

MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION: CUSTOMARY LAW PERSPECTIVE

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ABSTRACT

The goal of this research is to describe mediation as an alternative technique of conflict settlement under customary law in both criminal and civil matters. Dispute resolution processes based on customary law play an important role in decreasing litigation. Mediation is a cornerstone of traditional law-based dispute settlement. This study uses descriptive and qualitative research to better understand the phenomenon of mediation as an alternative form of conflict settlement under customary law. The data was gathered through a literature review and document analysis. The technique of data analysis employed in this study was a qualitative descriptive technique based on Miles and Huberman's interactive model. The findings show that mediation is the basis for conventional law-based dispute resolution. In resolving land disputes, indigenous peoples rarely bring them to district courts or religious courts; instead, deciding disputes is carried out by traditional leaders such as peace judges, who act as mediators. In fact, in several countries, such as Nigeria, traditional leaders also act to decide divorce issues. In ancient cultures, mediators sought to ensure that, as a consequence of the agreement, "peace and harmony prevailed in society." Therefore, individuals who stick to conventions sometimes use mediation in customary law as an alternative to dispute resolution. This shows that mediation in customary law can be used as an alternative solution to resolving disputes.

Keyword: Mediation, Customary Law, Alternative Dispute Resolution, Formal Law

INTRODUCTION

One of the most popular forms of Alternative Dispute Resolution (ADR) is mediation (Tindall et al., 2008). The most common style of mediation is facilitative mediation, in which the mediator assists the parties in resolving a dispute by facilitating communication between them and by fostering a friendly and productive environment in which these discussions may occur. Because the legal system is often inflexible, mediation can make parties create ideas that

may not be practical in court (Chua, 2019). The mediator constantly solicits feedback from the parties involved throughout the process. However, mediators lack the power to impose their own personal judgments or ideas, as well as the power to offer advice (Sukarmi, 2014). One of the most challenging aspects of establishing mediation between conflicting parties is persuading both to actively engage in the procedure, ensuring that they both understand the purpose of mediation and that it is far less expensive than litigation.

There are several instances when mediation is used, such as workplace disagreements, legal problems, and divorce or separation (Handayani & Syaflawar, 2017). In divorce and separation cases, mediation is typically required before the parties may even ask the court to hear their case. The mediator will examine the mediation concerns, the parties' ideas and feelings, and the case's suitability for mediation during this meeting. Once an agreement has been achieved, the mediator will draft a document that contains all of the agreements in family, civil, and employment mediation. This is known as a Statement of Results in employment and civil proceedings, and a Memorandum of Understanding or Parenting Plan in family matters. In some circumstances, a court order could contain these documents.

In contrast to Western "individualism", traditional dispute resolution procedures frequently take a "communal" approach to solving conflicts (Faris, 1995; McQuoid-Mason, 2021). Reconciling and reintegrating disputants into their communities is highly valued in traditional cultures. The goal of the traditional dispute-resolution procedure is to restore harmony not just between people but also between a person and his or her society. Mechanisms for resolving disputes also give disputing parties the freedom to completely express themselves without restriction or formality, while assuring them of a just and wise outcome that will preserve connections between people (Utama & Irsan, 2018).

The emphasis is on working together for the common benefit rather than competing, which can cause major instability in any society, according to the definition of "communal value" given above. When disagreements arise between members of the community, the entire community participates in efforts to settle the matter through customary courts since "problems between individuals will unavoidably affect the entire community". This informal method stands in stark contrast to Western dispute resolution courts, especially in formal justice systems, where processes in both criminal and civil matters are guided by meticulously

enforced technical criteria rather than procedures meant to foster "social healing" (Allen & Macdonald, 2014; Aiyedun, 2014).

Mechanisms for resolving disputes under customary law can be very helpful in lowering the amount of litigation in both criminal and civil matters. Negotiation, mediation, conciliation, adjudication, and reconciliation are some of these procedures (Disini et al., 2002; Sopamena, 2022). The first three are emblematic of Western ADR theories intended to reduce litigation. This issue is not present in the informal and flexible processes of conventional courts and arbitration systems, which place a strong emphasis on reconciliation and reintegration. Instead of doing a thorough analysis of how they operate, this is meant to highlight the parallels between various conflict resolution systems and conventional dispute settlement techniques.

First, the concept of "customary law" that is being discussed refers to the rules, regulations, and traditions that apply to local communities and indigenous peoples. In a global context, "customary law" is not the same concept as this (Zamroni & Kafrawi, 2021). Aspects of international law that are founded on conventions or practices between states are referred to as "customary international law," which has a more specific and technical definition in the context of norms controlling relations between various nations. The United Nations Charter's present Permanent Court of International Justice Statute directs the court to adopt, among other things, international practice as evidence of generally accepted practice for resolving disputes in accordance with international law. Although some academics have claimed that traditions of indigenous and local people and customary international law should be related or overlap, these two fields of law and practice should typically not be confused.

