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Customary Law and Agrarian Conflict:Analysis of Land Dispute Resolution Based on Local Wisdom

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ABSTRACT

Agrarian conflict is a recurring structural problem in Indonesia, particularly in areas inhabited by indigenous communities. The tension between state law and customary law is often the primary source of protracted land disputes. This study analyzes how land dispute resolution mechanisms based on local wisdom, derived from customary law, can function effectively as an alternative or complement to the formal justice system. Using normative legal research methods supported by sociological and historical approaches, this study examines various customary law instruments, jurisprudence, and field studies on land dispute resolution practices in indigenous communities across Indonesia. The results indicate that customary deliberation mechanisms, customary elder institutions, and communal consensus values embodied in local wisdom are highly effective in achieving just and sustainable dispute resolution. However, the weak legal recognition of customary institutions and decisions is a major obstacle to their implementation. This study recommends strengthening the national legal framework that integrates customary mechanisms into the agrarian dispute resolution system, accompanied by empowerment of local customary institutions.
Keywords:*Customary Law, Agrarian Conflict, Land Disputes, Local Wisdom, Alternative Dispute Resolution, Customary Law Communities.*

INTRODUCTION

The agrarian issue in Indonesia is one of the most complex and sensitive, persisting from the colonial era to the present day. Land is not merely an economic resource; it also has profound social, cultural, spiritual, and political dimensions, especially for communities whose lives are still closely tied to land and natural resources.[1] This complexity increases when faced with legal pluralism in Indonesia, where the state legal system must interact and often clash with customary law that has been rooted in people's lives for centuries.

Customary law as a legal system that lives and develops in Indonesian society has long been an important instrument in regulating human relations with the land and the natural resources around it.[2] This legal system encompasses not only norms governing land rights, but also dispute resolution mechanisms rooted in the values of consensus, deliberation, and cosmological balance understood and respected by all members of indigenous communities. Unlike Western legal systems, which tend toward adversarial and litigious principles, customary dispute resolution mechanisms prioritize restoring

[1]Boedi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya (Jakarta: Djambatan, 2005), hlm. 23.

[2]Ter Haar Bzn, Asas-Asas dan Susunan Hukum Adat, terjemahan K. Ng. Soebakti Poesponoto (Jakarta: Pradnya Paramita, 1994), hlm. 1–5.

social relations and communal balance rather than simply winning or losing.[3] However, over time, the position of customary law within Indonesia's national legal system has experienced significant ups and downs. Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) essentially recognizes the existence of customary rights and other customary rights, but its implementation often encounters various structural and bureaucratic obstacles.[4] On the one hand, various sectoral regulations, from forestry, mining, plantation, and spatial planning laws, often ignore or even erode recognition of indigenous peoples' rights to their land and natural resources. On the other hand, modernization and global capital flows are driving increasingly aggressive investment expansion into areas traditionally controlled by indigenous communities.

As a result, agrarian conflicts in Indonesia have continued to increase year after year. Data from the Agrarian Reform Consortium (KPA) records that throughout 2022, at least 212 agrarian conflicts occurred across the archipelago, involving 1,035,613 hectares of land and impacting 69,279 families.[5] These figures are just the tip of the iceberg of the total conflict that actually occurs, considering that there are still many disputes that are not reported or not officially recorded because the communities involved choose informal resolution routes through customary mechanisms.

In this context, an in-depth study of the potential and capacity of customary law, particularly dispute resolution mechanisms based on local wisdom, becomes highly relevant and urgent. The local wisdom embodied in customary legal systems is not simply an outdated tradition of the past, but rather a living knowledge system that continually adapts to social dynamics and maintains strong legitimacy in the eyes of its supporting communities.[6] The ability of customary law to resolve disputes more quickly, cheaply, and with local justice is a comparative advantage that the formal justice system, which is often slow, expensive, and far from the reach of remote indigenous communities, does not have.

This research is based on three main questions: First, what is the position of customary law in the land dispute resolution system according to Indonesia's positive legal framework? Second, what are the mechanisms and practices for resolving land disputes based on local wisdom that apply to indigenous communities in Indonesia? Third, what are the obstacles and opportunities in integrating customary mechanisms into a more comprehensive agrarian conflict resolution system in Indonesia? This research is expected to provide academic and practical contributions in efforts to formulate fairer and more pro-indigenous policies in handling agrarian conflicts. Furthermore, this research also aims to enrich the treasury of Indonesian customary law by comparing customary law theories with the increasingly complex reality of contemporary agrarian conflicts.

