

Reconstructing Alternative Dispute Resolution for Land Disputes Based on Local Wisdom in the Coastal Area of Tomini Bay

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Abstract

Alternative Dispute Resolution (ADR) has long been recognized as an effective mechanism for resolving land disputes in Indonesia due to its emphasis on consensus and social harmony. However, the increasing reliance on formal legal procedures has marginalized local wisdom-based dispute resolution practices, particularly in coastal communities. Despite extensive studies on ADR, limited research has examined the integration of local wisdom into land dispute resolution in regions such as Tomini Bay. This study aims to reconstruct ADR mechanisms by incorporating local wisdom in resolving land disputes in the coastal area of Tomini Bay. It employs a normative legal approach, combining empirical data with analysis of statutory regulations, legal doctrines, and field data, using qualitative methods. The findings indicate that local wisdom-based mechanisms, particularly deliberation (*musyawarah*) and consensus (*mufakat*), remain effective in resolving disputes and maintaining social cohesion, yet are not fully integrated into the formal legal system. Therefore, this study argues that ADR should be reconstructed by integrating local wisdom and living law into Indonesia's legal framework to ensure more culturally responsive and sustainable dispute resolution.

Keywords

Alternative Dispute Resolution, Local Wisdom, Tomini Bay, Land Disputes, Living Law.

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Introduction

Alternative Dispute Resolution (ADR) has deep historical roots, drawing from diverse cultural and philosophical traditions, including Confucian principles that emphasize harmony, fairness, and collective justice.¹ These principles align with broader societal objectives of maintaining social cohesion and resolving disputes in ways that preserve relationships.² In its modern form, ADR developed significantly within the common law traditions of England and the United States, where it evolved as a flexible and efficient alternative to litigation. These developments reflect a broader legal evolution aimed at balancing procedural efficiency with substantive fairness in dispute resolution.³

The global development of Alternative Dispute Resolution (ADR), which originated in England and the United States, has significantly influenced the evolution of dispute resolution mechanisms in various countries.⁴ Many jurisdictions have adopted ADR by establishing institutional frameworks to support arbitration and mediation, reflecting a shared commitment to efficient and flexible dispute resolution.⁵ In Southeast Asia, this development is evident through the emergence of institutions such as the Singapore

¹ René Provost, ed., "Alternative Dispute Resolution," in *Culture in the Domains of Law*, Cambridge Studies in Law and Society (Cambridge University Press, 2017), <https://www.cambridge.org/core/books/culture-in-the-domains-of-law/alternative-dispute-resolution/BE285C8D874DDE35DF7158D63BC7C4DC>.

² Juan Pablo, "Effectiveness of Mediation and Arbitration as Alternative Dispute Resolution Methods in Mexico," *Journal of Conflict Management* 4, no. 1 (2024): 1, <https://doi.org/10.47604/jcm.2383>.

³ Jean-Marie Kamatali, "Transplanting an ADR-Centric Model of Dispute Resolution From the Anglo-American Legal System to the Civil Law System: Challenges, Limitations, and Proposals," SSRN Scholarly Paper no. 3939119, no. 3939119 (Social Science Research Network, October 8, 2021).

⁴ Saima and Muhammad Imran Khan, "The The Evolution, Impact, and Future of Alternative Dispute Resolution in the Global Legal System," *Majallah-e-Talim o Tahqiq* 7, no. 3 (2025), <https://ojs.cer.edu.pk/index.php/mtt/article/view/367>.

⁵ Khurram Faizan et al., "Navigating Disputes: An In-Depth Analysis of Alternative Dispute Resolution within the Framework of Arbitration Law," *Journal of Development and Social Sciences* 5, no. 1 (2024): 429–36, [https://doi.org/10.47205/jdss.2024\(5-1\)40](https://doi.org/10.47205/jdss.2024(5-1)40).

