

The Dialectics of Islamic Law and Customary Law in Resolving Digital Cultural Grievances: A Case Study of Pandji Pragiwaksono's Customary Sanctions in Tana Toraja

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Abstract. *This study aims to analyze the legal construction and dialectical interaction between Islamic law and customary law in resolving digital cultural grievances in Indonesia's pluralistic legal system. It focuses on the landmark case of comedian Pandji Pragiwaksono, who was subjected to Torajan customary sanctions in 2026 for digital comedy content produced in 2013. The research employs a qualitative normative juridical method utilizing case, conceptual, and statutory approaches. The results reveal that digital cultural offenses can be theoretically reconstructed as Jarimah Ta'zir, as the permanent nature of digital footprints satisfies the formal, material (al-rukn al-maddi), and moral (al-rukn al-adabi) elements of a discretionary offense that degrades communal dignity (al-ihanah). Furthermore, the study demonstrates that the Torajan customary sanction of one pig and five chickens within the Massarrin ritual possesses structural harmony with the Islamic principles of Islah (reconciliation) and Maslahah Mursalah, prioritizing the restoration of social equilibrium and protection of honor (Hifdz al-'Ird) over rigid retributive state punishments. Ultimately, this research provides a conceptual hybrid model of living law-based restorative justice, offering critical practical and theoretical insights for law enforcement and judicial alignment under the framework of the New Indonesian Criminal Code (Law No. 1 of 2023).*

Keywords: Digital; Ethics; Justice; Law; Restorative.

1. Introduction

The digital era has transformed the public sphere into an arena of boundless expression, where comedy often serves as a powerful instrument of social critique

(Weaver & Lockyer, 2025). However, this expansion of expressive freedom has also generated a communication paradox, where individual freedom of expression frequently clashes with the collective rights of indigenous communities (Triana, 2021). In this context, cultural grievances arising from digital content are no longer merely ethical concerns but have evolved into complex legal issues, particularly when creative expressions are perceived to violate deeply rooted sacred values (Adekunle, 2022).

This tension is clearly illustrated in the case of comedian Pandji Pragiwaksono, who was subjected to customary sanctions in Tana Toraja in 2026 for stand-up material produced in 2013 (Tempo.co, n.d.). This case highlights the enduring nature of digital footprints and their potential to trigger legal accountability across time. It also reveals the limitations of positive law, such as the Electronic Information and Transactions (EIT) Act, in addressing cultural and spiritual harm, thereby creating space for customary law to function as a mechanism for restoring social balance (Triana, 2021).

Previous studies have largely examined restorative justice within the framework of conventional criminal acts, with limited attention to cultural grievances in digital spaces. While research has acknowledged the role of living law in Indonesian society, there remains a significant gap in understanding how Islamic law and customary law can interact in resolving digitally mediated cultural conflicts.

Therefore, this study aims to analyze the construction of legal accountability for digital cultural offenses through the perspective of Jarimah Ta'zir, as well as to examine the philosophical basis of customary sanctions in Toraja in relation to the principles of *Islah* and *Maslahah Mursalah*. This research is expected to contribute to the development of a more contextual and pluralistic legal framework in Indonesia, particularly in light of the recognition of living law under the New Criminal Code (Law No. 1 of 2023).

2. Research Methods

This study employs a normative juridical research method with a qualitative approach. This method is used to analyze the interaction and overlap between positive law, Islamic law, and customary law in addressing digital cultural phenomena. The research adopts a case approach, focusing on the customary sanction imposed on Pandji Pragiwaksono in Tana Toraja in 2026. In addition, a conceptual approach is applied to examine the concepts of Jarimah Ta'zir and *Maslahah Mursalah*, while a statutory approach is used to assess their relevance within the framework of the New Criminal Code (Law No. 1 of 2023). The data used in this study consist of secondary data, including primary, secondary, and tertiary legal materials. Primary legal materials include relevant statutory regulations related to criminal law and electronic information. Secondary legal materials are