METHODS

This research uses a normative legal research approach as the main method, which is combined with a sociological legal approach to obtain a comprehensive understanding

[3] Kurniawan, Ardian, et al. "Hukum adat dan nilai restoratif: kontekstualisasi penyelesaian konflik sumbang adat di Jambi." *Masalah-Masalah Hukum* 53.2 (2024): 111-122. https://doi.org/10.14710/mmh.53.2.2024.111-122

[4] Maria S.W. Sumardjono, Kebijakan Pertanahan: Antara Regulasi dan Implementasi (Jakarta: Kompas, 2008), hlm. 45–47.

[5] Konsorsium Pembaruan Agraria (KPA), Catatan Akhir Tahun 2022: Konflik Agraria Struktural dan Krisis Tata Kelola Sumber Daya Alam (Jakarta: KPA, 2023), hlm. 3–7.

[6] Soerjono Soekanto, Hukum Adat Indonesia (Jakarta: Rajawali Pers, 2012), hlm. 78.

of the phenomena being studied.[7] Normative legal research was chosen because the primary object of study is legal norms, both those expressly stated in laws and regulations and those implied in court decisions, legal doctrine, and local wisdom that exist within the community. The approach used in this research encompasses four approaches simultaneously. First, the statute approach, which examines all regulations related to agrarian law and the recognition of indigenous peoples' rights, starting from the 1945 Constitution of the Republic of Indonesia, the UUPA, the Forestry Law, and various regional regulations governing customary land.[8] Second, a conceptual approach, analyzing fundamental concepts in customary law and alternative dispute resolution theory to build a coherent analytical framework. Third, a historical approach is used to trace the development of customary law recognition in the Indonesian legal system from the colonial period to the reform era, thus understanding the dynamics and contestations underlying the current state of customary law.[9] Fourth, a comparative approach is applied by comparing various customary dispute resolution mechanisms that apply in various customary communities in Indonesia, to identify general patterns and the uniqueness of each system.

The legal materials used in this research fall into three categories. Primary legal materials include laws and regulations, Constitutional Court decisions, court decisions relating to customary rights and customary land disputes, and customary legal documents codified by specific indigenous communities.[10] Secondary legal materials include legal textbooks, scientific journals, previous research results, and reports from institutions working in the field of indigenous peoples' rights. Tertiary legal materials consist of legal dictionaries, encyclopedias, and glossaries of customary law terms. The legal materials were analyzed using legal interpretation methods, including grammatical, systematic, historical, and teleological interpretations. Comparative analysis was also used to compare various approaches to customary dispute resolution in various regions, as well as critical analysis to evaluate the extent to which Indonesian positive law has—or has not—adequately accommodated customary mechanisms.[11] Field data in the form of interviews with traditional leaders and customary law academics were used as supporting material to enrich and validate the normative analysis.

RESULTS AND DISCUSSION

The Position of Customary Law in the Land Dispute Resolution System in Indonesia: Normative Framework and Implementation Reality

Recognition of the existence of customary law in the Indonesian legal system has actually been explicitly stated in various legal instruments from the constitutional level to technical regulations. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Second Amendment) states that "The State recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary

[7]John W. Creswell, Research Design: Qualitative, Quantitative, and Mixed Methods Approaches, 4th ed. (Thousand Oaks: Sage Publications, 2014), hlm. 14–18.

[8]Peter Mahmud Marzuki, Penelitian Hukum, Edisi Revisi (Jakarta: Kencana Prenada Media Group, 2016), hlm. 35–36.

[9]Soetandyo Wignjosoebroto, Hukum: Paradigma, Metode dan Dinamika Masalahnya (Jakarta: ELSAM & HUMA, 2002), hlm. 76–81.

[10]Ibid., hlm. 82.

[11]Rikardo Simarmata, Pengakuan Hukum terhadap Masyarakat Adat di Indonesia (Jakarta: UNDP, 2006), hlm. 14–17.

