the Research: The purpose of this research is to analyze the differences in the legal politics of Indonesia and the Philippines in addressing juvenile offenders, focusing on the implementation of diversion in Indonesia and the juvenile justice system in the Philippines, while also examining the integration of customary or community-based mechanisms and the protection of children's rights in both jurisdictions.

Methods of the Research: This study employs normative legal research with comparative and conceptual approaches. Data were collected through literature review of statutory provisions, academic doctrines, scholarly literature, and relevant international instruments on children's rights. The analysis was conducted qualitatively and descriptively to compare norms, practices, and the implications of legal politics in both countries.

Results of the Research: The findings of this study demonstrate that the legal politics of both countries, through the integration of customary law and the protection of children's rights, serve as a fundamental basis for the normative framework in addressing children as perpetrators of criminal acts. In Indonesia, customary law is implicitly integrated through the mechanism of diversion as regulated in Laws of the Juvenile Criminal Justice System. In contrast, in the Philippines, customary or community-based law is explicitly integrated by involving the barangay tanod in handling juvenile offenders during the diversion process under the Juvenile Justice and Welfare Act of 2006 (RA 9344). These findings contribute to advancing Indonesia's legal policy toward a more humane, inclusive, and internationally aligned juvenile justice system.

Keywords: Legal Politics; Juvenile Offenders; Customary Law; Children's Rights.

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INTRODUCTION

The phenomenon of children in conflict with the law is an increasingly complex issue amidst societal development. Children are not only placed as subjects vulnerable to violence or exploitation, but also frequently appear as perpetrators of criminal acts.¹ This presents a

¹ Anik Iftitah et al., "Pertanggungjawaban Hukum Anak Dalam Pelaku Tindak Pidana Berat: Pendekatan, Dampak, Dan Implikasi Dalam Sistem Peradilan Anak," *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara* 1, no. 2 (2023): 152-67, <https://doi.org/10.55606/Birokrasi.v1i2.592>.

challenge, as children inherently hold a privileged position as individuals who are still in the stage of physical and psychological development.²

The existence of children as perpetrators of crime in the legal context raises a dilemma: on one hand, they are perpetrators who must be held accountable, but on the other hand, they are victims of their environment, social circumstances, and weaknesses in the protection system.³ The shifting perspective on children as perpetrators of criminal acts demands a legal approach that is not only repressive but also protective, in accordance with internationally recognized principles of children's rights.

Each country has a different way of regulating the handling of children who are entangled in legal problems. The United Nations Convention on the Rights of the Child (CRC), which has been ratified by many countries, including Indonesia and the Philippines, emphasizes the importance of child protection without neglecting the principle of justice. This principle mandates that legal proceedings against children be carried out with due regard to the best interests of the child.⁴ Indonesia and the Philippines are two countries in Southeast Asia that face similar challenges in handling children as perpetrators of criminal acts.⁵ Both countries have rich cultural backgrounds with customary law values and a shared colonial history, but they differ in terms of the construction of their legal systems and legal politics built after independence. Indonesia is known as a country that adheres to a mixed legal system with influences from civil law, customary law, and Islamic law,⁶ while the Philippines is strongly influenced by Spanish colonial law, Anglo-Saxon law from the United States, as well as local traditions rooted in indigenous communities.⁷ This difference is interesting to study because it produces a unique model of legal treatment towards children, especially when linked to the recognition of children's rights and the role of customary law in shaping state policy.

This historical background influences how the two countries formulate legal policies towards children as perpetrators of crime. In Indonesia, customary law still has a significant role in shaping public perceptions of justice, including in cases involving children. In some indigenous communities, the resolution of children's cases emphasizes a restorative approach rather than a repressive one, placing the interests of the community and social balance above individual punishment. Conversely, the Philippines, despite its diverse local cultures, tends to adopt a formal system through Anglo-Saxon practices with an emphasis on due process and an institutionalized juvenile justice system. This difference in approach opens up space for constructive comparison, so that it can be understood how the legal politics in each country responds to its social realities.