The lifestyles and practices of indigenous peoples and small communities are infused with customary law by definition (WIPO, 2013). Adat's legal standing and what constitutes "customary law" will be determined in large part by how indigenous peoples and local communities themselves view these issues and conduct themselves in these capacities. Suhariyono defines "customs" as "laws of behavior, necessary for those within its area, which were set by the previous user (Suhariyono, 2009). It is a valid habit to be ancient, certain, and reasonable, mandatory, and not contrary to statutes, although they may deviate from common law. Even if they may depart from common law, it is acceptable for a habit to be long-standing, definite, and reasonable as long as it is necessary and not against the law. Common customs

are national practices, such as the basic business practices of merchants. Specific qualities are used in specific cultures. Local customs are traditions unique to a region of the nation.

In both traditional and Western civilizations, mediation is a covert procedure where a neutral third person helps the disputing parties come to a mutually acceptable resolution. In Western culture, the mediator ensures that the parties come to their own resolution in a highly impartial manner, if it is rejected by the mediator (Bogdanoski, 2009). The mediator in traditional communities functions more as a conciliator. This is due to the fact that in traditional cultures, the mediators work to guarantee that "peace and harmony prevail in society" as a result of the agreement. This is summed up in the proverb "no winner, no loser," which states that if one party in a fight shares responsibility for their actions, then the other party must also bear some of the blame.

As in the Western system, the mediator is a family or community elder willingly selected by the parties, serves in a similarly unbiased capacity. Mediators hear both sides out while urging them to recognize and respect one another's interests. While facilitating the process so that the parties can arrive at a decision that is acceptable to both, the mediators do not force a solution on the parties. The majority of the time, the procedure is successful, efficient, and fair, and the outcomes are frequently enduring and agreeable to all parties. The mediator's job is considerably more active, similar to that of a conciliator, to influence the parties toward amicable resolution of their differences and amicable resolution of their differences with society (Zamroni, 2021). Emphasizing pertinent norms and regulations, offering evaluations, making ideas on behalf of the parties, picturing the situation if an agreement is not achieved, or restating the agreement that has been made are all parts of it.

In contrast to the conventional process reconciliation method, formal judicial systems rooted in the West frequently use a "win or lose" rights-based approach. Galanter (1974) notes that In contrast to the traditional system's interests-based approach, Western systems usually rely on a formal rights-based method to resolve legal disputes. Contrary to the traditional system, which is easily accessible, informal, flexible, quick, and affordable, western-style courts are frequently only available to those who can afford them and are formal, rule-bound, sluggish, and expensive. Formal courts are often found in metropolitan regions and are out of

the reach of many rural individuals, in contrast to customary systems that work at the local level.

Instead of the conventional flexible and adaptive systems approach, Western-style judicial processes need rigorous adherence to procedural norms governing defense and evidence. In addition, unlike the conventional approach where local languages or community vernaculars are employed, the procedure is conducted in the nation's official language with the assistance of interpreters, when needed. In addition, unlike the conventional system, which aims to restore and reconcile social peace between the parties, the formal criminal justice system sometimes places a greater emphasis on punishment and retribution.

Several previous studies have shown that mediation is considered as one of the most popular alternatives to conflict resolution in customary law. Hasana et al. (2016) conducted research on the role of mediation in resolving disputes over inherited community land in Madura. The results of his research show that inheritance disputes are rarely brought to the District Court and Religious Courts because traditional leaders act as mediators, playing an important role in resolving inheritance disputes among the Madurese community, including inheritance land disputes. This shows that the role of mediation in customary law is very influential in resolving community disputes. Research by Aiyedun and Ordor (2017) shows that in customary law in Nigeria, mediation plays an important role in resolving all types of disputes, including divorce. In his study, it was stated that indigenous peoples tend to choose the path of mediation by presenting a third party as an intermediary to resolve the problems faced by both parties. The main goal of this system is the peaceful resolution of disputes and the restoration of harmonious relations within a community. For decisions to be valid, therefore, the principles applied must be acceptable to society and conform to its norms. Ambarsari (2022) in his research shows that mediation is used as a settlement of land disputes in customary law communities. The customary peace judge gives a decision on a dispute after reading, weighing, remembering and paying attention.

