

# Indigenous land dispute resolution in Indonesia: Exploring Customary Courts as an alternative to formal judicial processes

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**Abstract:** Indigenous tribes struggle to protect their lands, identities, and livelihoods throughout conflicts. Indigenous areas are threatened by resource exploitation and development-related land ownership conflicts, requiring efficient conflict resolution. International frameworks for post-conflict property recovery rarely address customary land rights. This study examines Indonesian traditional courts as alternatives to indigenous land disputes. It investigates the legal coherence, justice, and utility of traditional judicial proceedings using secondary legal sources in a juridical-normative manner. The study compares customary and formal legal systems, evaluates traditional court procedures for fairness, and examines their effects on sustainable land management and community empowerment. Customary justice procedures should be integrated into the legal system to promote inclusive and sustainable development and safeguard indigenous rights and traditions. The paper recommends stronger cooperation between formal and customary legal systems and suggests future research to resolve constraints and improve understanding of customary law dynamics in settling indigenous land issues in Indonesia.

**Keywords:** Indigenous populations. Land conflicts. Customary courts. Legal pluralism. Indonesia.

**Summary:** Introduction – Research methods – The evolution of customary courts in Indonesia: From colonial era to present day – Factors contributing to customary rights conflicts – Land conflict resolution: Approaches and methods – Indigenous wisdom and customary institutions in land conflict resolution – Conclusion – References

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## Introduction

Indigenous populations living in conflict-affected areas around the world face ongoing dangers to their lives as they go about their daily routines, provide for their families, and safeguard the ecosystems that are crucial for their survival. These conflicts arise from many circumstances, such as historical remnants of colonisation, military confrontations, organised criminal activities, disagreements over land

and resources, initiatives to conserve the environment, large-scale development projects, and extractive industries. The complex and diverse obstacles significantly hinder the capacity of indigenous peoples to shape their futures. The issue of land ownership is a key factor in many of these conflicts, as indigenous territories are frequently targeted due to their valuable resources. This involvement often leads indigenous populations to catch up in battles for control.

Contrary to traditional viewpoints that consider land a simple commodity, indigenous groups regard it as essential to their identity, heritage, and overall welfare. They prioritise taking care of the land for the benefit of future generations.<sup>1</sup> A widely held idea exists within various indigenous cultures: “The Land Does Not Belong to Us; We Belong to the Land!”.<sup>2</sup>

The Pinheiro Principles and the Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT) are examples of soft international law and public policy frameworks that have been established to address property recovery after conflicts. Although these standards provide answers for resolving property losses during conflicts, they do not sufficiently cover losses under customary tenure systems. Considering the rapidly increasing need for land for development, it is crucial to recognise the importance of customary rights. Nevertheless, there are differing viewpoints on this issue. There is a belief that customary rights, previously seen as no longer relevant, are now becoming more important. On the other hand, some people emphasise the need to safeguard traditional rights due to increasing demands for land.<sup>3</sup>

The incorporation of customary rights into the Basic Agrarian Law in Indonesia is justified by their existence prior to the formation of the state.<sup>4</sup> The legal system acknowledges traditional rights as long as they align with the country’s interests and do not violate higher-level rules and regulations. Customary land tenure in indigenous societies includes personally owned and collectively held lands, which are customary land rights. These rights include a range of land kinds that are essential for survival and cultural traditions. Governmental actions, such as forest land policy, threaten customary land rights, especially when customary forests are transformed for commercial use.<sup>5</sup>

<sup>1</sup> Anne Ross et al., *Indigenous Peoples and the Collaborative Stewardship of Nature: Knowledge Binds and Institutional Conflicts* (Routledge, 2016).

<sup>2</sup> Lourdes Torres, “The Land Does Not Belong to Us We Belong to the Land!”, *Diálogo* 13, no. 1 (2010): 1.

<sup>3</sup> Sandra F. Jolreman and Rosine Tchatchoua-Djomo, “Post-Conflict Restitution of Customary Land: Guidelines and Trajectories of Change”, *World Development* 168 (August 1, 2023): 106272, <https://doi.org/10.1016/j.worlddev.2023.106272>.

<sup>4</sup> Maria Sumardjono, *Kebijakan Pertanahan: Antara Regulasi Dan Implementasi* (Jakarta: Penerbit Buku Kompas, 2006).

<sup>5</sup> Sukirno, *Politik Hukum Pengakuan Hak Ulayat* (Jakarta: Kencana, 2018).

The persistent conflicts around traditional land highlight the intricate difficulties native populations encounter. These conflicts frequently arise from confrontations between customary law factions, investors, governments, or even within indigenous communities themselves.<sup>6</sup> The societal and governmental consequences of customary land disputes are significant, necessitating fair and unbiased processes for resolution.<sup>7</sup> An example of such conflicts may be seen in the industrial sector development in Pulau Rempang, Batam City, where traditional heritage and business interests collide. Furthermore, there is a conflict between the Indigenous Dayak Marjun Community and P.T. Tanjung Buyuh Perkasa Plantation in Berau, East Kalimantan, exemplifies the corporate exploitation of ancestral territories, leading to environmental deterioration and social unrest.<sup>8</sup>