State of the Republic of Indonesia."[12] Likewise, Article 28I paragraph (3) of the 1945 Constitution mandates that "The cultural identity and rights of traditional communities are respected in line with the development of the times and civilization." In the realm of agrarian regulations, the 1960 UUPA is an important milestone in the effort to integrate customary law into the national land law system. Article 3 of the UUPA expressly states that customary rights and similar rights of customary law communities are recognized, as long as they actually still exist, do not conflict with national and state interests, and do not conflict with other higher regulations.[13] This recognition is conditional and contains restrictive clauses which in practice are often exploited by the state to assert its dominance over lands claimed as customary territories.

Another important milestone was Constitutional Court Decision Number 35/PUU-X/2012 which revoked the provisions in the Forestry Law that included customary forests in the category of state forests.[14] This ruling reaffirms the status of customary forests as forests located within the territories of customary law communities, not state forests. However, the implementation of this ruling still faces various bureaucratic, technical, and political obstacles, preventing the factual recognition of customary forests and customary territories more broadly. A fundamental issue within Indonesia's land legal framework is the structural tension between the concept of domein verklaring, inherited from Dutch colonial law, and the principles of customary rights in customary law.[15] Although the UUPA formally abolished the concept of domein verklaring, various sectoral regulations in the post-UUPA era, especially those born during the New Order era, have again adopted the assumption that land whose ownership cannot be formally proven is state land.[16] This assumption contradicts the fact that the majority of customary land has never been formally registered but continues to be inhabited, controlled, and utilized by indigenous communities based on their customary laws which have been passed down from generation to generation. Bottom of Form

The concept of customary rights is at the heart of the land tenure system in Indonesian customary law. Essentially, customary rights are the rights of a customary legal community over a specific territory, encompassing the right to regulate, control, and utilize the land and the natural resources above and below it, as well as the right to determine who may or may not enter the territory.[17] Customary land rights are communal, non-transferable, and vested in the indigenous community as a collective entity, not in individual members. The existence of these customary rights often becomes a source of conflict when confronted with claims to land rights based on state law, particularly in the form of land use rights (HGU), building use rights (HGB), or

[12]Badan Registrasi Wilayah Adat (BRWA), Laporan Pemetaan Wilayah Adat Nasional 2021 (Jakarta: BRWA, 2022), hlm. 5.

[13]Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, Pasal 3 dan Penjelasannya.

[14]Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 35/PUU-X/2012 tentang Pengujian Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan.

[15]Hilman Hadikusuma, Pengantar Ilmu Hukum Adat Indonesia (Bandung: Mandar Maju, 2003), hlm. 112–115.

[16] Bahari, Syaiful, Muhammad Panca Prana Mustaqim Sinaga, and Zahra Malinda Putri. "REKONSTRUKSI PEMAKNAAN HAK MENGUASAI NEGARA MENURUT PASAL 33 AYAT (3) UUD 1945." *JUSTLAW: Journal Science and Theory of law* 2.01 (2025): 46-55. https://ojs.sains.ac.id/index.php/Justlaw/article/view/102

[17]Noer Fauzi Rachman, Land Reform dari Masa ke Masa: Perjalanan Kebijakan Pertanahan Indonesia 1945–2009 (Yogyakarta: STPN Press, 2012), hlm. 89.

government-designated forest areas.[18] In many cases, customary lands that have been traditionally controlled by indigenous communities are suddenly designated as state forest areas or given as concessions to plantation and mining companies without the consent, let alone participation, of the indigenous communities involved. This pattern of conflict repeats itself with relatively similar variations across Indonesia, from Sumatra and Kalimantan to Sulawesi and Papua.

Data from the Customary Territory Registration Agency (BRWA) shows that at least 19.4 million hectares of customary territories have been mapped through participatory means throughout Indonesia, but only a small portion has received official recognition from local and central governments.[19] The disparity between the actual extent of existing customary territories and the minimal legal recognition granted by the state is a ticking time bomb that continues to exacerbate the potential for future agrarian conflict. Without a comprehensive, systemic resolution, customary-based agrarian conflict will continue to erode social cohesion and hinder equitable development.[20] In the Minangkabau context in West Sumatra, for example, customary land, known as "pusaka land," is land owned by the community that is managed collectively and cannot be sold, but can only be mortgaged with very strict customary procedures. This land management system reflects local wisdom values that prioritize intergenerational sustainability and balance individual rights with collective interests. However, when interacting with state law, this system is often not recognized as valid, leading to conflict between customary heirs and outsiders claiming land based on formal documents.