RESEARCH METHOD

A qualitative research design was used to describe mediation in customary law as an alternative method of dispute resolution. A descriptive method is a method in research on a group of

people, objects, systems of thought, or events in the present which aims to obtain information about these events. The qualitative approach is an approach whose results are not arrived at using mathematical or statistical methods. The purpose of qualitative research methodologies is to investigate and comprehend what it means for certain people or groups of people to experience social or human problems (Creswell, 2013). The final report of a qualitative study has a structure or framework.

According to Moleong in Royadi et al., Understanding the behaviors, perceptions, motivations, and actions of study participants is the goal of qualitative research. holistically, via verbal and linguistic expression in a special natural context, and by utilizing many natural techniques (Moleong in Royadi et al., 2019). The strength of qualitative research is its capacity to record the specifics, routines, and experiences of individuals as they occur. In qualitative research, words and actions are the primary data sources; the other data sources include documents and other sources (Moleong in Guzman & Oktarina, 2018). Research data was collected by conducting observational studies of various instances of dispute resolution through mediation under customary law and by reading up on the subject of mediation as a form of conflict resolution in different nations.

An interactive model was employed as the basis for the qualitative descriptive approach used in this study's data processing (Miles & Huberman, 1994). Data reduction, data presentation, and generating conclusions are the three (3) concurrent streams of activity that make up the data analysis method in qualitative research. Data reduction is a type of data analysis used to select, sort, discard, and organize data so that a verified conclusion is obtained (Sugiyono, 2017). Data reduction can be defined by summarizing and selecting important things or the main points of the object under study. The reduced data is then presented in the form of descriptive text.

RESEARCH OUTCOME AND DISCUSSION

1) Traditional dispute resolution procedures in a Western judicial system

There are several parallels between formal and traditional Western legal processes, notwithstanding the distinctions mentioned above. In the formal court system, for instance, there is a growing movement to limit litigation by promoting the use of alternative conflict

processes like mediation, conciliation, and arbitration, as has long been the case in traditional processes (Lestari, 2013; Huchhanavar, 2015). In the formal criminal justice system, there is a trend to employ restorative justice more frequently and to redirect juvenile offenders away from the criminal court system so they might use restorative justice methods to make apologies to their victims and reintegrate into society. Once more, this is in line with the customary law norms of community harmony and reconciliation.

The concept of *amicus curiae* is recognized by the formal legal system in civil disputes, which recognizes the validity of opinions expressed by those who make an appearance as "friends of the court" but are not parties to the dispute. The *amicus curiae* strategy, albeit considerably more constrained, is comparable to conventional adjudication procedures in that the jury considers comments, questions, and other interventions from those who are not parties to the dispute but who have a vital interest in the outcome of the case (Chayes, 1976).

In conclusion, there are a number of traditional procedures that are similar to the Western alternative conflict resolution techniques that have just recently undergone significant development. To settle conflicts and lessen the burden of excessive litigation in the formal judicial system, this involves increasing the use of mediation, conciliation, and arbitration. The rising use of restorative justice, particularly in criminal situations, is another mechanism shared by formal and traditional judicial systems.

2) Challenges in incorporating conventional conflict resolution methods into Western-based legal systems

A declaration from the UN Commission for the Legal Empowerment of the Poor emphasizing the need and relevance of traditional dispute resolution procedures was previously noted. The Commission also emphasized the need for reformers to seek out possibilities for strategic interventions to enhance the performance of the informal or customary justice system and support the effective integration of the formal and informal systems (UNGA, 2009). By "seeking to guarantee that good faith is the focus of attention in their choices," a limited number of regional constitutions in Indonesia have traditional values recognized and included in the official conflict settlement process.

The problem comes when the legal community, judges, and lawmakers do not always acknowledge the relevance of such cultural processes in lowering litigation, despite the Constitutional Court's or Supreme Court's requirement for such acknowledgement. When legal aid laws included references to the role that traditional dispute resolution mechanisms can play in transferring serious offenses from traditional courts to traditional courts or in transferring minor offenses from traditional courts to traditional courts, the provision was removed by the legislature, ostensibly at the judiciary's request.

Rural residents charged with small offenses can have their cases rapidly handled by using conventional procedures and restorative justice. Due to the lack of trust in traditional dispute settlement processes, justice can be delayed and the courts might fill up with pointless criminal proceedings. For instance, via mediation, small offences are kept out of the criminal court system in Mongolia. The Mongolian Criminal Procedure Code states (1) that "If the victim of a small offense governed by the Mongolian Penal Code reconciles with the defendant or defendant, the case will be ended as specified in the Mongolian Criminal Procedure Code, 2002, article 25." The Mongolian Criminal Procedure Code states (Choudree, 2000).