The ineffectiveness of current dispute resolution methods, which fail to consider fundamental interests and prioritise immediate results, highlights the necessity for alternative methods. Based on indigenous legal traditions, customary courts effectively settle problems while emphasising communal unity and cultural standards.<sup>9</sup> Recognising and utilising customary courts empowers indigenous people by safeguarding their land rights and contributing to greater social, economic, and environmental objectives.<sup>10</sup> By incorporating indigenous legal systems into official structures and granting power to traditional courts, significant advancements can be made in attaining the Sustainable Development Goals established by the United Nations. This approach facilitates collaborations, safeguards cultural heritage, and supports environmental sustainability.<sup>11</sup>

This research aims to improve the clarity and accuracy of customary land disputes in Indonesia by promoting customary courts as an alternative approach to resolving conflicts. This will contribute to the promotion of inclusive and sustainable development while also upholding the rights and traditions of indigenous communities.

<sup>6</sup> M Sofyan Pulungan, "Menelaah Masa Lalu, Menata Masa Depan: Sejarah Hukum Tanah Ulayat dan Model Penanganan Konflik Sosialnya", *Undang: Jurnal Hukum* 6, no. 1 (2023): 235–67, <https://doi.org/10.22437/ujh.6.1.235-267>.

<sup>7</sup> Festus A. Asaaga, "Building on 'Traditional' Land Dispute Resolution Mechanisms in Rural Ghana: Adaptive or Anachronistic?", *Land* 10, no. 2 (2021): 143, <https://doi.org/10.3390/land10020143>.

<sup>8</sup> Salma, "Rempang Conflict: Land Disputes Triggered by Development Project", *ugm.ac.id*, September 26, 2023, <https://ugm.ac.id/en/news/rem pang-conflict-land-disputes-triggered-by-development-project/>.

<sup>9</sup> Sunarno and HannaAmbaras Khan, "Customary Land Disputes in Indonesia", *International Journal of Academic Research in Business and Social Sciences* 13, no. 10 (October 27, 2023): 2038–47, <https://doi.org/10.6007/IJARBS/v13i10/19103>.

<sup>10</sup> Henry P. Panggabean, *Praktik Peradilan Menangani Kasus Kasus Hukum Adat Suku* (Jakarta: Bhuana Ilmu Populer, 2021).

<sup>11</sup> Kamaljit K. Sangha, Jeremy Russell-Smith, and Robert Costanza, "Mainstreaming Indigenous and Local Communities' Connections with Nature for Policy Decision-Making", *Global Ecology and Conservation* 19 (July 1, 2019): e00668, <https://doi.org/10.1016/j.gecco.2019.e00668>.

## Research methods

This study utilises a juridical-normative methodology to examine the settlement of indigenous land conflicts through traditional courts as a substitute for the formal legal system in Indonesia, with a specific emphasis on statutory rules. Indonesia, known for its varied cultural terrain and intricate legal framework, encounters multiple obstacles in settling land conflicts, particularly those involving indigenous tribes and their ancestral territories. Customary courts have gained increasing respect in recent years for their effectiveness and significance in resolving such issues. Nevertheless, traditional courts frequently suffer from inadequate authority and recognition within the official legal system despite their importance in indigenous communities.

The main aim of this study is to investigate the function and potential of traditional courts in settling land disputes among indigenous communities, taking into account their legal structure and the wider context of official rules. This research uses a juridical-normative approach to analyse the legal principles, coherence, justice, and utility of traditional court processes in resolving land disputes.

To accomplish this goal, the study relies on secondary data sources, which include primary legal materials such as legislation, secondary legal materials consisting of relevant studies, and tertiary legal materials. The sources are collected through an extensive examination of literature, which forms the basis for analysing the legal structure concerning traditional courts and their use in settling land disputes.

Legal reasoning plays a crucial role in this research, guiding the examination and interpretation of legal concepts within the framework of customary court practices. Legal reasoning involves interpreting, organising, and assessing legal norms to gain a thorough grasp of how customary courts play a role in effectively settling property disputes. An essential focus of this research is to investigate the alignment between customary courts and statutory norms and their contribution to ensuring legal clarity and coherence in resolving land disputes. The study seeks to find potential for enhancing the authority and recognition of customary courts within the broader legal system by analysing the compatibility and integration of customary law principles with formal legal systems.

Moreover, the study evaluates the consequences of traditional court procedures on many aspects of justice, such as the fairness of the process, the equitable distribution of resources, and the ability of indigenous groups to seek justice. The study aims to assess the fairness and efficacy of traditional court procedures to tackle inequality issues and guarantee equal access to legal remedies for all parties involved in property disputes. In addition, the project investigates the effectiveness of traditional court methods in advancing sustainable land management, community empowerment, and dispute resolution. The research seeks to emphasise the wider

advantages of incorporating customary justice procedures into the legal system by evaluating customary court rulings' tangible results and societal effects.

## The evolution of customary courts in Indonesia: From colonial era to present day

The role of formal law in managing the lives of many Indonesian residents, particularly those residing in rural areas, is rather insignificant. On the other hand, customary law systems offer efficient and readily available justice services that are consistent with the prevailing culture. Customary courts supervise and enforce informal customary rules and behaviour, typically based on local egalitarian and redistributive norms. Legal institutions consist of formal and informal systems and play a crucial role in maintaining the "rules of the game" that regulate everyday life. Written constraints, such as formal laws and constitutions, are usually supervised by formal legal institutions, which are formed and implemented by external legislative authorities.