² Agus Sriyanto and Sutrisno, "Perkembangan Dan Ciri-Ciri Perkembangan Pada Anak Usia Dini," *JOURNAL FASCHO: Jurnal Penelitian Dan Pendidikan Anak Usia Dini* 1, no. 2 (2022): 26–33, <https://www.ejournal.stitmuhgawi.ac.id/index.php/Fascho/article/view/39>.

³ Wawan Wartawan, "Anak Yang Berhadapan Dengan Hukum Ditinjau Dalam Pertanggungjawaban Hukum Sesuai Dengan Sistem Peradilan Anak," *Jurnal Inovasi Global* 2, no. 9 (September 23, 2024): 1186–98, <https://doi.org/10.58344/JIG.V2I9.154>.

⁴ Ahmad Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak Pada Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Progresif* 12, no. 1 (2024): 66–77, <https://doi.org/10.14710/JHP.12.1.66-77>.

⁵ Anthony Steven, Dorantes Wijaya, and Dave David Tedjokusumo, "Peran Perhimpunan Bangsa-Bangsa Asia Tenggara Dalam Menanggulangi Eksploitasi Perempuan Dan Anak," *Jurnal Syntax Admiration* 5, no. 6 (2024): 2261–71, <https://doi.org/10.46799/JSA.v5i6.1217>.

⁶ Citra Irwan Simbolon, Baginda Rizky Ariesvy Sitanggang, and Rosmalinda Rosmalinda, "Implikasi Sejarah Hukum Bagi Pembentukan Sistem Hukum Di Masa Depan," *Journal Sains Student Research* 2, no. 5 (2024): 423–34, <https://doi.org/10.61722/JSSR.v2i5.2700>.

⁷ Hazar Kusmayanti et al., "A Comparative Analysis of The Indonesian And Philippine Judicial Systems: Identifying The Role of Customary Courts," *Cepalo* 9, no. 1 (2025): 13–24, <https://doi.org/10.25041/Cepalo.v9no1.3677>.

The paradigm shift in international law that emphasizes a restorative justice approach in the juvenile justice system makes this research urgent. This approach requires that countries not only focus on aspects of retribution or punishment, but also on rehabilitation and social reintegration of children. In Indonesia, the concept of diversion has been adopted in the Law on the Juvenile Criminal Justice System. Meanwhile, the Philippines, with its Juvenile Justice and Welfare Act, has developed a similar mechanism with an emphasis on reducing the criminalization of children under a certain age. This comparison provides an opportunity to assess the extent to which the legal politics of the two countries are in line with the principles of restorative justice while also considering customary law and children's rights.

In addition, it needs to be emphasized that legal politics in handling child offenders cannot be separated from the national political dynamics of each country. Legal policy is always the result of a push and pull between state interests, social norms, and the demands of the international community. In Indonesia, legal politics is often influenced by the need to maintain social harmony, so customary law is still considered in resolving children's cases. In the Philippines, pressure from international institutions and the strong influence of the common law tradition create a more structured and formal legal policy. Through this comparison, it will be seen how different configurations of legal politics shape patterns of treatment towards children in conflict with the law.

The link between customary law and children's rights is also a crucial point that strengthens the urgency of the research. Customary law in Indonesia often promotes the principles of kinship, deliberation, and restoration of social relations, which is in line with the principle of children's rights to receive protection and education. However, this practice is not always harmonious with the formal justice system, which places more emphasis on legalistic aspects. The Philippines has local community practices that also influence how children are treated in a legal context. Comparative analysis will open up space to see the extent to which customary law can be a bridge between the formal legal system and the principles of child protection in both countries.

The study of legal politics in handling child offenders is not merely a normative study, but also a reflection on social, cultural, and political realities. By using a comparative perspective between Indonesia and the Philippines, this research is expected to show the variations in legal approaches that are rooted in history, legal systems, and customary values. From this comparison, it can be understood how the two countries articulate the protection of children's rights in the context of their respective legal politics. The urgency of this research lies not only in its academic contribution but also in its practical relevance in encouraging legal reforms that are more pro-child. Thus, the discussion on legal politics in handling child offenders becomes an important theme that is not only contextual but also strategic in building a criminal justice system that is just and humane.