The main problem seems to be that there is still some skepticism on the part of the judiciary, professions, and law when attempts are made to incorporate traditional dispute resolution mechanisms into the formal justice system, even though the legal system and ordinary citizens in post-colonial societies recognize the importance of them if they are consistent with fundamental human rights. Traditional conflict resolution techniques may be very helpful in lowering the amount of litigation in the official sector, especially for Indonesians who reside in rural and urban regions but yet pledge allegiance to traditional leaders, their extended families, and their communities.

Since the establishment of the Dispute Resolution Center, Aboriginal and Torres Strait Islander people have demonstrated a strong interest in mediation. In Aboriginal and Torres Strait Islander communities, mediation works better than the legal and criminal justice systems in resolving conflicts the way it has in the past. With the use of customary law and practice, mediation enables communities to: 1) Maintain ownership of disputes; 2) Using elements of customary law and practice; 3) Find a solution that fits their cultural values (Queensland Government, 2021). All members of the community frequently suffer when there is conflict

within Aboriginal and Torres Strait Islander communities. As a result, issues might be complicated and call for a flexible and innovative solution. Several distant indigenous settlements to assist locals in resolving various problems. The conclusion is more satisfactory than a court order in mediation since everyone engaged in the dispute has a voice. Parties frequently have differing perspectives on the idea of secrecy. The mediators, however, swore an oath of secrecy and agreed not to talk about mediation in public. Additionally, because mediation is confidential, it cannot be mentioned in court. Typically, mediation agreements are not enforceable in court, but you may if you want to.

In its broadest definition, "customary law" refers to a body of unwritten laws. Despite having far older origins, the German school of historical legal theory, which held that all law originated from tradition, set the theoretical groundwork in the seventeenth century. There, the meaning of the law that is independent of the state is acquired. When colonial powers had to decide how to relate to the legal system already in place in their colonies, this word gained popularity and gained significant practical significance in the nineteenth century. Most of the time, the system is unwritten or, at most, only partially documented. Customary law, one of the core elements of indigenous peoples' cultures and claims to sovereignty, has gained new political significance in response to their political aspirations for self-determination. Unwritten laws are referred to by a number of different names, each with distinct benefits and drawbacks. The political debate over the recognition of customary law will next be briefly discussed. Following that, historical trends in the field of study on customary law will be considered. Finally, the discussion will revolve around the claim that colonial powers invented customary law.

There is frequent conflation of the phrases "customary law," "customary law," "people's law," and, for Indonesia, "customary law." Each conveys a distinct meaning and has unique benefits and drawbacks (Merry, 1988). The issue with words like "adat" and "traditional" is that they allude to a history that is supposed to be immutable, despite the fact that all types of legislation are always evolving. Change can occur suddenly and in certain areas, but it can also happen gradually in other places and at other periods.

But nothing has changed regarding the legal system. The perception of excessive continuity can also lead to political and analytical issues. Too often, local laws are represented

in obsessive and archaic ways that have nothing to do with the social realities of those laws (von Benda-Beckmann & von Benda-Beckmann, 2011). However, when people do not want to obey a suggestion or direction, one of the few tenable defenses against government involvement is that the plans go against their conventional laws. There may be wholly distinct reasons for rejection, such as mistrust of dishonest public officials or differences in the plan's economic feasibility. This argument supports the government authorities' contention that customary law really inhibits development (Keebet von Benda-Beckmann, 2019).

In the late nineteenth century, the first empirical research on systems of customary law was conducted. Missionaries, tourists, and government employees have provided a rather erratic account of the practices they observed during that century (Manullang, 2021). The structures of family, inheritance, and land tenure attracted the attention of the colonial authorities. Later, social science researchers were interested in customary law as a way to examine how contemporary society has evolved. Thus, a long and rich heritage of customary law studies was born out of the confluence of the practical concerns of the colonial authorities and scientific pursuits. One of the issues is how to examine the unwritten legal system.

Due to the dearth of documentation, the typical method for analyzing legislative and court judgments is imprecise. Different methods for resolving this issue have been created over time with various objectives. The first comprehensive global collection of oral legal systems for comparative study was compiled by German legal specialists Post and Kohler. Post and Kohler sent questionnaires with in-depth questions on different facets of the legal system to missionaries, visitors, and government employees instead of conducting extensive fieldwork like scholars from the 20th century did to examine the nuances of a particular legal system. In 1861, Bachofen and the English academic Sir Henry Maine, who was a contemporary, produced *Das Mutterrecht and Ancient Law*, a comparative study of legal systems, both solidly grounded in an evolutionary approach (K. von Benda-Beckmann, 2001).