Conversely, customary legal institutions regulate the "codes of behaviour, norms, and conventions" within a particular social framework. Nevertheless, the formal and informal legal systems frequently intersect significantly rather than completely distinct. Legal pluralism is a prevalent phenomenon in numerous countries and locations across the globe.<sup>12</sup>

According to Stevens,<sup>13</sup> the following reasons are also recognised as constraints on communities' access to the legal system: Trial processes often experience substantial delays, primarily because of the high volume of cases handled by a limited number of courts. The distance to the nearest court can be significant for many residents residing in rural areas. State-administered justice seldom focuses on restoration or providing compensatory justice. However, it frequently diverges from the community's expectations rooted in conventional justice frameworks. Moreover, the laws and procedures employed in formal courts remain new and intricate to most individuals.

Customary law is integral to society and cannot be detached from it. This is because law and society develop together, meaning that wherever there is society, there is also law (*ubi societas ibi ius*). Customary law is a tangible representation of societal and cultural values. Customary law, although primarily unwritten, holds

<sup>12</sup> Francesco Cecchi and Mequanint Biset Melesse, "Formal Law and Customary Change: A Lab-in-Field Experiment in Ethiopia", *Journal of Economic Behavior & Organization* 125 (May 1, 2016): 67–85, <https://doi.org/10.1016/j.jebo.2016.01.006>.

<sup>13</sup> Joanna Stevens, *Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems* (London: Penal Reform International, 2000), <https://www.penalreform.org/resource/access-justice-subsafrican-africa/>.

relevance in the lives of customary societies that adhere to its principles. Customary law is applicable within a restricted domain, specifically inside the customary community where it is recognised. This arrangement permits each customary community to have distinct customary laws. According to Soekanto, customary law can be defined as a set of customs that are mostly not written down and are mandatory, with consequences for non-compliance. Customary justice refers to the regulations of customary law that dictate the process of resolving a dispute and making legal judgements by customary law. The act of resolving and establishing a legal matter's verdict is called "customary justice". "Justice" (*rechtspraak*) examines legal matters and fairness through thoughtful deliberation. Customary justice can be administered by community members acting independently, by families, relatives, or traditional leaders (according to customary law), village heads (known as village judges), or officials of organisation associations.<sup>14</sup>

The draft law on indigenous communities defines customary justice as a procedure for resolving issues conducted by customary institutions on behalf of the administration of customary law. Indigenous groups are entitled to enforce traditional legal systems and methods of resolving conflicts about traditional rights and the management of traditional law. Customary justice is an integral part of the operation of customary institutions.

According to Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, traditional communities' cultural identity and rights are to be respected by the progress of society and civilisation. Article 61 paragraph (1) of Law No. 39 of 1999 on Human Rights strengthens this principle by stating that the rights and needs of customary law communities must be taken into account and safeguarded by the law, society, and the government to uphold human rights. Therefore, customary legal courts in Indonesia are constitutionally and legally recognised, providing opportunities for their continued operation. Law No. 22 of 1999 on Regional Government acknowledged the role of village peace judges as one of the responsibilities of village heads. This recognition was based on Article 101 of the law above, which mandates villages to mediate conflicts among community members within the village. This item also confirms the obligatory nature of settling matters at the village level by declaring that any dispute resolved by the village head is legally binding on the parties involved. Following that, Law No. 32 of 2004 regarding Regional Government was enacted to assign the responsibilities of village heads according to regional regulations. As a result, the only legal foundation for village peace judges in terms of legislation is Law No. 1 of 1951 concerning

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<sup>14</sup> Nelwitis A and Riki Afrizal, "Pemberdayaan Peradilan Adat Dalam Menyelesaikan Perkara Pidana Menurut Hukum Adat Salingka Nagari Di Sumatera Barat", *UNES Journal of Swara Justisia* 7, no. 2 (July 3, 2023): 469–83, <https://doi.org/10.31933/ujsj.v7i2.342>.

Temporary Measures for Organising the Unity of Power Structure and Civil Court Procedures. According to Article 1, paragraph (2b) of the said law, autonomous courts, excluding religious courts, will be disbanded over time if the court, based on current law, is considered a distinct component of customary courts.<sup>15</sup>

Precisely, the concept of “customary justice” was acknowledged before Indonesia’s independence, particularly through legislation enacted during the rule of the Dutch East Indies government. During that period, there existed five distinct categories of courts, including Government Courts (*Gouvernementsrechtspraak*), Indigenous Courts or Customary Courts (*Inheemsche Rechtspraak*), Swapraja Courts (*Zelfbestuurrechtspraak*), Religious Courts (*Godsdienstige Rechtspraak*), and Village Courts (*Dorpjustitie*). The regulations about customary courts are outlined in Article 130 of the Indische Staatsregeling, which serves as a fundamental regulation within the Dutch government in the Dutch East Indies. This article argues that in addition to the courts regulated by the Dutch government, there exist original courts, such as customary courts in certain places under the direct authority of the Dutch East Indies government, as well as Swapraja courts, which are acknowledged and permitted to function. The recognition of customary courts and village courts by the Netherlands was prompted by the realisation that the European judicial system alone was insufficient to address all the challenges encountered by the inhabitants of the Dutch East Indies (Indonesia). Hence, to address these issues, the Dutch categorised the population into three distinct categories - the European, the Eastern Foreign, and the Indigenous Population.<sup>16</sup>