Research by Ari Muhammad in the *Lex Generalis Law Journal* discusses how customary law is applied as an instrument for resolving cases of children who commit crimes, especially related to environmental damage and customary property. The study emphasizes that customary law has an orientation towards restoration and social balance, thus providing alternative solutions that are different from the formal criminal justice mechanism. An important finding of this research is the large role of indigenous communities in restoring harmony while protecting the interests of child offenders so that

they are not trapped in long-term stigma. The relevance of this research to the theme raised is its contribution in showing the values of customary law as a basis in shaping the legal politics of handling child offenders.⁸

Meanwhile, research by Kadek Krisna Mahendra in the *Pacta Sunt Servanda* Journal provides a comparative perspective on how the two countries regulate the criminal responsibility of children. This research finds that there are fundamental differences in the legal systems, where Indonesia tends to emphasize diversion mechanisms in the juvenile justice system, while the Philippines uses a more formal juvenile justice framework. The research is important because it opens up cross-country comparative discourse in assessing the extent to which national laws are consistent with the principles of child protection. From this, it can be seen that there is room to further examine the aspects of legal politics, customary law, and children's rights that have not been fully explored in previous research.⁹

The novelty of this research lies in the effort to combine two perspectives that have not been widely touched upon in previous studies, namely the relationship between legal politics, customary law, and the protection of children's rights in the context of a comparison between Indonesia and the Philippines. If Ari Muhammad's research focuses more on the application of customary criminal law within a local scope, and Kadek Krisna Mahendra's research focuses on a formal comparison of criminal law, then this research fills the gap by connecting the dimensions of legal politics with customary law practices and the implementation of children's rights. Thus, this research is not only normative but also presents a comprehensive analysis that looks at the interaction between local values, national regulations, and international standards in handling child offenders.

The purpose of this research is to analyze the legal politics of handling children as perpetrators of criminal acts in Indonesia and the Philippines, with an emphasis on the integration of customary law and the protection of children's rights. In addition, this research also aims to compare the application of diversion in the juvenile criminal justice system in Indonesia with the juvenile justice system in the Philippines. With these objectives, the research is expected to provide a conceptual contribution in the development of a more humane, restorative legal politics model that is in accordance with the principle of the best interests of the child, both at the national and regional levels.

METHODS OF THE RESEARCH

The research method used in this study is normative legal research with comparative and conceptual approaches. Normative legal research was chosen because the main focus lies on the analysis of laws and regulations, doctrines, and legal principles that apply in Indonesia and the Philippines, especially related to the juvenile criminal justice system, customary law, and the protection of children's rights. The comparative approach is applied by comparing the substance of positive law in force in both countries, starting from normative regulations in laws, implementation practices in the judiciary, to the scope of integration of customary law and community values. Through this comparison, similarities

⁸ Ari Muhammad, "Penerapan Pidana Adat Terhadap Anak Sebagai Pelaku Perusakan Kekayaan Adat Dan Lingkungan," *Jurnal Hukum Lex Generalis* 6, no. 7 (2025), <https://doi.org/10.56370/JHLG.v6i7.1652>.

⁹ Kadek Krisna Mahendra, "Tinjauan Perbandingan Hukum Pidana Antara Negara Indonesia Dengan Filipina Terkait Pertanggungjawaban Pidana Terhadap Anak Dibawah Umur," *Jurnal Pacta Sunt Servanda* 6, no. 1 (2025): 13–21, <https://doi.org/10.15294/LRRQ.v8i3.60022>.

and differences in the orientation of legal politics in responding to children as perpetrators of criminal acts can be seen. Meanwhile, the conceptual approach is used to examine the legal principles underlying the formation of norms, such as restorative justice, the best interests of the child, and respect for local wisdom, which are then interpreted to provide a deeper understanding of the direction of legal development. Data processing techniques are carried out through literature study by reviewing academic literature, national regulations, international instruments, and relevant court decisions. The collected data is then analyzed using descriptive qualitative analysis techniques, namely by systematically describing the contents of legal norms, comparing their application in the two countries, and drawing argumentative conclusions regarding the implications of legal politics for the handling of children as perpetrators of criminal acts.