The condition of legal pluralism in which various legal systems apply simultaneously and compete with each other in their claims to validity—is the structural root of many agrarian conflicts in Indonesia.[21] In addition to the state legal system and customary law, in practice we also find land ownership systems that originate from religious law (especially Islamic law in relation to endowments and inheritance), local legal systems that are a combination of customary law and religious law, as well as land ownership systems based on local customs that are not always identical to customary law in the academic sense.[22]

This legal pluralism creates a situation where the same plot of land can be claimed by various parties based on different legal systems, and each of these claims has its own validity and legitimacy in the legal system used as reference.[23] When such conflicts are brought before formal courts, judges often face a dilemma because the state law they rely on does not always provide adequate space for the recognition of customary law-based

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[18]Zen Zanibar MZ, Hukum Adat Minangkabau: Prinsip dan Penerapannya (Padang: Universitas Andalas Press, 2009), hlm. 67–72.

[19] Dadek, Teuku Ahmad. "Tinjauan Yuridis RUU Masyarakat Hukum Adat: Melihat Implikasi Pengakuan Hak Adat Terhadap Perlindungan Lingkungan." *Unes Journal of Swara Justisia* 9.3 (2025): 438-449. https://doi.org/10.31933/s5pjq587

[20] Mirwati, Yulia, and Rahmides Utami. "Eksistensi Tanah Pusako Dalam Kontestasi Politik Agraria: Kajian Kritis Terhadap Hak-Hak Tradisional Masyarakat Adat Minangkabau." Unes Journal of Swara Justisia 9.4 (2026): 746-763. https://doi.org/10.31933/40tzk403

[21]Peraturan Daerah Provinsi Sumatera Barat Nomor 16 Tahun 2008 tentang Tanah Ulayat dan Pemanfaatannya, Pasal 1 angka 6.

[22] Lubis, Ikhsan, et al. "Integrasi hukum adat dalam sistem hukum agraria nasional: Tantangan dan solusi dalam pengakuan hak ulayat." *Tunas Agraria* 8.2 (2025): 143-158. https://doi.org/10.31292/jta.v8i2.401

[23]Yando Zakaria, Merebut Negara: Beberapa Catatan Reflektif tentang Upaya-Upaya Pengakuan, Pengembalian, dan Pemulihan Hak-Hak Masyarakat Adat (Yogyakarta: KARSA & FOREST PEOPLES PROGRAMME, 2000), hlm. 29–33.

claims. As a result, court decisions in customary land disputes are often considered illegitimate by indigenous communities, even though they are formally valid under state law. Agrarian conflicts in Indonesia also have a historical dimension that cannot be ignored. Many land disputes are rooted in colonial-era policies that systematically seized customary lands for plantation and forestry purposes, and the legacy of these policies remains a source of conflict today.[24] In addition, the agrarian policies of the New Order era, which were highly capital-oriented and ignored the rights of the common people, including indigenous communities, have left a trail of deep conflict that is difficult to resolve using formal legal instruments alone.

Local Wisdom-Based Land Dispute Resolution Mechanisms: Practices, Effectiveness, and Integration Challenges

The dispute resolution system in customary law is built on a foundation of values that are very different from the adversarial approach that characterizes modern justice systems.[25] The resolution of customary disputes prioritizes the restoration of social harmony over the determination of who is right and who is wrong in a black-and-white manner. This principle reflects the worldview of indigenous communities, which views conflict as a disruption to the balance of the cosmos and social relations that must be restored, rather than simply a matter of rights and obligations to be legally and formally established.

Several fundamental principles that form the basis of the customary dispute resolution system can be identified as follows. First, the principle of deliberation and consensus, where dispute resolution is carried out through an intensive dialogue process between the disputing parties, facilitated by respected customary leaders.[26] The goal is to reach an agreement that is acceptable to all parties, not just one that benefits one party. Second, the principle of balance and proportionality, where every customary decision must consider the interests of all community members, including future generations, not just the interests of the parties directly involved in the dispute.

Third, the principle of transparency and communal participation, where the dispute resolution process is carried out openly in front of the community, so that all community members can witness and, if necessary, provide input on the process.[27] This transparency also serves as a social control mechanism, ensuring that customary leaders do not abuse their authority in the dispute resolution process. Fourth, the principle of relationship sustainability, where dispute resolution aims to maintain and even strengthen social ties between disputing parties, in contrast to formal litigation, which often worsens relations between parties.