In the early 1950s, Indonesia underwent a process of revamping its legal system to achieve unification. This was evident through implementing several legislations, including the termination of the Royal Courts in Java and Sumatra and the eventual eradication of swapraja courts and customary courts, as mandated by Emergency Law Number 1 of 1951. The practice proceeded with the implementation of Law Number 19 of 1964 regarding the Fundamental Principles of Judicial Power, which expressly declared the exclusion of customary and swapraja courts, mandating that state courts must address all matters. The policy of eliminating customary courts persisted during the Soeharto regime, as seen by Law Number 14 of 1970 regarding the Fundamental Principles of Judicial Power, which granted the government the power to dissolve customary and swapraja courts. Nevertheless, this abolition aimed not to ignore customary law but to shift the adjudication

<sup>15</sup> Siska Lis Sulistiani, *Hukum Adat Di Indonesia* (Jakarta: Sinar Grafika, 2021).

<sup>16</sup> Herlambang Perdana Wiratraman, “Perkembangan Politik Hukum Peradilan Adat”, *Mimbar Hukum – Fakultas Hukum Universitas Gadjah Mada* 30, no. 3 (October 15, 2018): 490–505, <https://doi.org/10.22146/jmh.38241>.



process to the state courts. Over time, only formal courts became the predominant and universally applicable legal system.<sup>17</sup>

Restorative justice ideas, deeply rooted in customary law, provide a robust basis for fostering societal harmony in an ongoing environment. The religious elements of customary law establish the foundation for communal spiritual cohesion, perceiving the community as a spiritual entity intricately linked to both nature and one another. This framework recognises justice in secular terms and spiritual realms that mirror the interdependence of individuals, communities, and the cosmos. The collective nature of customary law underscores that people are not isolated entities but essential community components. They are obligated by the norms that their society has agreed upon, which impose social and moral duties on each person to uphold harmony in communal existence. In this context, the objective of community cohesion is to uphold equilibrium among individual interests, groups, and the environment, with every community member being accountable for accomplishing shared objectives.<sup>18</sup>

The notion of cosmic order, often known as cosmos, forms the basis for comprehending the equilibrium between the physical and spiritual dimensions in customary law. The community's interests are considered essential for maintaining peace and alignment with nature and spiritual forces. From this perspective, transgressions of traditional legal norms are regarded as infringements upon the universal order, capable of disturbing both societal equilibrium and ecological stability. Consequently, when individuals or societies break the cosmic boundaries set by traditional law, the repercussions are physical and spiritual. Disruptions to the equilibrium of the natural environment and the community's overall welfare can arise if the established standards are not adhered to and taken seriously by all community members. Hence, within the continuous flow of existence, the concepts of restorative justice in traditional legal systems establish a strong basis for perpetuating peace and equilibrium in society.<sup>19</sup>

Throughout customary courts, judges have the responsibility of fostering the development of customary law throughout the community. In the absence of applicable legal precedents, judges can render judgements by considering the specific circumstances and evolution of the community. Judges possess the authority to make various decisions to resolve issues, including aligning, adapting, diverging, sidelining, rejecting, or changing old customary legal principles with new

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<sup>17</sup> Ibid.

<sup>18</sup> Nur Rochaeti and Rahmi Dwi Sutanti, "Kontribusi Peradilan Adat Dan Keadilan Restoratif Dalam Pembaruan Hukum Pidana Di Indonesia", *Masalah-Masalah Hukum* 47, no. 3 (2018): 198–214, <https://doi.org/10.14710/mmh.47.3.2018.198-214>.

<sup>19</sup> Ibid.



ones. Past rulings do not constrain these decisions. All decisions are made to deliver equitable judgements grounded in the principle of the Divine Being.<sup>20</sup>

## Factors contributing to customary rights conflicts

The term “customary rights” refers to a collection of authorities and obligations that individual communities that adhere to customary law have over a certain place considered their customary land. The right to benefit from natural resources, including land, located within that territory is granted to the organization’s members. Every member of the community is the subject of these customary rights, and the object of these rights is the entire land located within the community’s customary environment. Suppose they have the consent of the local customary authorities. In that case, individuals not members of that customary community are permitted to use the land inside that customary territory.<sup>21</sup>

A definition of customary rights is provided by Regulation 5 of 1999, issued by the Minister of Agrarian Affairs and Head of the National Land Agency. This definition describes the authority that communities that adhere to customary law have over particular territories to benefit from natural resources, including land, for their sustenance. Among the things that fall under the purview of customary rights is communal land, which refers to land subject to customary rights from a particular community that adheres to customary law. Several modifications have been made to this term due to subsequent rules. Community and private land rights are two categories that might be distinguished among these customary rights. It is only within communities that adhere to territorial and genealogical customary law that communal rights, also called customary or lordship rights, are recognised. On the other hand, individual rights make it possible for community members to participate in legal relationships with the land. This connection has the potential to develop into ownership rights over the land or rights of enjoyment, which would make it possible for the land to be utilised for a single harvest.<sup>22</sup>

The term “customary land” refers to communal land that is supposed to be used by one generation and subsequent generations. As a result, this common land needs to be managed appropriately to satisfy both the collective and individual requirements. In addition, customary rights include the right to jointly own land and the obligation to manage, regulate, and direct land usage at certain times. Three factors need to be taken into consideration in order to ascertain whether or not customary rights are still in existence: the existence of a community that adheres

<sup>20</sup> Aprilianti and Kasmawati, *Hukum Adat Di Indonesia* (Bandar Lampung: Pusaka Media, 2022).