RESULTS AND DISCUSSION

A. Indonesian and Philippine Legal Policies in Handling Children as Perpetrators of Criminal Acts

Indonesia's legal policy in handling children as perpetrators of criminal acts is formally realized through Law Number 11 of 2012 concerning the Child Criminal Justice System (Child Criminal Justice System Law).¹⁰ This law marks a paradigm shift from retributive to restorative justice, where the emphasis is not on punishment but on the restoration of social relations and the best interests of the child.¹¹ This regulation was born as a response to the limitations of the conventional criminal justice system which often creates a negative stigma for children.¹² Through this legal policy, the state seeks to build norms that place children not only as perpetrators of crime but also as subjects with rights that must be protected. The legal norms that are formed then require diversion efforts at every stage of the legal process. Thus, Indonesia's legal politics is oriented towards the best interests of the child and social reintegration.

From the perspective of customary law, Indonesia's legal politics forms legal norms that combine national positive law with local values through recognition of customary law. Indigenous communities place children as part of the community who still need to be guided, not severely punished. The settlement of children's cases in customary law is usually carried out through deliberation, reconciliation, and restoration of social balance between families.¹³ This principle is similar to the idea of restorative justice adopted by the Child Criminal Justice System Law. The diversion norm in the Child Criminal Justice System Law allows for the involvement of community or traditional leaders in the resolution of juvenile cases.¹⁴ This makes customary law not just a social norm, but part of the formal legal system in the context of child protection. Through the integration of

¹⁰ Alvin Ferdiansya and Asep Suherman, "Perlindungan Anak Dalam Sistem Peradilan Pidana Anak," *Jurnal Kajian Hukum Dan Kebijakan Publik* 2, no. 1 (2024): 329–36, <https://doi.org/10.62379/Q62ZE369>.

¹¹ Fauzan Sugama et al., "Efektivitas Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Anak Di Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 306–16, <https://doi.org/10.71153/Jimmi.v1i3.148>.

¹² Iailatul Arifah, "Tinjauan Yuridis Penerapan Restorative Justice Dalam Kasus Pelecehan Anak Dibawah Umur" (Universitas Islam Sultan Agung, 2025).

¹³ Nur Asifah and Alauddin Alauddin, "Konflik Keluarga Dan Resolusinya Dalam Hukum Adat : Refleksi Atas Peran Budaya Dalam Merawat Harmoni Sosial," *Sibaliparriq: Jurnal Hukum Keluarga Dan Literasi Syariah* 2, no. 1 (2025): 1–12, <https://doi.org/10.46870/SBP.v2i1.1736>.

¹⁴ Natalisya Tetelepta, Julianus Edwin Latupeirissa, and Anna Maria Salamor, "Penerapan Diversi Oleh Hakim Dalam Penyelesaian Perkara Pidana Anak Ditingkat Pengadilan (Studi Pengadilan Negeri Masohi)," *PATTIMURA Law Study Review* 2, no. 1 (2024): 156–68, <https://doi.org/10.47268/Palasrev.v2i1.13876>.

national law and customary law, Indonesia's legal politics provides space for local wisdom to support national legal norms.