International Arbitration Center (SIAC)⁶ and community-based mechanisms like the Lupong Tagapamayapa in the Philippines.⁷ Indonesia has similarly demonstrated its commitment to ADR by establishing the Indonesian National Arbitration Board (BANI), which provides an institutional foundation for arbitration and mediation in both domestic and international disputes.⁸

In the Indonesian legal system, ADR is formally regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, which serves as a cornerstone for resolving disputes outside the court system.⁹ This legal framework emphasizes efficiency, flexibility, and mutual agreement between disputing parties, thereby offering an alternative to litigation.¹⁰ Furthermore, ADR principles are also reflected in other legal instruments, such as Law Number 32 of 2009 on Environmental Protection and Management, which promotes mediation in environmental disputes, and Law Number 1 of 2023 on the Criminal Code, which recognizes the role of “living law” in Indonesian society.¹¹ These developments indicate that ADR in Indonesia is not only a formal

⁶ Tran Hoang Tu Linh, “Commercial Arbitration in Asia: Legal Developments and Regional Dynamics from an ASEAN Perspective,” *Asia Pacific Law Review* 33, no. 2 (2025): 316–41, <https://doi.org/10.1080/10192557.2024.2445627>.

⁷ Junrey Laguda, “Managing Disputes at the Grassroots: Experiences of Lupong Tagapamayapa Chiefs,” *International Journal of Law and Politics Studies* 6, no. 5 (2024): 184–200, <https://doi.org/10.32996/ijlps.2024.6.5.9>.

⁸ Joko Cahyono, “Arbitration in The Philosophy of Business Dispute Resolution in Indonesia,” *International Journal of Law Social Sciences and Management* 2, no. 3 (2025), <https://doi.org/10.69726/ijlssm.v2i3.167>.

⁹ Ibid.

¹⁰ Vania Shafira Yuniar and Florentiana Yuwono, “The Comparison Of Arbitration Dispute Resolution Process Between Indonesian National Arbitration Board (BANI) And London Court Of International Arbitration (LCIA),” *Journal of Private and Commercial Law* 6, no. 1 (2022): 77–99, <https://doi.org/10.15294/jpcl.v6i1.30265>.

¹¹ Nita Triana et al., “Alternative Dispute Resolution in Marine Pollution: Advancing Ecological Justice through the Polluter Pays Principle,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 11, 2024, 89–107, <https://doi.org/10.24090/volksgeist.v7i1.10047>.

legal mechanism but also closely connected to community-based values and practices.¹²

Despite the formal recognition of ADR within Indonesia's legal framework, its implementation cannot be separated from local cultural traditions.¹³ Indonesian society has long relied on mechanisms such as *musyawarah* (deliberation) and *mufakat* (consensus) as fundamental approaches to resolving disputes and maintaining social harmony.¹⁴ These practices are particularly relevant in regions where customary law continues to play a dominant role, such as the coastal communities of Tomini Bay.¹⁵

Existing studies on ADR have largely focused on institutional development, procedural mechanisms, and the formal legal framework governing dispute resolution.¹⁶ Although these studies provide valuable insights, they tend to overlook the substantive role of local wisdom in shaping dispute resolution processes, particularly in specific socio-

¹² Fence M. Wantu, "Shifting the Paradigm of the Indonesian Judicial System from The Influence of the Anglo-Saxon Judicial System," *Jambura Law Review* 5, no. 1 (2023): 1, <https://doi.org/10.33756/jlr.v5i1.17927>; Fence M. Wantu et al., "Indonesian Constitutional Interpretation: Constitutional Court Versus the People's Consultative Assembly," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 6 (2021): 6.

¹³ Istianah Zainal Asyiqin et al., "The Principle of Self-Submission in Sharia Economic Dispute Resolution: A Critical Examination through Friedman's Legal System Theory," *Jambura Law Review* 7, no. 2 (2025): 390–416, <https://doi.org/10.33756/jlr.v7i2.27075>.

¹⁴ Maskun Maskun et al., "Harmonization between National Policy and Regional Regulations in Solid Waste Management in Indonesia: A Normative-Empirical Legal Analysis," *Jambura Law Review* 7, no. 2 (2025): 726–65, <https://doi.org/10.33756/jlr.v7i2.31141>; Mexsasai Indra et al., "Asymmetric Regional Development as a Framework for Achieving Spatial and Regional Justice in Indonesia," *Jambura Law Review* 1, no. 1 (2026): 55–75, <https://doi.org/10.33756/jlr.v1i1.32047>; Anis Widyawati et al., "Who Executes Justice? Comparative Institutional Paths from Verdict to Prison," *Jambura Law Review* 1, no. 1 (2026): 160–89, <https://doi.org/10.33756/jlr.v1i1.31642>.