<sup>21</sup> H.M. Arba, *Hukum Agraria Indonesia* (Jakarta: Sinar Grafika, 2021).

<sup>22</sup> Muhammad Ilham Arisaputra, *Reforma Agraria Di Indonesia* (Jakarta: Sinar Grafika, 2021).

to customary law, the presence of particular customary land, and the authority of the community to carry out particular actions that are associated with that land can all be considered customary land. If all three conditions are satisfied, customary rights are still regarded to be in circulation.<sup>23</sup>

Different parties' competing interests in land ownership are sometimes the root cause of property conflicts. To prevent communities from suffering harm, the government is working to speed up the process of resolving these disputes. Several factors, including regulatory inconsistencies, a lack of responsiveness from land officials, inaccurate data, and transaction mistakes, can cause land conflicts. Various parties may be involved in land conflicts, including local residents, local governments, or resource management challenges. Land disputes may entail the acknowledgement of ownership, the transfer of rights, the encumbrance of rights, or the occupation of land parcels that were previously private. Because of this, resolving land disputes is essential for preserving legal clarity and ensuring the general welfare of society. Conflicts that arise from problems about customary rights frequently have roots that are both complicated and diverse. In certain instances, these disputes can be classified into two primary categories: conflicts between indigenous groups and the government and investors and between indigenous communities distinct from one another. Differences in customary rights can give rise to various problems in either of these circumstances.<sup>24</sup>

First, disagreements arise due to acts taken by the government on nationalisation. Land lease agreements between communities that adhere to customary law and private corporations or governments in place during colonial rule are frequently the source of such problems. Immediately upon the nationalisation of these territories by the Indonesian government, the state asserts ownership of them without providing proper compensation to the indigenous populations that originally inhabited them. Second, the government's decision to designate certain places as conservation zones can create contentious situations. Conflicts of this nature frequently develop when the government designates regions that are inhabited by indigenous tribes as conservation zones without taking into consideration the aspirations and rights of the indigenous populations in question. Thirdly, conflicts develop due to concessions provided by the government to prospective investors. These concessions have the potential to damage the customary rights of indigenous groups directly. One example is the practice of awarding mining or plantation businesses the right to exploit natural

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<sup>23</sup> Ernila Erfa and Syania Ubaidi, "Konsep Dan Bentuk Perlindungan Hak Penguasaan Atas Tanah Masyarakat Hukum Adat Di Indonesia (Studi Kasus Putusan Pengadilan Negeri Balige No. 42/Pdt.Plw/2016/PN BLG)", *Indonesian Notary* 3, no. 2 (2021): 18–35.

<sup>24</sup> Ayu Meiranda et al., "Upaya Hukum Terhadap Penyelesaian Sengketa Tanah Ulayat di Kabupaten Kampar Guna Menjaga Keamanan Nasional", *Jurnal Analisis Hukum* 6, no. 1 (April 25, 2023): 99–114, <https://doi.org/10.38043/jah.v6i1.4232>.

resources, which frequently goes against the customary rights of indigenous tribes that have occupied and managed those places for a significant amount of time. There are also disagreements between indigenous people regarding the ownership of customary land, which brings us to the fourth consideration. Several potential causes exist for these conflicts, including overlapping claims to land ownership or historical disagreements between various indigenous communities.<sup>25</sup>

The circumstances that lead to conflicts over customary rights are diverse, but they frequently include opaque land acquisition processes, a lack of respect for indigenous rights, inadequate compensation, and the establishment of protected areas without considering the desires of the local community. Therefore, to resolve conflicts concerning customary rights, it is necessary to take a cautious approach, which includes receiving active participation from all relevant parties and considering the rights and interests of indigenous groups comprehensively.

## Land conflict resolution: Approaches and methods

Conflict, whether in the form of competitiveness or contradiction, has frequently been a defining characteristic of human history. The taming and mastery of nature, inequities between social classes, discrepancies between globalism and localism, and tensions between economic interests and the environment are all potential sources of conflict. Conflict can develop from a variety of factors. Even though conflict is frequently regarded as a hindrance to the progression of society, it may also act as a driving force behind change and innovation.<sup>26</sup> Within the framework of the history of agrarian reform, it is essential to have a solid understanding of the effects of such activities on the communities involved. This includes whether the land distribution process is peaceful or produces internal and foreign conflicts.<sup>27</sup>

The question of who truly profits from the land distribution is also included. In order to facilitate the resolution of social problems, Law No. 7 of 2012 emphasizes the significance of giving precedence to the social and customary institutions already present within the community. It is generally acknowledged that the dispute resolution outcomes through these procedures are legally binding for the

<sup>25</sup> Kurnia Warman & Syofianti, "Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat Vs Pemerintah)", *Masalah-Masalah Hukum*; 41, no. 3 (July 24, 2012): 407–15, <https://doi.org/10.14710/mmh.41.3.2012.407-415>.