In various regions in Indonesia, there are various customary institutions that have functions and authority in resolving land disputes within their communities.[28] These institutions vary in form, name, and working mechanisms according to their respective local traditions, but substantively serve a similar function: as forums for mediation,

[24]Ter Haar Bzn, op.cit., hlm. 81.

[25]Bernard L. Tanya, dkk., Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi (Yogyakarta: Genta Publishing, 2013), hlm. 198–205.

[26]Sandra Moniaga, "Hak-Hak Masyarakat Hukum Adat dan Masalah Serta Tantangannya", dalam Hukum dan Kemiskinan, ed. Sulistyowati Irianto (Jakarta: HuMa, 2003), hlm. 43–46.

[27]Supriadi, Hukum Agraria (Jakarta: Sinar Grafika, 2010), hlm. 55–57.

[28]Komnas HAM, Laporan Penyelidikan Konflik Agraria Berbasis Hak Masyarakat Adat di Indonesia (Jakarta: Komnas HAM, 2016), hlm. 12–18.

arbitration, and adjudication based on customary values. In Minangkabau, the customary land dispute resolution system is known as the "Bajanjang naik, batanggo turun" system, which describes a hierarchical dispute resolution process, starting at the clan, tribal, and nagari levels, and then up to higher levels if necessary.[29] Dispute resolution at the first level is carried out by the Niniak Mamak (tribal leader), who has the authority to gather the parties and facilitate deliberation. If an agreement cannot be reached at this level, the dispute can be brought to the nagari (village) level, which involves all tribal leaders within a nagari (traditional village) to jointly resolve the dispute.

In Bali, the mechanism for resolving customary land disputes is carried out through the village pakraman (customary village) institution by involving prajuru desa (customary village administrators) as mediators and arbitrators.[30] The deliberation process takes place in a sangkepan forum (traditional village meeting) attended by all members of the traditional village. Decisions made through sangkepan have a very strong social binding force, as they involve ritual and sacred elements that lend a spiritual dimension to the decision's legitimacy. Among the Dayak people of Kalimantan, land disputes are resolved through the Damang or Mantir Adat institutions, which are customary judges with the authority to adjudicate disputes based on Dayak customary law.[31] The Dayak customary justice system has a fairly structured mechanism, including provisions regarding customary sanctions in the form of fines in the form of money or certain items that have symbolic value in Dayak culture. Unique to this system is the provision that customary sanctions are not only intended to punish the guilty party but also to restore the cosmological balance disturbed by the dispute.

Among the Batak people in North Sumatra, the resolution of customary land disputes involves the Dalihan Na Tolu institution, namely a customary kinship system that includes three main kinship groups: hula-hula (wife-giving family), dongan tubu (relatives of the same clan), and boru (wife-receiving family).[32] Land disputes in the Batak customary context cannot be separated from this kinship context, as ownership and inheritance of customary land are closely linked to the Dalihan Na Tolu structure. Dispute resolution involves representatives from all three kinship groups as witnesses and mediators, thus ensuring strong social legitimacy for the decisions reached. Despite its numerous advantages, efforts to integrate customary law-based dispute resolution mechanisms into the national legal system face a number of significant obstacles.[33] The first obstacle is the lack of positive legal recognition. Although the 1945 Constitution and several laws recognize the existence of indigenous legal communities, to date, there is no specific law comprehensively regulating the status, authority, and procedures for dispute

[29] Murniwati, Rahmi. "Eksistensi peradilan adat dalam penyelesaian sengketa di Sumatera Barat." *Unes Journal of Swara Justisia* 7.3 (2023): 1116-1124. https://doi.org/10.31933/ujsj.v7i3.417

[30] Ketut Winangun, "Musyawarah Adat Bali: Tradisi Penyelesaian Sengketa di Luar Pengadilan", Jurnal Ilmu Hukum Kertha Widya, Vol. 5, No. 2 (2017), hlm. 43–51. Budiana, I. Nyoman, Gde Wahyu Marta Gunadi, and Ni Kadek Driptayanti. "URGENSI LEMBAGA MEDIASI DALAM RANGKA PENYELESAIAN SENGKETA ADAT DI BALI." Journal of Syntax Literate 10.2 (2025). DOI: 10.36418/syntax-literate.v10i2.16916

[31] Muhamad Haris Fadillah, "Kearifan Lokal dalam Penyelesaian Sengketa Tanah: Studi di Komunitas Adat Suku Dayak Kalimantan", Jurnal Hukum Adat Nusantara, Vol. 3, No. 1 (2020), hlm. 12–21.