Numerous authors have cautioned that colonial authority has had a profound impact on what is frequently believed to be true customary law—that is, customary law that has not been affected by the West. To express the evolving nature of customary law as it is currently used, the phrases "creation" or "made" of customary law have been suggested. Tobin contends that it is absurd to refer to customary law as a modified or altered version of customary law because

state institutions have really created a brand-new category of law. This issue is not something from the past. Most courts in the former colonies continue to base their decisions on customary law in many cases involving rural people.

State law includes elements of these tools of customary law. This is an instance of artificial legal plurality. However, because state court procedures are always created by the state, the application of customary law only considers substantive laws. As a result, "traditional" substantive law is applied in accordance with state law procedures, which has had a significant impact on the substantive rules. In actuality, there are two sorts of customary law: local laws are made and supported by the local community, as well as "customary law" as it is referred to by official bodies. These two types of law interact extensively with one another and with state law; they do not exist in a vacuum. One of the Dutch writers on colonial law, Van Vollenhoven, was aware of what was going on. To separate it from "adat," the Malay word for the local way of life or "adat" in its broadest sense, the phrase "adat law" is effectively employed. Currently, "customary law" refers to both state and local applications of customary law.

The development of the nation's customary law is heavily influenced by customary law. The field of state-defined customary law was expanded as banks and other government organizations (especially land registration offices and extension services) accepted judicial interpretations. These organizations occasionally even create their own renditions that diverge slightly from the judicial versions. Therefore, the presence of global organizations like the World Bank and donor organizations not only revives interest in customary law but also adds complexity to the study of it.

3) Mediation of Land Disputes Under Customary Law

He has a very deep bond with the Indonesian peasants, as per Law No. 5 of 1960. This is evident from the adoption of the Basic Regulations on Agrarian Principles, which, in legal terms, indicates that there is a strong desire for national agrarian law, which is a manifestation of or a development from customary law, to function as a tool to achieve prosperity, happiness, and justice for the community, particularly for farmers, in order to build a prosperous society. Land serves as the primary means of production, habitation, and socialization in people's lives,

particularly in rural regions with small communities. Given that land is one of the foundations of communal life, this is crucial (Rakib et al., 2017).

Additionally, customary land, which is known as customary land rights under the Basic Agrarian Regulations, is frequently linked to cosmic-magical-religious values (Maladi, 2013). This interaction involves not only the individual and the land but also the residents of the community as a whole. Land is a natural resource that must be used intelligently, managed effectively, and given up by the government in order to ensure the prosperity and wellbeing of the populace. The government's implementation of Law Number 25 of 2007 concerning investment by increasing the function of land, which is not only for agriculture but also for investment companies both domestically and abroad, is one of the government's efforts to realize the mandatory regulations in the Basic Agrarian Regulations to create a prosperous society. Additionally, Article 31 Paragraph (2) of Law Number 23 of 2014 Concerning Regional Government establishes government policy with the objective of enhancing community welfare and preserving the distinctiveness of regional customs, traditions, and culture. This demonstrates unequivocally that the government, in essence, offers legal protection and places a strong emphasis on enhancing the functionality of community property, particularly communities governed by customary law, to enjoy better land usage.

According to philosophy, the purpose of land is to help humanity, not to separate or enrage people (Imron, 2008). The government appears to be particularly concerned about enhancing the welfare of the community in relation to the function and use of property, as seen by the different legislation in the area. The government's primary objectives in formulating land laws in this country are to ensure legal certainty, prosperity, and fairness for all Indonesians. The use of land, however, which is crucial to human existence, can occasionally turn into a delicate item that leads to disagreements or confrontations between groups of all kinds. Indonesia is home to many communal conflicts, particularly those involving local groups' claims to customary rights, as evidenced by data from the National Agrarian Reform Commission showing an annual rise in land conflicts throughout the country.

There were only 254 incidents of land conflict in the 2015 brackets, but there were 453 occurrences in 2016. Even in disputes that arise between the community and investment companies, both foreign and domestic, that have been going on for a long time, even since the

establishment of the company, cases of land conflicts are on the rise and can be found in almost all regions of Indonesia, both in urban and rural areas. It has continued to occur up to this point. The bureaucracy, state corporations, private enterprises, and the people themselves are involved in land conflicts that arise as a result of a conflict of interest between the parties, which includes the people.