<sup>26</sup> Ruxandra Mălina Petrescu-Mag et al., "Agricultural Land Use Conflict Management—Vulnerabilities, Law Restrictions and Negotiation Frames. A Wake-up Call", *Land Use Policy* 76 (July 1, 2018): 600–610, <https://doi.org/10.1016/j.landusepol.2018.02.040>.

<sup>27</sup> Rogelio Jiménez Marce, "Conflictos Agrarios Y Formación De Un Poder Político Agrario En Santiago Tuxtla, Veracruz (1922-1950)", *Relaciones Estudios de Historia y Sociedad* 37, no. 148b (February 16, 2017): 125–67, <https://doi.org/10.24901/rehs.v37i148b.232>.

participants in the conflict. If a resolution cannot be reached through customary institutions, it is carried out using specialised task forces.<sup>28</sup>

Within the land tenure framework, land conflicts present several complicated difficulties. Several circumstances, such as regulatory mismatches, transaction errors, and a lack of reaction by land officials, can cause disagreements. It is possible for the parties concerned to settle their disagreements through a variety of channels, including litigation or other non-litigation methods. The resolution of land conflicts can be accomplished through various means, including formal agreements, conciliation, arbitration, mediation, and taking legal action in the courts. Even though mediation outside of court is considered more efficient and cost-effective, many people still prefer litigation because they do not have a fundamental grasp of mediation. Therefore, it is essential for the parties concerned to evaluate several possibilities for conflict resolution that are by their requirements and interests, focusing on achieving peace and justice. Land disputes need to be resolved as soon as possible since they can have detrimental effects on society and the economy. Land disputes that last for an extended period can result in economic losses, legal ambiguity, and social conflicts, all of which damage the level of stability and development in an area.<sup>29</sup>

Disagreements over land ownership are a complicated matter that requires considerable consideration in Indonesia. Regulatory mismatches, land shortages, flawed regulations, and a lack of data accuracy are the primary causes of land conflicts. Other variables that contribute to land conflicts include a lack of data correctness. The resolution of land disputes in Indonesia also focuses on ownership, rights transfers, encumbrances, and the occupation of land formerly under feudal rule. When a dispute is resolved by a process that does not involve litigation, it is often accomplished through mediation by either the National Land Agency or municipal land offices. Through the use of expert advisers or mediators, this mediation process entails the parties involved in the dispute agreeing with one another. Even though mediation is considered more efficient and cost-effective, many people continue to favour litigation because they do not know enough about it. In addition to mediation, arbitration is another tool that can be utilised to settle land disputes outside the court system. In arbitration, parties in conflict submit their dispute resolution to arbitrators mutually agreed upon to render conclusions legally enforceable for both parties.<sup>30</sup>

When it comes to land disputes, various approaches are utilised to arrive at equitable and suitable solutions for all parties involved. Consultation, mediation,

<sup>28</sup> Novianti, Dian Cahyaningrum, and Luthvi Febryka Nola, *Pemanfaatan Tanah Ulayat Untuk Kepentingan Investasi* (Publica Indonesia Utama: Jakarta, 2022).

<sup>29</sup> Adonia Ivonne Laturette, "Penyelesaian Sengketa Hak Ulayat pada Kawasan Hutan", *SASI* 27, no. 1 (April 13, 2021): 102–12, <https://doi.org/10.47268/sasi.v27i1.504>.

<sup>30</sup> Ibid.

conciliation, and arbitration are some of the procedures that fall under this category. When it comes to conflict resolution, it is essential to consider structural, cultural, and substantive components. These aspects include the judges' comprehension of land concerns, society's legal principles, and customary law application. Land conflict resolution can be carried out effectively and efficiently thanks to utilising a holistic approach and considering numerous issues. This would establish justice and peace for all parties involved.<sup>31</sup>

## Indigenous wisdom and customary institutions in land conflict resolution

Globally, conflicts within joint-stock companies often find resolution through alternative dispute resolution (ADR) mechanisms rather than resorting to formal judicial proceedings. These ADR methods facilitate dispute resolution and lead to significant cost and time savings compared to the traditional court route, which entails expenses such as court fees and legal representation costs, along with the prolonged duration of court proceedings. In traditional litigation, it is common for at least one party to be dissatisfied with the outcome, prolonging the conflict and potentially damaging business relationships. Conversely, ADR offers a more collaborative approach, where the interests of all involved parties can be fully addressed, leading to more satisfactory outcomes. By choosing ADR, companies can preserve relationships, maintain confidentiality, and expedite the resolution process, allowing them to refocus their resources on their core business activities. Moreover, ADR methods such as mediation and arbitration provide flexibility and customization, allowing parties to tailor solutions that best suit their needs and circumstances. This adaptability enhances the likelihood of reaching mutually acceptable agreements and fostering long-term stakeholder cooperation.