obtained through a review of scientific journal articles and legal literature published in recent years. Meanwhile, tertiary materials include supporting sources such as legal dictionaries and credible digital publications. The data are collected through literature study and document analysis. Furthermore, the data are analyzed using a descriptive-analytical method with a dialectical approach, by comparing customary sanctions in Toraja with the principles of ta'zir in Islamic law. The analysis aims to identify points of convergence within a restorative justice framework. The validity of the data is ensured through source triangulation, and the analysis is conducted systematically to formulate a conceptual model of hybrid law enforcement in accordance with Indonesia's legal principles.

3. Results and Discussion

This section will dialectically examine how a digital communication act is not merely viewed as a modern ethical breach but is also constructed as a legal offense within Islamic and customary theoretical frameworks. Through the synthesis of data obtained from Pandji Pragiwaksono's digital footprint and a systematic literature review, the following discussion will outline the transformation of such actions into a *jarimah*, the philosophical legitimacy of livestock fines as a form of restoration, and its significance in strengthening the restorative justice model within Indonesia's transforming national legal order.

3.1. Reconstructing Jarimah Ta'zir in Digital Comedy and the Restorative Logic of Livestock Fines

In Islamic jurisprudence, a prohibited act may be classified as a *jarimah*, namely conduct forbidden by sharia and punishable through *hadd* or *ta'zir* depending on the nature of the offense (Dermawan & Harisudin, 2021: 45). In this case, Pandji Pragiwaksono's digital comedy does not satisfy the strict evidentiary requirements of *hudud* offenses, such as *qadzaf*, and is therefore more appropriately placed within the category of *jarimah ta'zir* (Nur & Mad Sa'i, 2025: 62). This classification is important because ta'zir allows discretionary punishment based on social harm, public order, and communal welfare (Marwah & Fadhlán, 2021: 18).

The first element supporting this classification is the formal element, or *al-rukn al-syar'i*. This principle requires a legal basis before punishment may be imposed, but in ta'zir cases that basis is not always limited to a written statute (Hasibuan, 2019: 101). Islamic law permits the use of legal principles that protect human dignity, especially when the act is recognized by the community as degrading or morally disruptive (Taroman Pasyah et al., 2024: 77). In this sense, legal authority may arise from sharia norms and living social norms that preserve harmony.

This reasoning becomes more relevant in the Indonesian legal context after the enactment of Law No. 1 of 2023 on the New Criminal Code, which recognizes the "law that lives in society" (Hasibuan, 2019: 104). The recognition of living law

strengthens the bridge between state law and customary norms, especially when the offense is understood as a violation of social dignity and communal sensibility (Kastolani, 2020: 33). Therefore, the legal standing of digital ridicule is not evaluated solely from formal textual rules, but also from the social meaning attached to it.

The material element, or *al-rukn al-maddi*, is fulfilled through the creation and dissemination of comedy content that ridiculed the sacred funeral rites of the Toraja people (Dermawan & Harisudin, 2021: 49). In a digital environment, the act is not a temporary utterance but a reproducible and widely circulated expression that can prolong its social impact. From the perspective of Islamic law, such circulation may infringe upon **haqq al-adami**, namely human and communal rights, and therefore requires legal response (Kalingga, 2019: 88).

A further basis lies in the concept of *al-ihanah*, meaning insult or degradation. Unlike ordinary criticism, *al-ihanah* reflects a deliberate act that diminishes the dignity of a sacred cultural tradition (Hanafi, 2021: 56). When a funeral rite is transformed into an object of mockery, the resulting harm is not only symbolic but also social and psychological, which corresponds to the maxim *la darara wa la dirara* tehere should be no harm and no reciprocating harm (Wahbah Az Zuhaili, 1985: 39). This principle supports the need for corrective legal action.