The Philippines has a similar direction in its legal politics, marked by the enactment of the Juvenile Justice and Welfare Act of 2006 (RA 9344), which was later amended by RA 10630 in 2013.¹⁵ This law affirms that children must be treated differently from adults, prioritizing the prevention of imprisonment and promoting rehabilitation.¹⁶ The concept of restorative justice is the main foundation in every stage of case handling. Similar to Indonesia, the legal politics of the Philippines views children not only as perpetrators but also as individuals who need to be protected and guided for a better future. The norms born from the Juvenile Justice and Welfare Act still provide space for the barangay justice system, which is community-based justice at the local level. This is affirmed through section 4 Definition of terms (n) RA 9344 "Law Enforcement Officer" refers to the person in authority or his/her agent as defined in Article 152 of the Revised Penal Code, including a barangay tanod."¹⁷ This system has the function of resolving conflicts by emphasizing social harmony and the involvement of indigenous communities.

Within the framework of Philippine customary law, the principle of restorative justice also has traditional roots. Indigenous communities such as the Lumad, Igorot, and Moro resolve children's cases through communitarian mechanisms based on reconciliation.¹⁸ Children who commit offenses are given guidance by family and indigenous leaders with the aim of repairing social relationships, not punishing. This shows the compatibility of national legal politics with customary practices, where both place recovery above retribution. Philippine legal politics is even stronger because it is supported by the Indigenous Peoples' Rights Act 1997 (RA 8371), which provides explicit space for customary law.¹⁹ Thus, the Philippines uses local mechanisms as instruments for implementing legal politics in handling children.

Both Indonesia and the Philippines demonstrate selective legal politics. Indonesia implicitly recognizes the existence of customary law in resolving children's cases through diversion policies, while the Philippines accommodates traditional values through barangay justice, which more explicitly demonstrates the integration of customary legal norms. The legal politics of the Philippines is more explicit in incorporating customary law into the national legal framework. Meanwhile, Indonesia's legal politics emphasizes the sustainability of local community systems without having to place them in a formal legal framework. This difference reflects how each country interprets the integration of local culture into juvenile criminal law norms.

The state only adopts customary law values that are in accordance with the principles of human rights and the best interests of the child. Customary practices that are discriminatory

¹⁵ Shenai Juance and Dodelon F. Sabijon, "Beyond Troubled Childhood: Lived Experiences of Former Children in Conflict with the Law," *International Journal of Law and Politics Studies* 7, no. 4 (July 15, 2025): 34–47, <https://doi.org/10.32996/IJLPS.2025.7.4.2>.

¹⁶ Charilyn H. Gomonod et al., "Garden Of Second Chances: Lived Experiences of Bahay Pag-Asa Personnel In Handling Children in Conflict With The Law," *International Journal Of Politics, Publics Policy And Social Works* 7, no. 16 (2025): 27–47.

¹⁷ M. Asadur Rifqi, "Perbandingan Pengaturan Diversi Dalam Sistem Peradilan Pidana Anak Antara Indonesia Dengan Filipina Dalam Rangka Mewujudkan Keadilan Restoratif Di Indonesia" (UNS (Sebelas Maret University), 2021), <https://digilib.uns.ac.id/dokumen/87079/Perbandingan-Pengaturan-Diversi-Dalam-Sistem-Peradilan-Pidana-Anak-Antara-Indonesia-dengan-Filipina-Dalam-Rangka-Mewujudkan-Keadilan-Restoratif-di-Indonesia>.

¹⁸ Stephanie P. Stobbe, ed., *Conflict Resolution in Asia: Mediation and Other Cultural Models* (London: Bloomsbury Publishing PLC, 2020).

¹⁹ Renz G. Cabca and Joy C. Calva, "The Status of Mandatory Representation for Indigenous Peoples: A Critical Evaluation of Performance and Challenges," *East Asian Journal of Multidisciplinary Research* 4, no. 7 (2025): 3227–40, <https://doi.org/10.55927/EAJMR.v4i7.267>.

or potentially violate children's rights, such as physical punishment, are not accommodated. Thus, legal politics in both countries functions as a filter that balances local traditional values with international legal obligations. This demonstrates the function of legal politics as a state strategy to maintain the continuity of tradition and still meet national development standards.