In urban communities, the local wisdom inherent in each region can serve as a guide for resolving social, cultural, and economic disputes arising from rapid and irreversible changes in the urban environment. These changes frequently result in alienation and harm to urban identities. Within this framework, the distinctive capabilities of every region can serve as the foundation for conflict resolution. There is a strong emphasis on the significance of cultural adaptation in social conflict resolution, with indigenous wisdom being the key to effectively handling disagreements. Not only does indigenous wisdom encompass the knowledge

<sup>31</sup> Agung Basuki Prasetyo, "Penyelesaian Sengketa Tanah Masyarakat Adat Karuhun Urang (AKUR) Di Desa Cigugur Kuningan Melalui Lembaga Peradilan", *Law, Development and Justice Review* 2, no. 1 (May 29, 2019): 72–84, <https://doi.org/10.14710/ldjr.v2i1.5003>.

and intelligence of local people, but it also shows the ability of these cultures to manage both their physical and spiritual circumstances.<sup>32</sup>

Using customary courts to resolve conflicts involving customary land rights is extremely important. Disputes that include violations of customary law can be handled through the mechanisms that customary courts utilise. Individuals and legal entities not a part of the indigenous community must comply with the decisions made by customary courts, and those who violate these rulings may be subject to criminal sanctions or fines. The resolution of internal conflicts that arise within indigenous groups can be accomplished through the utilisation of customary institutions and customary justice procedures. In the indigenous legal community, the fundamental obligation of traditional leaders is to protect the welfare and interests of members of the indigenous legal community. Customary court decisions are final and binding. Several phases are often included in the process of settling land disputes. These processes include receiving reports, participating in customary discussions, attending witness hearings, and having decision-making conducted by leaders of customary institutions. Without any shadow of a doubt, customary institutions' decisions are legally obligatory on the entire indigenous legal community. It is hoped that communities will discover solutions to the problems they are facing that are both equitable and sustainable if they give indigenous wisdom a higher priority and involve customary institutions in conflict resolution.

When seen from the perspective of Minangkabau Customary Law, the conflict resolution process is carried out through a consultation system based on reaching an agreement and emphasizing justice ideals. Consultation based on reaching a consensus is the final phase in conflict resolution. Traditional leaders are positioned as the ultimate arbiters of truth. This approach is a reflection of the Minangkabau adage that states that truth is found by agreements that are based on consensus. It is common practice for communities to seek resolution through direct negotiations between themselves and the commercial corporations engaged in the conflict if earlier efforts to address the dispute have been unsuccessful. For this particular scenario, the conclusions reached must be legally binding on all parties involved in the dispute.

Consequently, in order to have the ability to enforce such agreements legally, it is essential to register them with the Notary Office and the Court system. Because they have an in-depth understanding of the historical land transfer to private firms, the local government is regarded as an acceptable choice if the engagement of a third party is required in the dispute settlement process. The Local Government

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<sup>32</sup> Ashadi L Diab et al., "Accommodation of Local Wisdom in Conflict Resolution of Indonesia's Urban Society", *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2153413, <https://doi.org/10.1080/23311886.2022.2153413>.

also possesses comprehensive facilities designed to facilitate the process of resolving land disputes, and it is their job to guarantee that the outcomes are fair and sustainable.<sup>33</sup>

In Sulahan Customary Village, the resolution of disputes about the land in the village courtyard is typically accomplished by mediation, headed by the Bendesa Adat, the Traditional Village Leader taking on the role of mediator. In order to ensure that the ritual goes off without a hitch, mediation takes place in the Sulahan Village Temple following prayers. The steps of mediation consist of the following: the acceptance of the report, the inspection of the report, the establishment of a team to analyse the report, the planning of a resolution, the summoning of the disputing parties, the implementation of the mediation, and the making of decisions based on the laws that are currently in effect in Sulahan Customary Village. If the disputing parties do not accept the decisions that the Village Court has made, the resolution will either be referred back to mediation or given over to positive law. Additionally, the Local Government is involved in this mediation process as witnesses from the government element. However, because the court does not have jurisdiction over the resolution of customary land disputes, it is imperative that the customary rules regulated in the laws of Sulahan Customary Village be adhered to and that the resolution be carried out customarily.<sup>34</sup>

Regarding the Moi Tribe Community, conflict resolution methods require hearings. These proceedings involve the participation of various members of the indigenous community as well as traditional authorities. As part of the evidence, the opposing parties will provide evidence concerning the geographical location of their customary land rights. In some instances, customary oaths will also be administered as part of the evidence. Eating Earth, Molobelo, Tikam Kayu, Besi Merah, and Potong Bambu Tui are some rites that may be performed during the traditional oath-taking ceremony.<sup>35</sup>

On the other hand, these activities are becoming less common as a result of the possibility of harsher sanctions, which may even include threats of death. The individuals who are seen to be at fault in the dispute will be subject to the customary consequences that are in place. These punishments may include monetary payments or the gift of Eastern cloth as a form of punishment. However, compensating parties are also expected to acknowledge and listen to the claims

<sup>33</sup> Sal Sabilla Syafira and Devi Siti Hamzah Marpaung, "Penyelesaian Sengketa Tanah Ulayat Masyarakat Di Minangkabau", *Jurnal Hukum Positum* 5, no. 2 (2020): 79–90.