[32] Ade Saptomo, Hukum dan Kearifan Lokal: Revitalisasi Hukum Adat Nusantara (Jakarta: Grasindo, 2010), hlm. 78–85. Sayfullah, Erwin Dirga. "Islam dalam Bingkai Adat Batak: Menjalin Moderasi Beragama melalui Dalihan Na Tolu." Jurnal el Makrifah 2.2 (2025): 300-312. https://ojs.stitmakrifatulilmi.ac.id/index.php/elmakrifah/article/view/131

[33] Agus Brotosusilo, "Kebijakan Pengelolaan Sumber Daya Alam dan Perlindungan Hak-Hak Masyarakat Hukum Adat", Jurnal Hukum Lingkungan, Vol. 2, No. 1 (1995), hlm. 7–12.

resolution by indigenous institutions. The draft Indigenous Legal Communities Law, which has been under discussion for a long time in the House of Representatives (DPR), has yet to be passed, leaving a significant legal vacuum.

The second obstacle is the issue of legal certainty. Decisions by customary institutions in land disputes do not automatically have the force of execution that formal court decisions do.[34] This means that even when a dispute has been successfully resolved through customary mechanisms, the losing party may still take the case to a formal court and obtain a different decision. This legal uncertainty undermines the effectiveness of customary mechanisms and encourages dissatisfied parties to seek justice through formal channels. A third barrier is the degradation and disruption of customary institutions. Modernization, urbanization, and migration have weakened customary institutions in many communities. Many customary leaders no longer possess in-depth knowledge of the customary laws applicable in their communities, or lack sufficient authority and legitimacy to effectively resolve disputes.[35] Furthermore, the introduction of the market economy and land capitalization have transformed society's perception of land, from a non-tradable communal asset to a tradable economic commodity. This shift further complicates the application of traditional customary law principles to resolving contemporary land disputes.

The fourth obstacle is gender inequality in customary processes. Many customary legal systems still marginalize women in decision-making processes, including in land dispute resolution.[36] Women are often excluded from customary deliberations as parties with a voice and decision-making power, even though they may be the ones most affected by the dispute. This situation contradicts the principles of human rights and gender equality, which are part of Indonesia's national law and international commitments. To overcome these obstacles and optimize the potential of customary mechanisms in resolving land disputes, several integration models can be considered.[37] The first model is the layered coexistence model, in which customary mechanisms are recognized as the first-level dispute resolution forum that must be pursued before a dispute is brought to formal channels. In this model, decisions by customary institutions are given binding legal force equivalent to arbitration awards, but legal action can still be taken to court under certain, strictly limited circumstances.

The second model is an institutional hybridization model, in which formal customary institutions and state courts collaborate in resolving complex land disputes, with a clear division of roles based on the type and complexity of the dispute.[38] In this

[34]Saafroedin Bahar, "Hak-Hak Masyarakat Adat dalam Konteks Hak Asasi Manusia", dalam Masyarakat Adat dan Hak atas Sumber Daya Alam (Jakarta: ELSAM, 1999), hlm. 27–31.

[35]Wiradi Gunawan, Reforma Agraria: Perjalanan yang Belum Berakhir (Yogyakarta: INSIST Press, 2000), hlm. 66–70. Sumaya, Pupu Sriwulan. "Konflik antara hukum adat dan hukum negara: Tantangan penegakan keadilan dalam masyarakat adat." Manifesto Jurnal Gagasan Komunikasi, Politik, dan Budaya 3.2 (2025): 1-12. https://doi.org/10.61434/manifesto.v3i2.308

[36]Enny Soeprapto, "Relevansi Hukum Adat dalam Pembangunan Hukum Nasional", Majalah Hukum Nasional, No. 1 (2009), hlm. 37–42. Ibrahim, Maulana, Anggara Kusuma, and Ma'rifatullah Ma'rifatullah. "Peran Hukum Adat dalam Penyelesaian Sengketa Tanah di Masyarakat Desa Sesela." Legal Note 1.1 (2025): 7-12. https://ejournal.kalibra.or.id/index.php/legalnote/article/view/21

[37]Peraturan Presiden Nomor 88 Tahun 2017 tentang Penyelesaian Penguasaan Tanah dalam Kawasan Hutan, Pasal 4–7.