Many indigenous peoples and local communities place a high value on adhering to customary norms and rituals as part of their identity (Sembiring, 2018). Numerous facets of their lives are impacted by these rules and regulations. Customary law can be relevant to a variety of topics, including the use and access to natural resources, rights and duties regarding land, inheritance, and property, spiritual life conduct, the preservation of cultural heritage, and knowledge systems. They can also specify the duties and rights of local communities and indigenous peoples with regard to critical facets of their way of life, culture, and worldview. Customary legislation can be used to identify or characterize the community's unique identity. Furthermore, many native peoples and local groups could consider it indecent or absurd to refer to their law as "custom," which indicates that it is simply their law and less significant than other laws.

In order to maintain the vibrancy of intellectual, cultural, and spiritual life as well as the history of indigenous peoples and local communities, it may be necessary to uphold traditional rules and procedures. The way that traditional cultural heritage is shared and developed can be influenced by customary rules and norms, as well as how the TK system is properly kept and managed by indigenous peoples and local communities. As a result, within indigenous communities, since they frequently play a crucial part in maintaining the cultural and legal identities of indigenous peoples and local communities, it is necessary to follow customary rules and practices. However, local communities and indigenous peoples have also asked for various ways to respect and recognize their own customary laws and rituals outside of their own territory. This is a complex issue that might arise in the context of national constitutional law, such as in disputes over rights to land and natural resources.

Numerous facets of communal life, including dispute resolution, land tenure and other rights, inheritance, family law, and political and social interactions in general, can be governed by customary law (Fajrini, 2021). Customary law is frequently referred to as a component of

the holistic worldview of indigenous peoples, implying that only within the communities themselves can it be properly understood and applied in its whole. It is difficult to see how a community's whole corpus of customary law and practice could be made to completely apply to those who are not a part of that community or the normal scope of its customary jurisdiction. This might relate to issues with the constitution or, for people living outside the nation, civil international law. Additionally, it's possible that there are restrictions on how people from outside the community can acknowledge and react to the complex social, political, cultural, and spiritual environments that shape and define customary law and practice.

Some of these legal topics—like those regarding family connections or the usage of ancestral land—might be pertinent to third parties who live and work outside the community, but most likely not. However, there may also be extremely explicit and obvious responsibilities about how the knowledge or cultural manifestations of a community should be treated within the more general framework of customary law. This might be seen as a particular duty on the part of third parties. It is entirely possible for outsiders to be bound by stringent confidentiality obligations, which can be enforced under external laws that, in some ways, "take into account" the customary law obligation to keep this information a secret, despite the fact that they have a much deeper meaning to indigenous communities. One specific example is secret sacred materials. Another illustration is the inclusion of indigenous peoples' customary rights and responsibilities in national copyright laws.

CONCLUSION

Traditional conflict resolution procedures often employ a "community" approach to resolution rather than the Western "individualistic" approach. Reconciliation and reintegration of disputing communities is highly valued in traditional civilizations. The goal of conventional dispute resolution procedures is to restore harmony not only between people but also between a person and his society. The opportunity to fully express oneself without restrictions or formalities is another benefit of conflict resolution procedures, which also provide parties to a dispute with the assurance of fair and reasonable decisions that will promote the cohesion of society. The conflict resolution process under customary law can be a useful tool for reducing litigation in both criminal and civil cases. Among these techniques are negotiation, mediation,

conciliation, adjudication, and reconciliation. Mediation is the basis for conventional law-based dispute resolution. In resolving land disputes, indigenous peoples rarely bring them to district courts or religious courts, deciding disputes is carried out by traditional leaders such as peace judges who act as mediators. In fact, in several countries such as Nigeria, traditional leaders also act to decide divorce issues. In ancient cultures, mediators sought to ensure that, as a consequence of the agreement, "peace and harmony prevailed in society." Therefore, individuals who stick to conventions sometimes use mediation in customary law as an alternative to dispute resolution. This shows that mediation in customary law can be used as an alternative solution in resolving disputes.