<sup>34</sup> I Putu Ade Surya, I Made Suwitra, and I Ketut Sukadana, "Penyelesaian Sengketa Tanah Pekarangan Desa di Desa Adat Sulahan Kecamatan Susut Kabupaten Bangli", *Jurnal Interpretasi Hukum* 1, no. 2 (September 26, 2020): 78–83, <https://doi.org/10.22225/juinhum.1.2.2439.78-83>.

<sup>35</sup> Moldi Samuel, "Mekanisme Penyelesaian Sengketa Hak Atas Tanah Adat Dan Perlindungan Hukum Hak Ulayat Masyarakat Adat Suku Moi Di Kabupaten Sorong", *Equality Before The Law* 1, no. 2 (2022): 60–78.



made by other family members. Additionally, the conflict resolution process will comprise customary court proceedings conducted by traditional leaders such as the Raja (King). During the customary court proceedings, the disputing parties and witnesses, such as Seniri, Orang Kai, Soa, and Tuan Tan, who play an important part in elucidating the truth about the contested customary land, will be called before the court. The customary court process is carried out to encompass complete fairness, impartiality, and transparency. The Raja will decide the location and time of the proceedings before the conventional court proceedings begin. He will also make sure that all of the parties concerned are present throughout the time of the hearings. In addition, the community's elders are present to offer explanations and testimonials that can assist the Raja in making equitable choices. It is anticipated that the presence of the Raja as the judge in the proceedings of the customary court will result in decisions that restore the situation of the community and return it to the normal state it was in prior to the occurrence of the customary land dispute.<sup>36</sup>

## Conclusion

It is impossible to emphasise the significance of customary law in regulating the lives of Indonesian communities, particularly in rural regions, to ensure that individuals have prompt access to justice that conforms with the culture of the place. As a component of the customary legal system, customary justice plays a role in maintaining informal behavioural standards by considering the norms of redistribution and egalitarianism prevalent in the community. Formal and informal legal institutions frequently overlap in practice even though formal law plays a role in textual limits and the execution of laws by legislative authorities.

Legal pluralism is prevalent in many nations, including Indonesia, and is characterised by the coexistence of formal and customary legal systems. Conflicts over indigenous land are complicated issues that arise from a variety of sources, including the government's nationalisation of indigenous communities and disagreements between indigenous communities. In order to successfully resolve conflicts, strategic approaches that involve the active engagement of all relevant parties are required.

A tighter working relationship between the formal legal system and the customary legal system is required in order to increase access to justice. At the same time that principles of justice and indigenous community engagement are being taken into consideration, there is a need for improvements in transparency, responsiveness, and efficacy in resolving indigenous land disputes. The strengthening of customary legal institutions and processes for dispute resolution must be supplemented by

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<sup>36</sup> Cornelia Junita Welerubun, "Perlindungan Hukum Hak Atas Tanah Ulayat Masyarakat Hukum Adat Di Kabupaten Maluku Tenggara.", *Jurnal Media Hukum Dan Peradilan* 5, no. 1 (2019): 133–46.

the teaching and socialisation of communities regarding their rights and how they can access existing justice systems.

It is important to realise that this research has drawbacks, such as lacking empirical data or in-depth case studies. Additionally, mapping customary legal practices and resolving indigenous land conflicts in different regions of Indonesia should be the primary emphasis of future study development. Additionally, the factors that influence the application of these practices should be identified. There is the potential for a more thorough knowledge of the dynamics of customary law, legal pluralism, and the resolution of indigenous land conflicts in Indonesia to be obtained through in-depth case studies and research from multiple disciplines.

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**Resolução de disputas de terras indígenas na Indonésia: explorando os tribunais consuetudinários como uma alternativa aos processos judiciais formais**

**Resumo:** As tribos indígenas enfrentam dificuldades para proteger suas terras, identidades e meios de subsistência em meio a conflitos. Áreas indígenas são ameaçadas pela exploração de recursos e por conflitos de propriedade relacionados ao desenvolvimento, exigindo uma resolução eficiente de disputas. Os marcos internacionais para a recuperação de propriedades no pós-conflito raramente abordam os direitos de terra consuetudinários. Este estudo examina os tribunais tradicionais indonésios como alternativas para disputas de terras indígenas. Investiga a coerência legal, a justiça e a utilidade dos procedimentos judiciais tradicionais, utilizando fontes jurídicas secundárias de maneira jurídico-normativa. O estudo compara os sistemas legais consuetudinários e formais, avalia os procedimentos dos tribunais tradicionais quanto à sua equidade, e examina seus efeitos na gestão sustentável de terras e no empoderamento comunitário. Os procedimentos de justiça consuetudinária devem ser integrados ao sistema legal para promover o desenvolvimento inclusivo e sustentável, além de salvaguardar os direitos e tradições indígenas. O artigo recomenda uma cooperação mais forte entre os sistemas legais formais e consuetudinários e sugere futuras pesquisas para resolver limitações e melhorar a compreensão das dinâmicas do direito consuetudinário na resolução de questões fundiárias indígenas na Indonésia.

**Palavras-chave:** Populações indígenas. Conflitos de terras. Tribunais consuetudinários. Pluralismo jurídico. Indonésia.

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