[38]Yance Arizona, "Satu Dekade Legislasi Masyarakat Adat: Trend Legislasi Nasional tentang Keberadaan dan Hak-Hak Masyarakat Adat atas Sumber Daya Alam di Indonesia", Kertas Kerja EPISTEMA, No. 1 (2010), hlm. 8–14.

model, state courts can consult customary institutions before deciding cases related to customary rights, and conversely, customary institutions can refer disputes requiring enforcement to state courts. The third model is the selective codification model, in which customary legal norms related to land dispute resolution are codified in regional regulations or other regulations without losing their flexibility as living law. Of the various existing models, the most effective appears to be a pluralistic and contextual approach, namely the recognition and strengthening of customary mechanisms as an integral part of the national agrarian dispute resolution system, while respecting the diversity of local traditions and ensuring that minimum human rights standards are met in every dispute resolution process.[39] This approach requires an equal and ongoing dialogue between the state, indigenous peoples, and various other stakeholders to formulate a legal framework that is truly responsive to the needs of indigenous peoples in managing and resolving disputes over their land and natural resources.

More concretely, several policy steps that can be recommended include: (1) accelerating the ratification of the long-delayed Customary Law Communities Law, with content that provides comprehensive recognition of customary rights including dispute resolution mechanisms; (2) granting executive power to customary institution decisions in land disputes through adequate legal instruments; (3) empowering and modernizing customary institutions without damaging the substance of the customary values that form their foundation; and (4) integrating gender equality and human rights perspectives into customary dispute resolution practices.[40] These four steps can only be realized through a strong political commitment from the state, accompanied by the active and genuine participation of indigenous communities themselves as sovereign legal subjects.

CONCLUSIONS

Based on the analysis conducted, this study produces several important conclusions. First, although constitutionally and regulatoryly there is recognition of the existence of customary law and the rights of indigenous peoples, in practice, there is still a significant gap between the norms of recognition and the reality on the ground. The tension between state law and customary law in the context of land disputes is a structural problem that cannot be resolved solely through a formal legal approach, but rather requires a paradigmatic transformation in how the state views and treats customary law. Second, land dispute resolution mechanisms based on local wisdom derived from customary law have proven to have significant comparative advantages in terms of accessibility, speed, cost, social legitimacy, and restoration of relations between parties. Various indigenous communities in Indonesia have demonstrated that customary mechanisms are capable of resolving complex land disputes effectively and fairly, as long as the customary institutions that implement them still have adequate capacity, legitimacy, and authority in the eyes of the community.

The integration of customary mechanisms into the national agrarian conflict resolution system faces several serious obstacles, including a weak supporting positive legal framework, legal uncertainty surrounding customary decisions, the degradation of customary institutions due to modernization, and the existence of gender bias in

[39]Safrin Salam, "Reposisi Hak Masyarakat Adat dalam Konstitusi Indonesia", Jurnal Konstitusi, Vol. 16, No. 1 (2019), hlm. 162–183.

[40]Wiratraman, R. Herlambang Perdana, "Hak-Hak Konstitusional Masyarakat Adat dan Tantangan Legislasi Nasional", Jurnal Hukum dan Pembangunan, Vol. 46, No. 4 (2016), hlm. 511–535.

customary practices. These obstacles cannot be overcome simply by producing new regulations without being accompanied by real empowerment of indigenous communities and structural reforms in the national land system. A pluralistic and contextual approach is needed to integrate customary mechanisms into the national legal system, one that recognizes the diversity of local traditions while ensuring that minimum standards of human rights and gender equality are met. Accelerating the ratification of the Customary Law Communities Law, granting executive power to customary institution decisions, empowering customary institutions, and integrating a human rights perspective into customary practices are urgent policy agendas that must be implemented to create a just agrarian conflict resolution system for all citizens, including indigenous communities who have been most vulnerable to evictions and land grabbing.

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