¹⁵ Waode Mustika et al., "State Sovereignty and Sustainable Marine Governance: The Legal Status of Tomini Bay as a Juridical Bay," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 5, no. 2 (2025): 239–58, <https://doi.org/10.51825/sjp.v5i2.39163>.

¹⁶ Beny Saputra, "Strengthening ADR System in Indonesia: Learning from ADR Practices in Hungary," SSRN Scholarly Paper no. 4941510 (Social Science Research Network, May 31, 2024), <https://papers.ssrn.com/abstract=4941510>.

cultural contexts. In coastal regions such as Tomini Bay, there is still limited research that systematically examines how local wisdom can be integrated into ADR mechanisms to resolve land disputes.¹⁷

This gap highlights the need for a more comprehensive socio-legal approach that bridges the divide between state law and living law. Without such integration, ADR mechanisms risk being formally valid but socially ineffective, as they may fail to reflect the values and practices that govern community life. Therefore, a deeper analysis is required to understand how local knowledge systems can be incorporated into formal dispute-resolution frameworks in a structured, consistent manner.

In this region, land disputes are often characterized by overlapping claims, unclear land ownership, and the coexistence of state law and customary norms.¹⁸ The strong influence of local wisdom in regulating social relations and land use creates a unique socio-legal landscape. While local communities continue to rely on traditional mechanisms for resolving disputes, the integration of these practices into formal ADR frameworks remains limited. As a result, there is often a disconnect between formal legal procedures and the realities of dispute resolution at the community level.

Based on the issues outlined above, this study aims to reconstruct Alternative Dispute Resolution (ADR) mechanisms for resolving land disputes by integrating local wisdom practices in the coastal area of Tomini Bay. This objective is driven by the need to develop a dispute resolution model that is not only legally sound but also socially relevant and culturally appropriate. The study seeks to examine how traditional values and customary practices can be systematically incorporated into ADR frameworks to enhance their effectiveness and legitimacy. In addition, this research aims to analyze the interaction between formal legal systems and living law in the context of land disputes, particularly in regions where customary norms remain influential. Through this

¹⁷ Didik Sukriono et al., "Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 261–85, <https://doi.org/10.22219/ljih.v33i1.39958>.

¹⁸ Fence M. Wantu and Weny Almoravid Dunga, *Arbitration and Alternative Dispute Resolution: Local Wisdom-Based Resolution* (Eureka Media Aksara, 2024).

approach, the study aims to formulate a reconstruction model of ADR capable of addressing both legal certainty and social justice.

In achieving these objectives, this study is guided by several key research questions that aim to explore both the empirical and normative dimensions of dispute resolution in the Tomini Bay region. First, what are the characteristics of land disputes in the coastal area of Tomini Bay, including their underlying causes and patterns? Second, how does local wisdom influence the implementation of ADR mechanisms in resolving land disputes within the community? Third, how can ADR mechanisms be reconstructed by integrating local wisdom into formal legal frameworks? These questions are designed to provide a comprehensive understanding of how dispute resolution operates in practice and to identify pathways for improving its effectiveness through a socio-legal perspective.

This study is expected to contribute both theoretically and practically to the development of dispute resolution mechanisms in Indonesia. From a theoretical perspective, it enriches socio-legal scholarship by offering a framework that bridges the gap between formal legal systems and living law, particularly in the context of land disputes. It also provides a deeper understanding of how local wisdom can function as a substantive element within ADR, rather than merely a complementary practice. From a practical standpoint, this research offers policy-oriented recommendations for strengthening ADR mechanisms that are more inclusive, culturally responsive, and sustainable. Furthermore, the findings of this study are particularly relevant to policymakers, legal practitioners, and local authorities in designing dispute-resolution models that reflect the socio-cultural realities of Indonesian society, especially in regions where customary law continues to play a significant role.

This study employs a socio-legal approach that combines normative legal analysis with empirical investigation.¹⁹ The normative approach is used to examine legal principles, statutory regulations, and legal doctrines related to Alternative Dispute Resolution (ADR),

¹⁹ Irwansyah Irwansyah, *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020); Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

particularly Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, as well as other relevant legal frameworks. Meanwhile, the empirical approach is applied to understand how ADR mechanisms are implemented in practice, especially in resolving land disputes in the coastal area of Tomini Bay, where local wisdom and customary practices remain influential.