The moral element, or *al-rukn al-adabi*, also plays a central role in this case. Islamic law considers not only the external act, but also the intention and awareness of the actor (Hanafi, 2021: 61). Although humor may be claimed as the purpose of performance, the deliberate targeting of a culturally and religiously sensitive symbol increases moral responsibility (Taroman Pasyah et al., 2024: 81). In digital space, this responsibility becomes broader because content can reach large audiences and intensify public tension.

Customary law further strengthens this interpretation through the doctrine of *'urf*. Islamic jurisprudence acknowledges local custom as legally relevant as long as it does not conflict with sharia principles (Fauzi, 2024: 92). The objection of the Toraja community is therefore not merely emotional, but a legal indication that communal boundaries have been crossed (Putri, 2020: 44). This aligns with the maxim *al-adatu muhakkamah*, which affirms that custom may have binding legal force when it reflects accepted social order (Atul Asyuro & Sayehu, 2025: 29).

The case also relates to *hifdz al-'ird*, or protection of honor, one of the core objectives of *maqasid al-shari'ah* (Muslim, 2024: 66). Mocking funerary traditions is not a harmless expression of comedy, but a direct assault on communal dignity and cultural identity (Zulkarnain et al., 2024: 73). On this basis, *jarimah ta'zir* functions as a doctrinal mechanism to protect social honor from the excesses of digital freedom.

The temporal dimension of harm is also important. Although the comedy material originated years earlier, its reappearance in the digital sphere may renew communal pain and legal grievance (Kronologi Pandji Pragiwaksono Dilaporkan Masyarakat Toraja | Tempo.Co, n.d.). In *ta'zir*, liability does not automatically disappear with time if the harm remains unresolved and the social wound is still open (Kalingga, 2019: 90). This makes customary and restorative mechanisms relevant for addressing digital harm that persists across time.

From a jurisprudential perspective, *ta'zir* serves two main functions: *ta'dib* and *zajr*, meaning education and deterrence (Dermawan & Harisudin, 2021: 52). The goal is not revenge, but correction of behavior and restoration of social order (Marwah & Fadhlani, 2021: 24). Because *ta'zir* is flexible, it allows sanctions that emphasize reconciliation, moral reflection, and communal repair rather than purely retributive punishment (Taroman Pasyah et al., 2024: 84).

The sanction of one pig and five chickens should not be understood merely as a customary penalty, but as a culturally grounded form of restitution that seeks to restore harmony between the offender and the affected community (Putri, 2020: 51). In customary legal logic, the sanction has symbolic, social, and reconciliatory functions at once. It acknowledges harm, expresses responsibility, and opens the path toward reintegration.

Its philosophical legitimacy may be explained through the principle of *maslahah mursalah*, namely public interest that is not expressly regulated but remains consistent with the objectives of law (Fauzi, 2024: 96). In this case, the sanction is not intended to escalate conflict, but to reduce resentment and reestablish social equilibrium (Muslim, 2024: 69). Because the harm is communal and cultural, the restoration must also be communal and cultural.

This structure is closely aligned with restorative justice. Rather than focusing only on punishment, restorative justice emphasizes repair of harm, acknowledgment of responsibility, and recovery of relationships (Zulkarnain et al., 2024: 78). The livestock fine therefore serves as a bridge between Islamic legal reasoning and customary conflict resolution, showing that local sanctions can become legitimate restorative instruments when they are directed toward peace rather than retaliation (Taroman Pasyah et al., 2024: 87).

In the broader Indonesian legal order, this model is significant because it demonstrates the compatibility among customary mechanisms, Islamic legal principles, and the state's recognition of living law (Hasibuan, 2019: 107). The case illustrates that legal pluralism can work productively when the objective is to protect dignity, restore social harmony, and prevent repetition of harm (Kastolani, 2020: 38). Therefore, the livestock fine can be understood as a restorative measure that has both philosophical and normative legitimacy.

3.2 Toraja Customary Sanctions (1 Pig and 5 Chickens) through the Lens of *Ta'zir* and *Maslahah Mursalah*

In Islamic jurisprudence, the customary sanction imposed on Pandji Pragiwaksono may be understood as a manifestation of *restorative jarimah ta'zir* rather than a punitive act aimed at physical retaliation (Pandji Pragiwaksono Jalani Sanksi Adat di Toraja, Didenda 1 Babi dan 5 Ayam | Kumparan.com, n.d.). *Ta'zir* in this context functions as *ta'dib*, namely education and moral correction, so that the offender does not merely “pay” for the violation but also acknowledges the social harm caused by the act (Widjajanto et al., 2025: 214; Dona et al., 2025: 88). Unlike *hadd* punishments, which are rigid and textually fixed, *ta'zir* provides discretionary space for customary leaders to determine sanctions in accordance with the nature of the offense and the distress experienced by the community (Philona, 2025: 61).

This discretionary character makes *ta'zir* capable of accommodating social context and proportionality. In the Toraja case, the requirement of one pig and five chickens should not be read as an arbitrary custom, but as a sanction that reflects the weight of the offense within the value system of local law (Rizal & Mustakim, 2025: 129). The purpose is *zajr*, namely deterrence, so that similar public transgressions are not repeated in the future (Islam et al., 2025: 47). From the perspective of Islamic legal justice, the sanction is meaningful because it connects the gravity of the offense with a form of restitution that is socially recognized and proportionate (Syah et al., 2025: 93).

The choice of livestock as a fine can also be situated within the concept of *maslahah mursalah* because the sanction produces collective benefit even though it is not specifically regulated in classical textual sources (Fimaulidina, 2023: 52). Although pork is prohibited in sharia, in the context of Indonesia's legal pluralism, compliance with a customary sanction imposed by a non-Muslim community may be seen as respect for *al-ittifaq al-ijtima'i*, or the social contract that preserves order in a plural society (Wahbah Az Zuhaili, 1985: 40). This position is consistent with *maqasid al-shari'ah*, especially the protection of life (*hifdz al-nafs*) and the preservation of interfaith harmony (Munir, 2022: 117).

The principle of *maslahah* requires law to generate the greatest possible benefit for the collective. In this case, Pandji's acceptance of the sanction may be interpreted as an effort to restore the social stability disrupted by his digital content (Mekanisme Sanksi Adat Toraja Bagi Pandji Pragiwaksono | Tempo.co, n.d.). Rather than escalating conflict, the sanction becomes a means of lowering tension and rebuilding trust between the offender and the affected community. This shows that Islamic law remains flexible through *ijtihad* when it is directed toward public interest and social peace (Rajafi, 2016: 74).

The *Massarrin* ritual, or self-purification accompanying the handover of the fine, also has a close relationship with *islah* in Islamic law (Darmawan et al., 2025: 101).

Islah emphasizes reconciliation and peacebuilding as the preferred outcome of legal resolution, rather than mere formal punishment (Izharti et al., 2025: 66). When Pandji participated in the ritual at Tongkonan Layu Kairo, the process went beyond material payment; it represented a symbolic restoration of honor before the Toraja people and the wider public (Mekanisme Sanksi Adat Toraja Bagi Pandji Pragiwaksono | Tempo.co, n.d.).

Theologically, this purification process may be paralleled with **kifarat**, namely expiation that seeks to rebalance both spiritual and social relations (Masykar, 2021: 58). The handover of animals functions as a symbolic medium for removing the social stain caused by improper speech and public offense (Alghifari & Fariz Farrih Izadi, 2023: 35). Because the process involved customary leaders and the community, it created a sense of closure for the victims and publicly affirmed the offender's acknowledgment of wrongdoing. In this way, the sanction acquires a restorative meaning rather than a merely punitive one.