The principle of child protection, which is clearly visible in the construction of Indonesian legal politics, includes several things. First, the best interests of the child are affirmed through Article 2 letter d, which states that the juvenile criminal justice system is implemented based on the principle of the best interests of the child, so that every legal policy must place the welfare of the child as the main priority. Second, non-discrimination is affirmed through Article 2 letters c and h, which state that the juvenile criminal justice system is implemented based on the principles of non-discrimination and proportionality. Third, the principle of the right to life, growth, and development, which is translated into efforts to avoid imprisonment as stated in Article 3 letter g of the Juvenile Criminal Justice System Law. Fourth, the principle of child participation in accordance with Article 3 letter h of the Juvenile Criminal Justice System Law, where the child's statement is heard in legal proceedings. The integration of all these principles reflects the implementation of Indonesia's ratification of the UN Convention on the Rights of the Child.

The Philippines applies similar principles in its legal politics through RA 9344, which affirms the paradigm of restorative justice and community-based intervention as the main framework. The principle of the best interests of the child is reflected in Section 2 (Declaration of State Policy) which states: "The State shall protect the best interests of the child through measures that will ensure the observance of international standards of child protection." This shows that every handling of children in conflict with the law must prioritize the welfare and future of the child. Furthermore, the principle of diversion is affirmed in Section 4(j) which defines diversion as: "an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background, without resorting to formal court proceedings." This provision affirms that the settlement of children's cases should be diverted from formal mechanisms to community channels as much as possible.

The principle of protection from detention is also explicitly affirmed in Section 6 (Minimum Age of Criminal Responsibility) which reads: "A child 15 years of age or under at the time of the commission of the offense shall be exempt from criminal liability." This article ensures that children under the age of 15 cannot be prosecuted, but must be placed in social intervention mechanisms. On the other hand, the principle of rehabilitation and reintegration is affirmed in Section 2 (Declaration of State Policy) which also states: "The State recognizes the right of children in conflict with the law to rehabilitation and reintegration." Thus, every child involved in a criminal case is not only seen as a perpetrator of wrongdoing, but also as an individual who must be restored to function in society. The legal politics of the Philippines builds a juvenile justice system that is oriented towards protection, diversion of cases from formal processes, and social recovery. RA 9344 not only adopts international principles of child protection, but also adapts them to the values of local communities in the Philippines, so that customary law and communitarian practices are still given space as long as they do not conflict with children's rights and human rights

standards. The legal politics of Indonesia and the Philippines leads to strengthening child protection through restorative channels. The Philippines provides more explicit recognition of customary law as a settlement instrument, while Indonesia accommodates customary values within the framework of national law without mentioning it directly. This shows that the Philippines is more open to legal pluralism in the context of indigenous rights, while Indonesia emphasizes integration into the national legal system. This difference shows variations in legal political strategies in balancing modernity and tradition.

The integration between national and customary law in both countries shows that legal politics is not just technical, but also cultural. Both Indonesia and the Philippines choose legal channels that emphasize recovery, because of the awareness that children are not just criminal objects, but subjects of rights that must be protected. Their legal politics reflects an ideological choice to make law an instrument of human development, not just social control. Thus, the legal norms born from this legal politics represent a moral consensus between local tradition, international law, and national needs.

The legal politics of handling children in Indonesia and the Philippines affirms the role of the state as a director of a humane and protection-oriented legal system. Legal politics in both countries starts from the principle that children are not just perpetrators of crime, but individuals with fundamental rights that must be protected. The adoption of customary values and the application of international principles such as the best interests of the child, non-discrimination, and restorative justice are important foundations in the legal construction of Indonesia and the Philippines. This shows how legal politics builds a bridge between legal modernity, local wisdom, and commitment to child protection.

B. Differences in the Implementation of Diversion in the Juvenile Criminal Justice System in Indonesia and the Juvenile Justice System in the Philippines

Diversion is a form of effort to handle children as perpetrators of criminal acts in both Indonesia and the Philippines. Diversion in Indonesia is an integral part of the legal politics built through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Child Criminal Justice System Law). This concept was born from the need to avoid criminalizing children and provide alternative paths outside of court proceedings.²⁰ This legal norm requires law enforcement officials to pursue diversion in criminal acts with a threatened punishment of under seven years and not a repetition of criminal acts. With this legal policy, the state seeks to shift the orientation from retributive justice to restorative justice.