The data used in this study consists of both primary and secondary data. Primary data are obtained through field research, including interviews with relevant stakeholders such as community leaders, local authorities, and parties involved in land disputes. Secondary data are derived from legal materials, including statutory regulations, legal literature, journal articles, and prior studies on ADR and land dispute resolution.²⁰ Data collection is conducted through document analysis and interviews, enabling a comprehensive understanding of both the legal framework and its practical implementation in society.

The data are analyzed qualitatively using a descriptive-analytical method, focusing on the interaction between formal legal systems and living law.²¹ The analysis aims to identify patterns, challenges, and opportunities in integrating local wisdom into ADR mechanisms for resolving land disputes. This research is limited to the coastal area of Tomini Bay, with a focus on reconstructing ADR to be more culturally responsive, socially acceptable, and legally effective in addressing land conflicts within the community.

A. Characteristics of Land Problems in the Tomini Bay Region

The Tomini Bay coastal area, spanning Bone Bolango Regency in Gorontalo Province, Luwuk Banggai Regency in Central Sulawesi Province, and South Bolaang Mongondow Regency in North Sulawesi Province, faces similar patterns of land-related issues. These challenges

²⁰ Wantu and Dungga, *Arbitration and Alternative Dispute Resolution: Local Wisdom-Based Resolution*.

²¹ Heri Purwanto, Pujiyono, Irma Cahyaningtyas, Ridwan Arifin, and Muhammad Azil Maskur. 2025. "Reconstructing the Legal Understanding of the Presumption of Innocence in Criminal Justice to Achieve Justice". *Indonesian Journal of Criminal Law Studies* 10 (2): 427, <https://doi.org/10.15294/ijcls.v10i2.32033>.

stem from overlapping claims and inadequate land administration practices.²² Among the primary concerns is the existence of a single land parcel holding dual certificates, creating conflicts over rightful ownership. Additionally, a significant portion of land remains unregistered or uncertified, leaving it vulnerable to disputes and unclear legal status. Undivided inherited land, often passed down through generations without proper documentation, exacerbates the complexity of land management in the region. Furthermore, communal heir properties, or budel land, frequently become a source of contention among family members, while uncertified land management practices hinder legal security for users. Another pressing issue is the conversion of commercial-use rights into ownership rights, often leading to disputes over rightful possession.²³

Land disputes in the coastal area of Tomini Bay exhibit distinct characteristics shaped by the interaction between formal legal systems and customary practices.²⁴ These disputes generally arise from overlapping land claims, unclear land boundaries, and the absence of formal land registration, particularly in areas where customary tenure systems remain dominant.²⁵ In many cases, land is controlled and utilized based on hereditary claims and communal recognition rather than formal legal titles, leading to potential conflicts when state-based land administration systems are introduced.

Another significant characteristic of land disputes in this region is the coexistence of multiple legal regimes, namely state law and customary

²² Muzakir Muzakir and Suparman Suparman, "Strategy of Developing Tomini Bay for Economic Growth of Coastal Community in Central Sulawesi," *JEJAK: Jurnal Ekonomi Dan Kebijakan* 9, no. 1 (2016): 1, <https://doi.org/10.15294/jejak.v9i1.7189>.

²³ Naila Nur Auliyah Azis and Ana Silviana, "Occupying Inherited Land Rights Implemented Without The Consent of The Heirs," *Jurnal Ilmiah Universitas Batanghari Jambi* 23, no. 2 (2023): 2, <https://doi.org/10.33087/jiubj.v23i2.3564>.

²⁴ Hendra et al., "Unveiling the Mystic Sense of Place and Ocean Literacy: The Role of the Torosiaje Community in Championing Marine Sustainability in Tomini Bay, Indonesia," *Cogent Social Sciences* 11, no. 1 (2025): 2586139, <https://doi.org/10.1080/23311886.2025.2586139>.

²⁵ Dolot Alhasni Bakung and Zainal Abdul Aziz Hadju, "Building Legal Protection of Land Borders in the Management of People-Based Economy," *Priviet Social Sciences Journal* 6, no. 2 (2026): 655–77, <https://doi.org/10.55942/pssj.v6i2.1016>.

law. While state law emphasizes formal ownership and legal documentation, customary law relies on social legitimacy, collective memory, and traditional authority structures.²⁶ This dualism often creates legal uncertainty, especially when disputes are brought into formal legal institutions that may not fully recognize or accommodate customary claims. As a result, disputing parties may experience difficulties in obtaining fair and culturally acceptable resolutions.