REFERENCES

Journal Article

- Aiyedun, A., & Ordor, A. (2017). Integrating the Traditional with the Contemporary in Dispute Resolution in Africa. *Law, Democracy & Development*, 20(1), 154-173. <https://doi.org/10.4314/ldd.v20i1.8>
- Bogdanoski, T. (2009). The Neutral Mediator's Perennial Dilemma: To Intervene or Not to Intervene. *Queensland U. Tech. L. & Just*, 9(1), 26-43. <https://doi.org/10.5204/qutlr.v9i1.40>
- Chayes, A. (1976). The Role of the Judge in Public Law Litigation. *Harvard Law Review*, 89(7), 1281. <https://doi.org/10.2307/1340256>
- Choudree, R. B. (1999). Traditions of conflict resolution in South Africa. *African Journal on Conflict Resolution*, 1(1), 9-27. <https://journals.co.za/doi/10.10520/EJC16225>
- Chua, E. (2019). Enforcement Of International Mediated Settlement Agreements In Asia: A Path Towards Convergence. *Asian International Arbitration Journal*, 15(1), 1-27.
- Fajrini, R. (2021). Hak biokultural masyarakat dalam kebijakan konservasi sumber daya hayati. *Jurnal Hukum Lingkungan Indonesia*, 2(2), 95-109. <https://doi.org/10.38011/jhli.v2i2.27>
- Galanter, M. (1974). Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change. *Law & Society Review*, 9(1), 95. <https://doi.org/10.2307/3053023>
- Guzman, KC, & Oktarina, N. (2018). Strategi Komunikasi Eksternal Untuk Menunjang Citra Lembaga. *Economic Education Analysis Journal*, 7(1), 301-315. <https://journal.unnes.ac.id/sju/index.php/eeaj/article/view/22882>

- Handayani, F., & Syaflidar, S. (2017). Implementasi Mediasi dalam Penyelesaian Perkara Perceraian di Pengadilan Agama. *Jurnal Al Himayah*, 1(2), 227–250. <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/586>
- Huchhanavar, SS (2015). In Search of True “Alternative” to Existing Justice Dispensing System in India. *SSRN Electronic Journal*, 1–25. <https://doi.org/10.2139/ssrn.2558442>
- Lestari, R. (2013). Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia. *Jurnal Ilmu Hukum Riau*, 3(2), 217–237. <https://doi.org/http://dx.doi.org/10.30652/jih.v3i2.1819>
- Maladi, Y. (2013). Reforma Agraria Berparadigma Pancasila Dalam Penataan Kembali Politik Agraria Nasional. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 25(1), 27–41. <https://doi.org/https://doi.org/10.22146/jmh.16108>
- Manullang, SO (2021). Understanding the sociology of customary law in the reformation era: complexity and diversity of society in Indonesia. *Linguistics and Culture Review*, 5(3), 16–26. <https://doi.org/10.21744/lingcure.v5nS3.1352>
- McQuoid-Mason, D. (2021). Could traditional dispute resolution mechanisms be the solution in post-colonial developing countries – particularly in Africa? *Oñati Socio-Legal Series*, 11(2), 590-604. <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1145>
- Merry, SE (1988). Legal Pluralism. *Law & Society Review*, 22(5), 869. <https://doi.org/10.2307/3053638>
- Rakib, MA, Islam, S., Nikolaos, I., Bodrud-Doza, M., & Bhuiyan, MAH (2017). Flood vulnerability, local perception and gender role judgment using multivariate analysis: A problem-based “participatory action to Future Skill Management” to cope with flood impacts. *Weather and Climate Extremes*, 18 (Desember), 29–43. <https://doi.org/10.1016/j.wace.2017.10.002>
- Royadi, D., Susiana, N., & Khumaida, FA (2019). Effectiveness Management of Qualitative Research in Writing Scientific Papers. *Aptisi Transactions on Management (ATM)*, 3(1), 84–90. <https://doi.org/10.33050/atm.v3i1.848>
- Sopamena, RF (2022). Alternative Dispute Resolution Dalam Sengketa Bisnis Internasional. *Balobe Law Journal*, 2(1), 1-6. <https://doi.org/10.47268/balobe.v2i1.767>
- Suhariyono AR. (2009). Penentuan Sanksi Pidana dalam Suatu Undang-Undang. *Legislasi Indonesia*, 6(4), 615–666. <https://doi.org/https://doi.org/10.54629/jli.v6i4.337>
- Tindall, DB, Kay, FM, Zuberi, DM, & Bates, KL (2008). Urban and Community Studies. In *Encyclopedia of Violence, Peace, & Conflict* (pp. 2224–2244). Elsevier. <https://doi.org/10.1016/B978-012373985-8.00185-9>