Philippine legal politics formed the juvenile justice system through the Juvenile Justice and Welfare Act of 2006 (Republic Act Number 9344), which was later amended by RA Number 10630 in 2013. This law promotes the principle of restorative justice and provides more flexible diversion programs. Unlike Indonesia, this system gives more space for children to avoid formal judicial processes, even in cases with fairly severe criminal threats. The Philippines prioritizes social rehabilitation and community-based intervention as the main pillars.²¹ This legal policy is strongly influenced by international pressure, especially the Convention on the Rights of the Child (CRC). In Indonesia, the legal politics of diversion

²⁰ Herman et al., "Analisis Peran Upah Minimum Provinsi Dalam Diversi Pada Sistem Peradilan Anak Terhadap Pasal 9 Ayat (2) Huruf d Undang-Undang SPPA," *Halu Oleo Legal Research* 7, no. 1 (2025): 66–85, <https://doi.org/10.33772/Holresch.v7i1.1628>.

²¹ Eduardo Junio Andaya et al., "Evidence-Based Child Protection in the Philippines: A Scoping Review," *International Journal of Social Science Research and Review* 8, no. 5 (2025): 102–23, <https://doi.org/10.47814/ijssrr.v8i5.2623>.

is also influenced by the recognition of customary law. The concept of resolving problems through deliberation, peace, or reconciliation in Batak customary law, for example, has similarities with the principle of diversion which emphasizes the restoration of social relations. Likewise, with sharia customary law in Aceh, which provides space for a restorative justice approach through family and community-based mediation.²² This integration shows how Indonesian legal politics tries to embrace customary values as long as they do not conflict with the principles of human rights. Diversion in Indonesia, although regulated in a positive legal framework, still finds relevance with the style of dispute resolution in customary law.

The Philippines also shows a strong influence of customary law in the practice of diversion. Indigenous groups such as the Lumad and Igorot have traditions of communitarian reconciliation that focus on restoring social harmony,²³ Meanwhile, the Moro community tends to use a community-based sharia approach in resolving child cases.²⁴ Philippine legal politics then recognized the role of this customary law through the Indigenous Peoples' Rights Act (RA 8371/1997), which provides a legal basis for integrating customary values into the modern justice system. As a result, diversion in the Philippines is not only in the form of formal procedures, but also manifested in customary reconciliation practices recognized by the state. This reinforces the uniqueness of Philippine legal politics which is more accommodating to legal pluralism.

From the aspect of protecting children's rights, Indonesia through the Child Criminal Justice System Law affirms the principles of the best interests of the child, non-discrimination, child participation, and the right to life, growth, and development. This is clearly seen in Article 3 of the Child Criminal Justice System Law, which places the principles of child protection as the basis of the entire juvenile criminal justice process. Diversion then becomes an instrument to prevent children from imprisonment, in accordance with the principle that imprisonment is *ultimum remedium*. Thus, Indonesian legal politics seeks to integrate international standards of child protection with local social and customary law realities.

The Philippines regulates the protection of children's rights through RA 9344 with more progressive principles. Section 6 of RA 9344 states that children aged 15 years and under are completely exempt from criminal liability, but can only be directed to social intervention programs. Diversion in the Philippines is not just an alternative, but the main mechanism in the juvenile justice system. The principle of rehabilitation and reintegration is affirmed in Section 2 of RA 9344, which guarantees the right of children to be restored to society. This shows that Philippine legal politics emphasizes more on protecting children from the stigma of the criminal justice system.