From a socio-religious perspective, the sanction reflects a working model of *restorative justice* rooted in local wisdom and living law. In Islamic legal thought, restoration is also linked to *al-'afwu* or forgiveness, followed by fair compensation to remove resentment from the victims' hearts (Rizal & Mustakim, 2025: 133). The delivery of livestock was therefore not a simple economic exchange, but a symbolic act of humility and accountability. It demonstrates that customary law can produce a restorative outcome that formal litigation often fails to achieve because of its retributive orientation.

The significance of this resolution also lies in the psychological recovery of the affected community. Restorative justice shifts attention from imprisoning the offender to repairing the broken relationship between the offender and the victimized group (Pradhani, 2021: 90). Within Islamic legal reasoning, this is a more complete form of justice because it does not stop at legal liability, but also heals social wounds and restores dignity. In this case, the Toraja sanction functions as a bridge between legal obligation and cultural recognition.

At the level of national legal development, this customary mechanism offers an important reference for implementing the New Criminal Code, which recognizes the law that lives in society. The integration of *ta'zir* values, *maslahah mursalah*, and Toraja local wisdom demonstrates that justice can be achieved through contextual and humane hybrid models. This experience also supports the strengthening of restorative justice based on living law in Indonesia's national legal order, as a more responsive alternative to colonial retributive paradigms.

3.3. The Urgency of *Living Law*-Based Restorative Justice in National Legal Reform

The successful resolution of Pandji Pragiwaksono's case through a customary trial in Tana Toraja demonstrates the urgent need to shift Indonesia's national legal paradigm from retributive justice to restorative justice (Ahmad et al., 2022: 114). In the context of legal reform, restorative justice is no longer merely an alternative model, but a necessary approach to address the limitations of formal law in responding to the social dynamics of the digital age (Apriansyah & Rany Claudia, 2025: 67). This perspective is consistent with constitutional values that recognize cultural diversity and local wisdom as part of a justice system oriented toward substantive fairness (Abubakar et al., 2025: 51). The case shows that social harmony can be restored more effectively through direct community involvement than through imprisonment alone.

The New Criminal Code, Law No. 1 of 2023, has strengthened the legitimacy of the "law that lives in society" or living law (Darmalaksana et al., 2022: 80). This recognition is an important step toward legal decolonization, considering that Indonesia's criminal justice system has long been shaped by rigid and individualistic Western legal traditions (Nashih, 2025: 93). By acknowledging customary sanctions as part of law enforcement, the state is adopting a hybrid model that combines state law with local norms that have long maintained social stability (Rosman, 2023: 44). In this way, the judiciary becomes more inclusive and more responsive to the sense of justice that grows within society.

From an Islamic legal perspective, the urgency of restorative justice is grounded in the concepts of *sulh* and *islah* (Darmawan et al., 2025: 101). Islam places the realization of communal welfare and peace above the mere satisfaction of punishment or resentment. The integration of *al-'afwu* or forgiveness into national criminal law can strengthen a more humane and dignified judicial character (Hamidah et al., 2025: 58; Ali et al., 2025: 74). In this framework, sanctions are not only burdens for offenders but also instruments for self-purification and the repair of human relations.

The success of custom-based restorative justice is not unique to Tana Toraja. Various regions in Indonesia have developed similar mechanisms to resolve socio-religious conflicts effectively (Sukris et al., 2025: 69). In South Sulawesi, for example, *Silariang* cases have been handled through customary institutions to restore *siri'* or family honor without relying on formal criminal proceedings (Azwar et al., 2021: 88; NONCI et al., 2023: 91). Likewise, in Aceh, minor offenses such as theft committed by minors are often resolved through the *Gampong* institution, which combines customary values and Islamic principles to achieve peace without incarceration (Amdani, 2016: 35).

The digital era has intensified communication conflicts that often cross geographical and cultural boundaries. In this situation, formal law such as the Electronic Information and Transactions Law is frequently perceived as too repressive and insufficiently healing for insulted communities. Living law-based

restorative justice therefore becomes essential as a bridge that reaches not only legal interests but also emotional and spiritual dimensions of conflict resolution (Darmawan et al., 2025: 105). A sincere admission of fault before customary elders may create a stronger healing effect for the community than a formal verdict delivered in a courtroom.