Furthermore, land disputes in Tomini Bay are not merely legal conflicts but also social conflicts that can disrupt community harmony. Given the close social relationships within coastal communities, disputes often involve not only legal interests but also social, cultural, and familial dimensions. Therefore, resolution mechanisms that prioritize consensus and social cohesion are generally preferred over adversarial approaches.²⁷ This condition highlights the importance of understanding the socio-cultural context in designing effective dispute resolution mechanisms.

B. Role of Local Wisdom in Dispute Resolution

Local wisdom plays a fundamental role in resolving land disputes in the coastal area of Tomini Bay, particularly in communities where customary law remains deeply embedded in social life. Unlike formal legal mechanisms that rely on written rules and institutional procedures, local wisdom-based dispute resolution emphasizes deliberation (*musyawarah*), consensus (*mufakat*), and the restoration of social harmony.²⁸ These principles are not merely procedural tools but represent deeply rooted cultural values that guide how conflicts are managed and resolved within the community.

In practice, dispute resolution based on local wisdom is typically facilitated by traditional leaders, community elders, or respected figures

²⁶ Agus Satory et al., “The Role of Customary Law in Land Dispute Resolution in Rural Areas: Challenges and Prospects in the Modern Era,” *Journal of the American Institute* 2, no. 4 (2025): 511–22, <https://doi.org/10.71364/817ft721>.

²⁷ Saima and Khan, “The The Evolution, Impact, and Future of Alternative Dispute Resolution in the Global Legal System.”

²⁸ Sukriono et al., “Local Wisdom as Legal Dispute Settlement.”

who possess social legitimacy and moral authority.²⁹ Their role is not only to mediate between disputing parties but also to ensure that the resolution reflects fairness, balance, and communal acceptance. This process often involves open dialogue, collective deliberation, and consideration of social relationships, rather than focusing solely on legal rights and obligations.³⁰ As a result, the outcomes of such processes tend to be more acceptable to the parties involved and are more sustainable in maintaining long-term social cohesion.

Moreover, local wisdom-based mechanisms demonstrate a high degree of flexibility and adaptability, allowing them to respond to the specific circumstances of each dispute.³¹ Unlike formal adjudication, which is often rigid and procedural, these mechanisms prioritize restorative outcomes that aim to repair relationships rather than produce winners and losers.³² This is particularly relevant in the context of land disputes in Tomini Bay, where conflicts are closely tied to social identity, kinship, and community structure.³³ Therefore, local wisdom not only functions as an alternative dispute resolution mechanism but also serves as a living legal system that continues to evolve alongside societal changes.

However, despite its effectiveness, the role of local wisdom in dispute resolution is often marginalized within the formal legal framework. State-based legal institutions tend to prioritize formal procedures and written evidence, which may not fully accommodate customary practices and unwritten norms. This situation creates a gap between formal law and the realities of community-level dispute resolution.³⁴ Consequently, there is a need to strengthen the position of local wisdom within ADR mechanisms to ensure that dispute resolution

²⁹ Sidik Puryanto, "Reconciliation in Indonesia: Local Wisdom as the Key to Conflict Resolution," *GATR Global Journal of Business Social Sciences Review* 12, no. 4 (2024): 197–208, [https://doi.org/10.35609/gjbssr.2024.12.4\(4\)](https://doi.org/10.35609/gjbssr.2024.12.4(4)).

³⁰ Ashadi L. Diab et al., "Accommodation of Local Wisdom in Conflict Resolution of Indonesia's Urban Society," *Cogent Social Sciences* 8, no. 1 (2022): 2153413, <https://doi.org/10.1080/23311886.2022.2153413>.

³¹ Ibid.

³² Ibid.

³³ Mustika et al., "State Sovereignty and Sustainable Marine Governance."

³⁴ Amin Tohari, "The Role of Local Wisdom in Creating Peace and Social Harmony in Villages: Cultural and Traditional Perspectives," *Jurnal Konseling Dan Pendidikan* 13, no. 1 (2025): 316–25, <https://doi.org/10.29210/1142400>.

processes are not only legally valid but also socially legitimate and culturally relevant.