In Indonesia, the values of deliberation and reconciliation from Batak customs and the principles of sharia mediation in Aceh can provide social legitimacy for diversion practices. Indonesian legal politics places these values as a source of inspiration, although their implementation is still limited by formal provisions in the Child Criminal Justice System

²² Budi Bahreisy, "Peran Lembaga Adat Di Aceh Dalam Penyelesaian Perkara Anak Yang Berkonflik Dengan Hukum," *Jurnal Penelitian Hukum De Jure* 20, no. 1 (2020): 25–36.

²³ Stobbe, *Conflict Resolution in Asia: Mediation and Other Cultural Models*.

²⁴ Primitivo III Cabanes Ragandang, *Peacebuilding and Memory in the Philippines*, Rethinking Peace and Conflict Studies (Cham: Springer Nature Switzerland, 2025), <https://doi.org/10.1007/978-3-031-90375-5>.

Law. This integration is important because it makes diversion more acceptable to the public, while strengthening the effectiveness of resolving children's cases at the local level. Meanwhile, in the Philippines, the customary law of the Lumad, Igorot, and Moro is more directly integrated into the diversion system. This community-based settlement mechanism receives formal recognition through state policy, so that diversion truly reflects restorative justice practices that live in society. Philippine legal politics thus not only adopts the universal principle of child protection, but also provides ample space for the sustainability of customary law in modern legal practice.

One unique form of integration in the Philippines is the involvement of barangay tanods in the system of handling children as perpetrators of criminal acts. Barangay tanods have mediation and supervision functions at the community level, so that children in conflict with the law are handled more in the closest social environment before entering the formal system.²⁵ This shows that Philippine legal politics emphasizes the principles of social proximity, community participation, and restoration of relations in society. This integration is also evidence that the diversion system in the Philippines is more contextual with the reality of customary law and local social structures.

Indonesia implements diversion with more formalistic limitations, while the Philippines provides more space for customary law and communities. Indonesian legal politics still emphasizes the integration of customary values into a standard national legal framework, while the Philippines is bolder in giving direct authority to indigenous communities and local institutions such as barangays. This difference reflects a difference in legal political traditions: Indonesia, which tends to be legalistic with state supervision, and the Philippines, which is more communitarian with explicit recognition of customs.

Both Indonesia and the Philippines place diversion as the main instrument of child protection in the criminal justice system. However, the style of legal politics, recognition of customary law, and models of child rights protection make diversion practices in the two countries have different characters. Indonesia tends to combine international standards and customary law within the formal framework of the state, while the Philippines builds a more open system by emphasizing community participation and explicit recognition of customary practices. This difference shows how legal politics rooted in the history and culture of each country forms a distinctive configuration in child protection.

CONCLUSION

The legal politics of handling children as perpetrators of criminal acts in Indonesia and the Philippines shows differences in orientation and normative strategies. Indonesia, through the Child Criminal Justice System Law, promotes diversion by implicitly integrating values in customary law. Meanwhile, the Philippines, with the Juvenile Justice and Welfare Act, develops a more progressive system through diversion programs and community-based interventions that involve barangay tanods in the process of handling children as perpetrators of criminal acts. This difference shows that although both countries equally adopt the principle of restorative justice, the Philippines is more able to integrate customary legal structures and procedures into its legal politics in the context of handling

²⁵ Chris Millora, *Local Volunteering, Adult Learning and Social Change in the Philippines: Everyday Learning, Everyday Literacies* (London: Bloomsbury Publishing, 2025).

children as perpetrators of criminal acts. In terms of protecting children's rights, the Philippine system is more consistent in applying the principle of the best interests of the child, including in more serious cases, while Indonesia is still trapped in normative limitations. Indonesia can adopt several good practices from the Philippines to strengthen the juvenile criminal justice system. First, raise the minimum age of criminal responsibility to be more in line with international standards and the principle of non-criminalization of children. Second, expand the scope of diversion to include serious criminal acts with mechanisms that emphasize recovery and social reintegration. Third, strengthen the capacity of customary institutions and local communities to play a more real role in resolving children's cases, similar to the role of the barangay justice system in the Philippines. With these steps, Indonesian legal politics can move in a more humane, inclusive direction and in accordance with the principles of child rights protection

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