The integration of customary law and positive criminal law also strengthens protection for indigenous rights. In cases such as *Silariang*, customary approaches often provide legal certainty that is closer to local understandings of justice than the application of rigid criminal statutes. This shows that strengthening living law is a concrete effort to harmonize state law with Indonesia's plural social reality.

At the same time, the expansion of customary institutions in criminal settlement can reduce the burden on the state judiciary. This is in line with the principle of *ultimum remedium*, which positions imprisonment as a last resort after deliberation and peace-making efforts have been exhausted at the community level. Such out-of-court settlements can also provide faster and more cost-efficient legal certainty while preserving social relations among citizens.

The implementation of living law-based restorative justice also requires law enforcement officers with cultural literacy and mediation skills. Police and prosecutors must be able to view cultural disputes as opportunities for diversion and for the termination of prosecution in the interest of broader justice. Cooperation among formal law enforcers, customary leaders, and religious figures in the *islah* process will strengthen the legitimacy of peace both in state law and in religious morality.

Nevertheless, the integration of customary and Islamic legal values into the national system still leaves important theoretical questions. To what extent can the criteria of "customary violation" be standardized without erasing the authenticity of local values? How can the legal system balance customary sanctions with human rights standards when those sanctions involve sensitive symbols or physical rituals? These questions show that future legal reform must develop a hybrid framework that preserves cultural harmony while ensuring substantive justice for all citizens in the era of global digital communication.

Table Synthesis of Legal Perspectives on Digital Ethics Violations in the Pandji Pragiwaksono Case

Legal Aspect	State Law (EIT Criminal Code)	Act/New	Islamic (Jarimah Ta'zir)	Law	Toraja Customary Law (Living Law)
Nature of Violation	Complaint/Public (Defamation)	Offense	Jarimah (Defamation of Dignity/ <i>al-Ihanah</i>)	Ta'zir (Defamation of Dignity)	Customary Offense (Disturbance of Cosmic Balance)
Purpose of Sanction	Retributive (Punishment/Imprisonment)		Ta'dib (Education) & Zajr (Deterrence)		Restorative (Restoration of Social Harmony)
Restoration Instrument	Court Verdict (Criminal/State Fine)		Islah (<i>Peacebuilding</i>) & Fidyah		Massarrin Ritual (Livestock Fine)

Justice Paradigm	Legalistic Justice	Substantive Justice (Maslahah)	Communal Justice
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Source: Processed from various literature sources, 2026.

4. Conclusion

This study concludes that the resolution of the cultural grievance involving Pandji Pragiwaksono in Tana Toraja demonstrates that *jarimah ta'zir* in the digital sphere can be effectively addressed through living law mechanisms. The comedic content fulfilled both the material and moral elements of a discretionary offense because it caused degradation of communal dignity (*al-ihanah*), while the customary sanction of one pig and five chickens in the *Massarrin* ritual was normatively justifiable as an application of *maslahah mursalah* that prioritized the restoration of social harmony and respect for the social contract (*al-ittifaq al-ijtima'i*) over rigid retributive punishment. These findings show that non-Muslim customary sanctions may function as valid legal instruments within Islamic legal reasoning to maintain cosmic and social equilibrium, while also affirming that Islamic law operates not as an exclusive system but as a moral compass supporting inclusive restorative justice in Indonesia. In addition, this research offers a theoretical contribution by showing that the boundary between digital expression and cultural sacredness should be managed through a hybrid approach that prioritizes *islah* over mere formal legal enforcement, and it also provides a practical implication for the implementation of Law No. 1 of 2023 on the New Criminal Code in recognizing *living law* as a basis for resolving digital communication conflicts in customary regions across Indonesia.

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