C. Existing ADR Mechanisms and Their Limitations

The implementation of Alternative Dispute Resolution (ADR) in Indonesia, particularly in the context of land disputes, has been formally supported by legal frameworks such as Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. In practice, ADR mechanisms such as mediation and negotiation are increasingly utilized as alternatives to litigation due to their efficiency, flexibility, and potential to achieve mutually beneficial outcomes.³⁵ However, despite this formal recognition, the practical application of ADR often remains closely tied to procedural and institutional approaches that reflect formal legal paradigms.

One of the primary limitations of existing ADR mechanisms is their insufficient integration with local wisdom and customary practices. While ADR is conceptually compatible with values such as deliberation and consensus, its institutional implementation often adopts standardized procedures that may not fully reflect the socio-cultural context of local communities.³⁶ In regions such as the coastal area of Tomini Bay, where customary law plays a significant role, this lack of integration can result in dispute resolution processes that are formally valid but socially disconnected from the community's lived realities.

Furthermore, the dominance of formal legal structures within ADR processes often leads to an overemphasis on procedural compliance rather than substantive justice. Mediators or facilitators operating within formal frameworks may prioritize neutrality and procedural fairness, but may lack sufficient understanding of local customs, social hierarchies, and cultural norms. As a consequence, the outcomes of ADR processes may not fully address the underlying social dimensions of disputes,

³⁵ Wantu and Dunga, *Arbitration and Alternative Dispute Resolution: Local Wisdom-Based Resolution*.

³⁶ Rusli Subrata, "Mechanisms of Alternative Dispute Resolution in Conflict and Dispute Resolution in Indonesia," *LITIGASI* 24, no. 1 (2023): 1, <https://doi.org/10.23969/litigasi.v24i1.7198>.

thereby reducing their effectiveness in maintaining long-term social harmony.

Another limitation lies in the absence of a clear normative framework that systematically incorporates local wisdom into ADR mechanisms. Although Indonesian law recognizes the existence of living law and customary practices, there is no comprehensive guideline for integrating these elements into formal dispute resolution processes. This creates inconsistencies in practice, where some disputes are resolved using culturally sensitive approaches, while others rely solely on formal legal procedures. Such inconsistencies may lead to legal uncertainty and unequal access to justice for different communities.

These limitations indicate that, while ADR has been widely adopted as an alternative to litigation, its current implementation has not fully realized its potential in addressing the complexities of land disputes in culturally diverse contexts. Therefore, there is a need to move beyond a purely procedural understanding of ADR and toward a more contextual approach that integrates local wisdom as a substantive component of dispute resolution.

D. Reconstruction Of ADR Based on Local Wisdom

The reconstruction of Alternative Dispute Resolution (ADR) in resolving land disputes in the coastal area of Tomini Bay must begin with a conceptual understanding of the limitations of the formal legal approach that has traditionally been applied. Formal legal mechanisms, which emphasize procedural compliance, legality, and administrative evidence, often fail to adequately address the social and cultural dimensions inherent in land disputes within local communities. In coastal societies where customary values remain deeply embedded, disputes are not merely perceived as legal conflicts but also as disruptions to social balance and communal relationships. Therefore, a more comprehensive approach is required—one that not only prioritizes legal-formal aspects but also accommodates the living law that operates within society.

Conceptually, the reconstruction of ADR in this study is grounded in a socio-legal approach that views law not merely as a set of written norms, but as a social phenomenon that evolves within the

community. From this perspective, local wisdom is not treated as a complementary element but as an integral component of the dispute resolution system itself. Consequently, ADR should not be narrowly understood as an alternative to litigation, but rather as a hybrid dispute resolution system that integrates formal legal principles with local socio-cultural values. This integrated approach enables ADR to function more effectively in addressing disputes that are deeply rooted in community dynamics.

Furthermore, this reconstruction is based on a critical reflection of the dominance of legal positivism in dispute resolution practices, which often neglects the social realities of the communities involved. In many instances, an excessive emphasis on legal certainty may lead to substantive injustice, particularly for communities that lack formal documentation or are not fully recognized within the formal land administration system. Accordingly, the reconstruction of ADR must aim to balance legal certainty with substantive justice by incorporating local wisdom as a key instrument in achieving this equilibrium.