- Utama, M., & Irsan, I. (2018). General Overview on Selecting and Drafting Construction Contract Disputes Resolution. *Sriwijaya Law Review*, 2(2), 152-169. <https://doi.org/10.28946/slrev.Vol2.Iss2.129.pp152-169>
- Von Benda-Beckmann, F., & Von Benda-Beckmann, K. (2011). Myths and stereotypes about adat law: A reassessment of Van Vollenhoven in the light of current struggles over adat law in Indonesia. *Bijdragen Tot de Taal-, Land- En Volkenkunde*, 167(2/3), 167–195. <http://www.jstor.org/stable/41288760>
- von Benda-Beckmann, K. (2001). Folk, Indigenous, and Customary Law. In *International Encyclopedia of the Social & Behavioral Sciences* (pp. 5705–5708). Elsevier. <https://doi.org/10.1016/B0-08-043076-7/02786-8>
- von Benda-Beckmann, Keebet. (2019). Anachronism, Agency, and the Contextualisation of Adat: Van Vollenhoven's Analyses in Light of Struggles Over Resources. *The Asia Pacific Journal of Anthropology*, 20(5), 397–415. <https://doi.org/10.1080/14442213.2019.1670242>
- Zamroni, M. (2021). Misconceptions on the concept of mediation and conciliation in the act on industrial relations disputes settlement. *Yustisia Jurnal Hukum*, 10(2), 240-251. <https://doi.org/10.20961/yustisia.v10i2.48667>
- Zamroni, M., & Kafrawi, RM (2021). Perlindungan masyarakat hukum adat di wilayah pesisir pasca berlakunya UU nomor 11 tahun 2020 tentang Cipta Kerja. *Perspektif Hukum*, 21(2), 235-256. <https://doi.org/10.30649/ph.v21i2.99>

Research Report

- Tobin, B. (2008). *The Role of Customary Law in Access and Benefit-Sharing and Traditional Knowledge Governance: Perspectives From Andean and Pacific Island Countries*. Research Report of world intellectual property organization and united nations university. https://www.wipo.int/export/sites/www/tk/en/resources/pdf/customary_law_abs_tk.pdf
- Unga. (2009). *Legal Empowerment of the Poor and Eradication of Poverty*. Research Report of the Secretary General (Issue July). https://www.un.org/esa/socdev/documents/reports/Legal_empowerment_of_the_poor.pdf

Thesis/Dissertation

- Imron, A. (2008). *Kontribusi Hukum Islam Terhadap Pembangunan Hukum Nasional (Studi Tentang Konsepsi Taklif dan Mas'uliyat dalam Legislasi Hukum)*. Thesis. Semarang: Magister of Law Program Universitas Diponegoro. <https://core.ac.uk/download/pdf/11716261.pdf>

Faris, JA (1995). *An analysis of the theory and principles of alternative dispute resolution*. Dissertation. Doctor of Law Program University of South Africa.
<https://core.ac.uk/download/pdf/43175988.pdf>

Books

Allen, T., & Macdonald, A. (2014). Post-Conflict Traditional Justice. In *Encyclopedia of Criminology and Criminal Justice* (pp. 3831–3843). Springer New York.
https://doi.org/10.1007/978-1-4614-5690-2_580

Creswell, JW (2013). *Qualitative inquiry and research design : choosing among five approaches*. SAGE Publications, Inc. <http://www.ceil-conicet.gov.ar/wp-content/uploads/2018/04/CRESWELLQualitative-Inquiry-and-Research-Design-Creswell.pdf>

Disini, D. P., Aguilin-Pangalangan, E., Daroy-Morales, R. E., Gatmaytan, D. B., & Lim-Jardeleza, C. (2002). *Dispute Resolution Mechanism in the Philippines*. Institute of Developing Economies.

Miles, MB, & Huberman, AM (1994). *Qualitative Data Analysis: An Expanded Sourcebook, 2nd Edition* (2nd ed.). Sage Publications.

Sembiring, J. (2018). *Dinamika Pengaturan dan Permasalahan Tanah Ulayat* (Tim STPN Press (ed.)). STPN Press. <http://repository.stpn.ac.id/463/1/Dinamika-Pengaturan-dan-Permasalahan-Tanah-Ulayat-1-dikompresi.pdf>

Sugiyono. (2017). *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*. CV. Alfabet.

Proceedings

Sukarmi. (2014). Alignment of Malaysia and Asean Agreements on ICT Laws: A Review. *International Conference on ElectronicCommerce Law “E-Commerce Law in Asia: Opportunities and Challenges,”* 1–8. <https://hukum.ub.ac.id/wp-content/uploads/2019/10/Proceeding-PDF-sesuai-KUM-1.pdf>

Hasanah, U., Hamzah, M., & Ikhwan, M. (2019, November). Mediation as Alternative Disputes Resolution for Land Heritage of Madurese Society. In *The First International Conference On Islamic Development Studies 2019, ICIDS 2019, 10 September 2019, Bandar Lampung, Indonesia*.

Internet Resources

Queensland Government. (2021, August 6). *Mediation for Aboriginal and Torres Strait Islander peoples*. Retrieved Juny 12, 2022 from: <https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/mediation-services/mediation-for-aboriginal-and-torres-strait-islander-peoples>

WIPO. (2013). *Customary law, traditional knowledge and intellectual property: an outline of the issues*. Retrieved Juny 13, 2022, from: http://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf