



## **Analysis Of Traditional Village Government System In Civil Dispute Settlement**

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### **Abstract**

There are many ways to resolve civil disputes in the community, both litigation, and non-litigation, using the prevailing positive legal system and customary law. This study analyses how to resolve civil disputes based on the existing government system in traditional villages. This study uses a descriptive qualitative approach with a normative legal research type because it focuses on analysing legal norms that arise through legislation and legal conceptual analysis. The results of this study conclude that customary law as a legal system has its model in dispute resolution. In customary law communities, the village head or customary law judge usually carries out dispute resolution. It should be noted that, historically, Indonesian culture has highly respected the consensus approach. Develop dispute resolution in Indonesia based on traditional decision-making and dispute resolution mechanisms. Dispute resolution, both through negotiations and through customary courts, is still dominated by negotiations in dispute resolution because negotiation is one of the philosophies and characteristics of indigenous peoples. Disputes can be resolved through customary law mechanisms through negotiations in the form of mediation and negotiation. Indigenous peoples in resolving their disputes often use these two ways of resolving disputes.

**Keywords:** Customary Law, Civil Dispute, Traditional Village

### **INTRODUCTION**

Indonesia is a legal state based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which guarantees the implementation of the judiciary by implementing and enforcing applicable laws, including customary law. It can be seen from these regulations that the legal basis is getting stronger, the law is the basis for Indonesia to regulate the behavior of its citizens. Furthermore, the law is used as the basis for the administration of government which regulates all actions of the government and other agencies. With these provisions, the arrogance of power can be prevented (Mayasari & Rudy, 2021).

Indonesia has a diverse culture that is spread throughout the archipelago (Sinaga, 2021). By understanding Indonesian customary law, it is hoped that they will be able to better understand and be aware of the identity of the individual, ethnicity and culture of others, so as not to cause divisions among Indonesian citizens and increase the unity of consciousness. and nationalism (Rauf, 2016). In Article 18b(2) of the 1945 Constitution of the Republic of Indonesia, "The state recognizes and respects community units according to customary law and traditional rights, as long as they exist and are in accordance with the principles of development and community unity. Republic of Indonesia. Follow the law," explained village government units such as Dukuh in Java, Nagari in West Sumatra, and various customary groups in various regions such as ulayat, as long as they are customary law community groups that strictly obey the law, really exist and live, rather than being forced to exist (Sasmitha Jiwa Utama et al., n.d.). Therefore, in its implementation, these groups must be further regulated by regional regulations stipulated by the Ministry of Democratic Development, which must not conflict with the principle of a single

state. According to Article 18b(2) of the 1945 Constitution, the State recognizes and respects community unity according to customary law and traditional rights (Bilung, 2020).

Controversy or conflict is not a situation that everyone wants. However, in social life, we live with people with different interests (Wahyuni et al., n.d.). Differences in interests lead to conflicts and social conflicts (Nurdin, 2013). To be able to resolve disputes, disputes between individuals need to have a legal method, and one of the functions of law is as a means of dispute resolution in order to create public order and peace (Bachtiar, n.d.; Yulianti et al., n.d.). In general, disputes or conflicts can often only be resolved through the courts (litigation) which forgets and ignores dispute resolution methods through non-procedural channels. Another way to resolve disputes out of court is through peaceful means known as mediation (Budiono et al., 2021; Menkel-Meadow, 2015; Mnookin, 1998; Moser, 1981). Peaceful settlement of civil disputes aims to find a peaceful solution for both parties to the dispute and then form a peace agreement that has been signed by both parties (Manik, 2019). Peace is basically a system of Alternative Dispute Resolution (ADR).

Almost every community has its own local wisdom about conflict resolution. According to (Harahap et al., 2021), this local wisdom can be used as a socio-cultural mechanism that is tied to the social traditions of the Indonesian people. Considered and proven to be a powerful means of promoting brotherhood and solidarity among citizens, this tradition has been institutionalized and expressed in social and cultural structures. This cultural approach to security and order is in line with the precepts of social law that good law is good law that lives in society. This means that a cultural approach that involves local wisdom and customary systems is a strategic and effective step, because the community already has a living legal system known as customary law.

On this basis, it is interesting to consider and study further how the customary village management system handles existing disputes, especially civil disputes. Therefore, this study aims to analyze how to resolve civil disputes based on the existing government system in traditional craft villages. This study is expected to be a reference and a new perspective in the procedure for resolving civil disputes. Based on this research, we hope to be able to introduce more about the existence of customary law to resolve disputes.

Previous research that is considered relevant to this study was conducted by (Yulianti et al., n.d.). This study mentions the importance of systematizing customary law and incorporating customary mechanisms into the village governance structure, because it will provide clear legal protection for dispute resolution. In contrast to previous research, this study will explore the customary government system in resolving customary village disputes.

## **METHODOLOGY**

This research is a qualitative descriptive study with a normative legal approach because it focuses on the analysis of legal norms that arise through the use of legislation and legal conceptual analysis. Soerjono Soekanto and Sri Mamudji stated that normative legal research includes a study of legal principles, legal systematics, levels of vertical and horizontal synchronization, legal comparisons and legal history (Soekanto & Mamudji, 2013). According to Soerjono Soekanto, there are two types research methods, namely: normative legal research and empirical or sociological legal research. Empirical is something that is based on an experiment or observation or factual development of facts (Zaini, 2011)

The research conducted includes normative legal research, namely legal research based on secondary data. After the data is collected, the data analysis is carried out in stages: the first is data identification, information collected from applicable regulations and interviews, including settlement of civil disputes in the customary government system. Second, classification of data. After the data is identified, the data is classified according to the type of data required for the expression of the problem. Third, data analysis, data that has been classified is then analyzed using existing methods. Fourth, summary, after analyzing all the steps, the next step is to summarize the research.

## RESULT AND DISCUSSION

### 1. Traditional village in the Indonesian government system

Indonesia as a country needs legal unity. This is a problem because sociologically there are many different tribes in Indonesia and customary law still applies today. In recent years, the development of the existence of customary law has been supported by national and international regulations. Allegedly, the method of unification through legislation will have socio-political implications because it roughly disrupts the existing order before the formation of the state.

When life develops on a wider scale, from the circle of local community life (old society) to the large translocal circle at the level of national life, it is organized into political communities called modern nation-states (new states) (Kumar, 2010). A definite legal system is absolutely necessary. Thus, the movement of unification and codification of law seems to be happening here as if it is an essential part of the process of nationalization and nationalization and modernization, impressive because of the denial of the existence of everything that is local and traditional (Mujib, 2014). The Indonesian legal change movement based on legal pluralism has made great strides. One of them is the recognition of the rights of indigenous peoples, including the laws in the constitution. Regulations that legalize the application of customary law include: Regulation of the Minister of Home Affairs Number 3 of 1997 concerning Empowerment, Protection and Development of Customs, Community Practices and Customary Institutions in the Regions. Amendment to the 1945 Constitution, Recognition of Customary Law, as referred to in Article 18B(2), the State recognizes and respects customary law community units and their traditional rights as long as they still exist and are in accordance with the principles of community development and the Unitary State of the Republic of Indonesia. Indonesia. Indonesia, regulated by law.

Indonesia's independence is in line with the development of the modern legal paradigm. According to Sajipto, modern law is full of formal forms and procedures as well as law enforcement. So the effect is very significant (Rauf, 2017). As a result, the laws that became the order of people's lives long before the advent of modern law were thrown from their homes. Furthermore, Satjipto explained that the law has become an artificial system and is increasingly distant from society or society. Even in extreme cases, according to him, the law seems to have hegemony, almost completely destroying the existing social order long before modern law. The concept of modern law is characterized by unity. As a result, standards of public behavior are regulated throughout the country. As a result, the characteristics of Indonesian law are lost in the wave of unification (Rusydi, 2007). Likewise, the notion of customary law communities living in a shared and integrated way of life inspired by the Indonesian nation experienced a tremendous shock, even though customary law communities are characterized by local values and culture as a form of legal pluralism that is considered normal established. Choose the future frontline in Indonesia.

Based on existing developments, the concept of customary village is difficult to apply because it is influenced by various struggles in the Indonesian legal system related to the concepts of legal unity, pluralism and internationalization. This unifying effect has changed the way we view the law so that the essence of the existence of law is often taken away or forgotten by humans, even though every society has different characters, values and laws that must follow the environment and society. It means talking about Indonesians, it is impossible to talk about people from the West, Middle East or other countries.

As a result of all that, there are currently three legal products in Indonesian society, namely state law, religious law, and customary law, because all three are recognized by the constitution. This means that the Indonesian people are free to use any of the three legal products. The legal system adopted by countries in the world can be seen or found from the philosophical foundation or point of view of the life of each nation and how the law of life solves a legal problem. Each country has a basic philosophy of life or different views and attitudes towards life, as well as the culture or culture of its people, so the laws are different because most laws are developed from the culture of a society.

### 2. Dispute Resolution Efforts in the Customary Law System

From an anthropological point of view, each person in a community has a set of systems and mechanisms for resolving disputes. For some Indonesians who live in rural areas, if there is a dispute between them, they are rarely brought to the district court to be resolved. They are more

willing and happy to refer disputes to institutions that indigenous peoples can use for peaceful resolution (Chirayath et al., 2005). In customary law communities, dispute resolution is usually carried out before the village head or customary law judge. Historically, Indonesian culture has highly valued the consensus approach. Develop dispute resolution in accordance with traditional decision-making mechanisms and customary dispute resolution methods. Indigenous peoples have long used cooperative dispute resolution processes. For example, in Batak indigenous peoples whose dispute resolution has religious values, the traditional Ranggon forum is still developing which essentially resolves disputes through deliberation and kinship. Similar to the Dispute Settlement Bodies in Bali and Minangkabau, the well-known Peace Bodies usually act as mediators and mediators. The concept of decision making in rural Javanese communities is based on the principle of deliberation and consensus from all present as a unit in village deliberations (Fiadjo, 2013).

What is meant by disputes in customary law communities is aimed at social imbalance, if there is a dispute in the customary law community then the customary law community will feel that the life of the customary law community is not balanced. Therefore, customary law communities will be resolved through customary law mechanisms. As a legal system, customary law has its own model in dispute resolution. Customary law has its own characteristics compared to other legal systems. Customary law is born and developed from society, and its existence cannot be separated from society. Customary law is based on values, rules or norms that are agreed upon and considered correct by customary law communities, and is closely related to the characteristics, values, and dynamics that develop in customary law communities. Indonesian customary law is an embodiment of the culture of the Indonesian nation and is based on an Indonesian nationality mentality that is different from the Western legal system or other legal systems. Sudarsono said that Indonesia's customary law system is different from other Indonesian legal systems, such as the Roman legal system, the Indian Hindu legal system, the Islamic legal system and other legal systems brought to Indonesia (West) by the Dutch colonialists. The difference between the Indonesian customary law system and other legal systems is natural because the Indonesian people who are supporters of this culture have their own views and philosophy of life. Suemo gave an example that customary law is the actual manifestation and feeling of the community about the law.

In common law society, dispute resolution is usually carried out by the village head or common law judge. It is important to note that, historically, Indonesian culture has highly respected the consensus approach. Develop dispute resolution in Indonesia based on traditional decision-making mechanisms and traditional dispute resolution methods. In Indonesia, the dispute resolution process takes into account the values shared by cooperative indigenous peoples. This can be seen from the way the Aboriginal Batak community resolves disputes, for example, people with religious values are still developing the traditional Jean Gut Forum which essentially resolves disputes through deliberation and kinship. In Minangkabau, it is known that there is a peace justice body which usually acts as a mediator and consolidator. And the concept of decision making in rural Javanese communities is based on the principle of deliberation and consensus from all parties who work as a unit in village deliberation forums.

In its development, Indonesian society is at a crossroads, from a traditional agrarian society (rural) to an industrial society (urban), which leads to a conflict of values. The traditional values held by the first generation began to fade. At the same time, new (modern) values have not been fully formed and accepted, and current disputes include (1) traditional disputes (family, inheritance, land or natural resources), (2) complex commercial disputes, as well as financial, modern banking, regulations, Conditions for elements such as professional ethics, contract performance, (3) complex environmental disputes with scientific evidence issues and relations between central and local administrations, and (4) labor disputes characterized by human rights issues, national reputation, and the concerns of the international community (Terris & Inoue-Terris, 2002).

The above description raises the right need to deal with disputes that arise in customary law communities, which always pay attention to the inherited principles in the settlement of customary disputes. The principles that have long been used by many indigenous peoples in

Indonesia to resolve customary disputes include: Negotiation or negotiation is one of the available ways in which negotiations give the parties a choice. In negotiations, both parties do not rely on harsh legal norms in the law or various other regulations, besides that the negotiations also provide space for both parties to win together. There are no winners and losers in negotiations. During the negotiation process, all parties have the opportunity to explain various issues. The mediator is the person who mediates. Mediation is a dispute resolution process that requires a neutral third party to assist in negotiating the settlement of a dispute. In terms of using mediation, the implementation of the mediation process requires several elements, including:

- (a). Voluntary Dispute Resolution,
- (b). A neutral and impartial third party intervenes or assists,
- (c). Decisions are taken by deliberation of all parties,
- (d). The decision-making process takes place in a participatory manner.

To understand the tradition of dispute resolution in indigenous peoples, it is necessary to understand the philosophy behind disputes and the impact of the values of indigenous peoples. It is important to understand this philosophy in order to understand the decisions made by habit holders (custom leaders) when resolving disputes. Philosophical considerations based on a way of life are important because they measure the level of justice, peace, sacrifice and welfare felt by indigenous peoples when making decisions. The tradition of dispute resolution in customary law communities is based on the philosophical values of solidarity (similarity), sacrifice, supernatural values and justice.

In customary law communities, the common good is a philosophy of life that permeates every member of the customary law community. Common interests override individual interests, so there is a common interest among indigenous peoples. In the view of customary law communities, disputes that arise between individuals and groups are acts that interfere with common (public) interests and therefore must be resolved quickly and wisely using the customary settlement model. The philosophy of sacrifice in dispute resolution is the focus of the common law community, and the disputing parties must be willing to sacrifice their personal interests for the common good. Resolving disputes in a habitual pattern reflects shared values that conflicting individuals must accept and realize that they are part of the other.

Customary law decisions made in dispute resolution are an umbrella that upholds and maintains traditional values and orders that are upheld in order to maintain unity and equality. Those who are willing to sacrifice for the common good receive greater respect and moral values from Aboriginal people, while those who do not consider the common good tend to be judged negatively by indigenous peoples and subject to customary sanctions. Paranormal philosophy, dispute resolution in customary law communities is determined in the form of ritual rituals. The goal is that the disputing parties need supernatural approval in their settlement. Therefore, the existence of supernatural values indicates that dispute resolution is approved and supervised by the Almighty, so that the conflicting parties cannot freely return to conflict after resolving the dispute through customary means. The philosophy of justice that is expected to be upheld in dispute resolution in a common law society is community justice, namely justice where no one is harmed by decisions made by the chairman or traditional leaders in dispute resolution. This kind of justice is very important as a link in the order of life in the common law world. Customary law is enforced to maintain community justice. The higher the value of community justice that is realized, the higher the status of the common law community. The essence of customary law dispute resolution is to achieve peace in the full sense. Peace here means total peace.

Therefore, the method used is a persuasive method to resolve disputes using traditional language and religion, so that all parties realize that there is no point in living in this world if there are disputes and actions that harm others. Settlement of disputes in customary law aims to achieve permanent peace. Indigenous peoples prefer negotiated solutions to disputes aimed at creating social peace. The negotiation path is the main way for indigenous peoples to resolve disputes, because in negotiations a peace agreement can be reached that benefits both parties. Using deliberation does not mean closing the dispute resolution process through customary courts. Dispute resolution, both through negotiations and through customary courts, is still dominated by negotiations in dispute resolution, because negotiation is one of the philosophies and

characteristics of indigenous peoples. Disputes can be resolved through customary law mechanisms through negotiations, in the form of mediation and negotiation. These two ways of resolving disputes are often used by indigenous peoples in resolving their disputes.

### **3. The Existence of Traditional Villages in Indonesia as an Effort to Settle Civil Disputes**

The urgency of the customary law system in the formation of the national legal system cannot be separated from the strong influence of experts who formulate laws and regulations in Indonesia, who also prioritize and override the power of the customary law system. One example is Sunaryati Hartono, who argues: "Indonesia's national law will be more in the form of customary law based on agreements (contracts) and laws (including laws established by the government), with additional customary law, namely normative laws or regulations. customary things. which is not or is not provided for by law."

Many regulations in various laws and regulations limit the space for customary law, such as Law No. 5/1960 (UUPA) and Law No. 41/1999 on Forestry, which contain the following requirements: "Still Existing"; "According to" social development" and "not violating laws and regulations" are examples of threats to the existence of customary law. In terms of customary law, one of the points and advantages of customary law is the existence of a customary law court (*Adatrechtspraak*) which was originally a customary court which was abolished and abolished as part of the justice system in Indonesia. Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power is explained in General Note Number 6 as follows: Recognition of the Judiciary as a State Court is intended to eliminate the existence or future of the establishment of Swapradja Courts or Customary Courts. established by non-State Judiciary Institutions.

This provision is in no way intended to nullify unwritten laws, but solely to transfer developments and legal regulations to state courts. Starting with the repeal of customary law, where dispute resolution is known and mainly based on customary law. The abolition of adat courts is also essentially the abolition of the power and authority of adat leaders, including village heads, who are usually local rulers. By being revoked, the existence of customary judges will disappear by themselves (Tanner, 1969). One of these missing elements has accelerated the collapse of customary law itself, due to the abolition of customary law courts, because customary law courts are no longer recognized in the Indonesian judicial system (Haq et al., 2021).

Since the abolition of customary courts and Swapraja was implemented throughout Indonesia, the judicial system recognized as national courts only includes four arrangements which are also enforced as positive law. The 1945 Constitution of the Republic of Indonesia states: "Judicial power is exercised by the Supreme Court and the judicial bodies below it in the ordinary courts, religious courts, military courts, state administrative courts, and the Constitutional Court." (Article 24(2) Article 24(2) of Law No. 48 of 2009 edited from a constitutional basis, contained in Article 18 of Law No. 48 of 2009. Law No. 48 of 2009 also confirms that the four major courts do not regulate the existence of courts customary law, but only regulates the existence of customary law courts.

An important part of the discussion on how to strengthen customary law is explored and discussed in Law Number 6 of 2014 concerning Villages, which is explained in General Regulation Number 4 that villages or other names have the following characteristics: Universally applicable throughout Indonesia. Meanwhile, traditional villages or other names have different characteristics from villages in general, mainly because of the influence of adat on the local government system, local resource management and the cultural life of the village social community.

In principle, traditional villages are a legacy of local government organizations, passed down from generation to generation, and are still recognized and championed by traditional village community leaders so that they can play a role in developing community welfare and local socio-cultural identity. The traditional village comes from the village, because the traditional village is a primitive community in society (Fitzpatrick, 1997; Pospisil, 1981). Traditional Villages are customary law community units that historically have territorial boundaries and cultural identities formed on a territorial basis, empowered to regulate and manage the interests of village communities according to their origins. Law Number 6 of 2014 concerning Villages also explains

that the formation of customary law community units is basically based on three basic principles, namely genealogy, territory and/or a combination of genealogy and territory. The common law community unit referred to in this law is a unit that combines lineage and territory. Hilman Hadikusuma explained that the concept adopted by Law Number 6 of 2014 concerning the village, which is a combination of genealogy and territory, where customary law communities as a permanent and regular unit is basically a territorial community, while genealogical society can only be said to be non-existent, because there is no human life that does not depend on soil.

From the thoughts of (Sumardi et al., 2021), he concluded that the so-called genealogical territorial legal community is a fixed and regular community unit whose members are not only limited by their place of residence in a certain area, but also by descent, blood relation and/or kinship. The implementation of these customary community units already exists and lives in the territory of the Unitary State of the Republic of Indonesia such as: *huta/nagori* in North Sumatra, *gampong* in Aceh, *nagari* in Minangkabau, *clan* in southern Sumatra, *tiuh* or *pekon* in Lampung, *Bali Pakraman/village adat* in Pakraman, *Lembang* in Toraja, *Banua* and *Wanua* in Kalimantan, and *Negeri* in Maluku. Law Number 6 of 2014 concerning villages is more detailed in a narrower scope than broader ones such as customary law communities, because it emphasizes village communities and special provisions regarding customary villages. Law Number 6 of 2014 regulates villages consisting of traditional villages and villages (Article 6 paragraph 1), and also provides special provisions on customary villages in Chapter XIII, and according to Article 96: "The government, provincial government and district governments / district cities to organize customary law community units and designate them as customary villages."

This article stipulates that existing customary law community units and customary villages are identified as customary villages only once. Likewise with Law Number 6 of 2014 concerning Villages, Article 97 states:

(1) The determination of the customary village as referred to in Article 96 must meet the following provisions:

- a. The customary law community units and their traditional rights still exist in practice, both territorial, genealogical and functional;
- b. Considering customary law community units and their traditional rights in accordance with community development; and
- c. The unity of customary law communities and their traditional rights are in line with the principles of the Unitary State of the Republic of Indonesia.

(2) The customary law community unit as referred to in letter a paragraph (1) and its existing traditional rights must be territorial in nature and fulfil at least one of the following combinations of elements:

- a. a society in which citizens share the same feelings within the group;
- b. traditional government agencies;
- b. assets and/or customary goods; and/or
- c. special specifications

(3) The customary law community unit and its traditional rights as referred to in paragraph (1) (b) are considered to be in line with the development of the community if:

- a. Its existence has been recognized in accordance with applicable law, reflecting the development of values that are considered desirable in today's society, both in general and in sectors; and
- b. The nature of these traditional rights is recognized and respected by members of the relevant community unit and the wider community, and does not conflict with human rights.

(4) In the event that the customary law community unit does not interfere with the customary law community unit and its traditional rights as referred to in paragraph (1) letter c, the customary law community unit and its traditional rights are in accordance with the principles of the unitary state of the Republic of Indonesia. The Unitary State of the Republic of Indonesia as a political and legal entity which:

- a. does not threaten the sovereignty and integrity of the Republic of Indonesia; and

- b. The essence of common law norms is to comply with the provisions of laws and regulations, and not conflict with the provisions of laws and regulations.

In terms of government, according to Law Number 6 of 2014, Article 108 stipulates that "the traditional village committee consists of the original village committee and carries out the responsibilities of village committee meetings and deliberations. Customary villages can be formed on the initiative of the village community of the villagers." Article 109 of Law Number 6 of 2014 concerning Villages also states that "in accordance with customary law, the institutional structure, filling positions, and the term of office of the customary village head are determined by the province". This provision is inaccurate because according to the customary law system, the head of the customary village and the head of government in customary law communities and customary villages are also heads of customary villages with a feudal model, hereditary principles of the legal system. Habit. If you look at the urgency of the Village Law based on Law No. 6 of 2014, the focus on traditional villages and villages including their empowerment is a bit late. In fact, from the perspective of the customary law system, the existence of a customary village (Dorp) is the beginning and foundation of the existence of indigenous peoples. Strengthening villages, especially traditional villages, still takes time to be on time.

## CONCLUSION

From the description above, it can be concluded that customary law as a legal system has its own model in resolving disputes. In customary law communities, dispute resolution is usually carried out by village heads or customary law judges. It is important to note that, historically, Indonesian culture has highly respected the consensus approach. Develop dispute resolution in Indonesia based on traditional decision-making mechanisms and traditional dispute resolution methods. Dispute resolution, both through negotiations and through customary courts, is still dominated by negotiations in dispute resolution, because negotiation is one of the philosophies and characteristics of indigenous peoples. Disputes can be resolved through the common law mechanism through negotiations, in the form of mediation and negotiation. These two ways of resolving disputes are often used by indigenous peoples in resolving their disputes.

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