In Indonesia, the framework of Alternative Dispute Resolution (ADR), particularly arbitration, incorporates both legal principles and cultural heritage. Unlike countries with common law systems, Indonesia has its own distinct legal structure and cultural context that shape its approach to ADR.³⁷ The principles of Pancasila, which form the ideological foundation of the nation, must be integral to ADR processes. Pancasila emphasizes consensus, justice, and the welfare of the people, guiding Indonesia's approach to conflict resolution. These cultural values serve as a bedrock, ensuring that ADR practices are not merely juridical but also culturally relevant, reflecting the country's unique legal and social context.³⁸ Thus, integrating local wisdom into ADR processes ensures that dispute solutions are not only legally sound but also

³⁷ Mrs Herliana, "Designing Culturally Conscious Alternative Dispute Resolution to Foster Asian Economic Development," *Old Website of Jurnal Mimbar Hukum* 23, no. 2 (2011): 2, <https://doi.org/10.22146/jmh.16184>.

³⁸ Haposan Siallagan and Otong Syuhada, "The Role of Pancasila in the Formation of National and Regional Regulations," *Journal of Law and Sustainable Development* 11, no. 3 (2023): e711–e711, <https://doi.org/10.55908/sdgs.v11i3.711>.

culturally appropriate, thereby promoting justice and sustainable development.³⁹

The implication is that alternative dispute resolution (ADR), which has been in effect for nearly 25 years since the rule was enacted in 1999, must be reinstated to align with our country's values and legal framework. Law Number 30 of 1999 has 82 articles, from general provisions to closing provisions. The following comprises ten chapters that provide explanatory rules governing the settlement of disputes or disagreements between parties in a certain legal relationship. Currently, the settlement of conflicts or disagreements in society ideally occurs in line with the features of our country, namely, based on positive law and living law.

The phrase "living law" was first proposed by Eugen Ehrlich as a counterpoint to state law, also known as positive law, which is enacted by the state.⁴⁰ Eugen Ehrlich said that living law is the governing principle of existence, notwithstanding its absence from formal legal codification. Von Savigny's doctrine asserts that ideal or genuine law is derived from society rather than being constructed and apart from it.⁴¹ This rule is referred to as The Living rule, signifying a law that evolves and coexists within communal life. The state should not only adopt laws that lack resonance with the essence and culture of its populace; rather, it is incumbent upon the state to investigate the living law.⁴²

It is widely acknowledged that the settlement of disputes, particularly land conflicts, has historically been conducted through a culture of discourse and consensus in Indonesia. This method, deeply rooted in the principles of Pancasila, reflects a commitment to humanistic values, community harmony, and the familial spirit that has

³⁹ Suwito et al., "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (2023): e1261–e1261, <https://doi.org/10.55908/sdgs.v11i10.1261>.

⁴⁰ Eugene Ehrlich and Klaus A. Ziegert, *Fundamental Principles of the Sociology of Law* (Routledge, 2017), <https://doi.org/10.4324/9780203791127>.

⁴¹ Mathias Reimann, "The Historical School Against Codification: Savigny, Carter, and the Defeat of the New York Civil Code," *The American Journal of Comparative Law* 37, no. 1 (1989): 95–119, <https://doi.org/10.2307/840443>.

⁴² Elisabeth Sundari, Helidorus Chandera Halim, and Ousu Mendy, "Should Indonesia Adopt Legal Representation in Civil Cases?," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025), <https://doi.org/10.53955/jhcls.v5i2.604>.

long characterized Indonesian society. Unlike common law jurisdictions that prioritize adversarial processes, such as arbitration and alternative dispute resolution (ADR), which aim to achieve win-win outcomes through legalistic mechanisms, Indonesia's approach emphasizes dialogue, mutual understanding, and agreement-building. This communal-oriented method ensures that conflicts are resolved in ways that uphold the values of togetherness, fairness, and respect for local wisdom, thereby fostering social cohesion and preserving the cultural identity of Indonesian communities.⁴³

This process fosters harmony, understanding, and cooperation, ensuring that decisions are made with the involvement of all stakeholders. Deliberation is not only a fundamental element of Pancasila democracy but also a crucial component of democratic governance, where diverse voices come together to contribute to the decision-making process. The practice of deliberation has numerous advantages in everyday life, as it promotes transparency, accountability, and inclusivity, leading to agreements that prioritize the common good.⁴⁴ By emphasizing collective input and shared responsibility, deliberation enhances social cohesion, reduces conflicts, and ensures that the interests of all members of society are represented and respected. Ultimately, the role of deliberation in democracy helps to create a more just, equitable, and harmonious society.

The advantages of selecting the deliberate implementation technique are as follows: first, acclimating to articulating thoughts within a collaborative arena that fosters a familial atmosphere and emphasizes camaraderie, cohesion, and collective unity; second, enhancing cohesion in addressing challenges through discourse and resolution. Third, it is anticipated that any emerging issue may be resolved by discourse. Fourth, mitigating and sustaining divides that stem

⁴³ Afrizal and Ward Berenschot, "Resolving Land Conflicts in Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 176, no. 4 (2020): 561–74, <https://doi.org/10.1163/22134379-17604002>.

⁴⁴ Sinung Mufti Hangabei et al., "The Ideology Of Law: Embodying The Religiosity Of Pancasila In Indonesia Legal Concepts," *LAW REFORM* 17, no. 1 (2021): 77–94, <https://doi.org/10.14710/lr.v17i1.37554>.

from divergent viewpoints. The implementation is conducted with a familial ethos, therefore mitigating excessive emotionality and egotism.⁴⁵

Moreover, it is crucial to acknowledge and affirm that the Unitary State of the Republic of Indonesia (NKRI) is a nation-state built on the foundational principle of deliberation, which serves as the cornerstone of Indonesia's governance and national identity. This principle of deliberation, deeply rooted in Indonesia's cultural and historical heritage, reflects the collective aspiration to uphold popular sovereignty and ensure that decisions are made through inclusive and consensus-driven processes. The Indonesian people's journey towards nation-building and development has been shaped by this indigenous wisdom, which emphasizes harmony, mutual respect, and cooperation. Deliberation has not only been a guiding force in Indonesia's struggle for independence but continues to play a crucial role in shaping democratic governance and fostering unity amidst the country's rich diversity. As Indonesia advances in the modern era, the principle of deliberation remains essential, ensuring that governance reflects the collective will of the people and preserves the nation's commitment to democratic values and social cohesion.

The principles recognized in deliberation serve as a guiding framework for decision-making in Indonesia's governance and democratic values. Firstly, deliberation is rooted in the understanding of the Fourth Principle of Pancasila, which emphasizes democracy guided by wisdom in deliberation. Secondly, decisions made through deliberation must be well-justified, ensuring that all participants have a clear rationale for their choices.⁴⁶ Third, the deliberative process must align with the core values of Pancasila and the 1945 Constitution, ensuring that decisions are in harmony with the fundamental principles of the nation. Fourth, every participant has equal rights and responsibilities in expressing their viewpoints, fostering an inclusive environment where diverse perspectives are acknowledged and respected.

⁴⁵ Wantu and Dunga, *Arbitration and Alternative Dispute Resolution: Local Wisdom-Based Resolution*. p. 88

⁴⁶ Fence Wantu et al., "Eksistensi Mediasi Sebagai Salah Satu Bentuk Penyelesaian Sengketa Lingkungan Hidup Pasca Berlakunya Undang-Undang Cipta Kerja," *Bina Hukum Lingkungan* 7, no. 2 (2023): 267–89, <https://bhl-jurnal.or.id/index.php/bhl/article/view/193>.

Finally, the outcomes of deliberation must be embraced and implemented with a collective sense of accountability, ensuring that decisions are not only reached through consensus but are also executed with integrity and responsibility. In cases where consensus cannot be reached, voting may be used to finalize decisions.

In addition to these foundational principles, deliberation possesses unique characteristics that distinguish it as a vital method for collective decision-making. Sunarsoa and Eka Pratiwi highlight several key traits of deliberation. Firstly, discussions in deliberation are centered around shared interests, aiming to achieve outcomes that benefit the broader community. Secondly, deliberation requires rationality and enthusiasm, ensuring that participants approach discussions with a clear, thoughtful mindset. Ethical considerations play a crucial role throughout the decision-making process, ensuring that deliberations are conducted with integrity and fairness. Third, rational thought helps participants better understand and support different viewpoints, promoting open dialogue. Fourth, the decision made through deliberation should not impose negative consequences on individuals or society, ensuring that choices are beneficial and sustainable. Lastly, the deliberative process is characterized by openness, collaboration, and a family-like atmosphere, where all parties engage in the exchange of ideas and opinions, fostering mutual respect and collective responsibility. These unique features underscore the significance of deliberation in promoting democratic governance and resolving conflicts in a constructive and inclusive manner.⁴⁷

Consequently, recognizing discussion as a fundamental method for addressing issues at both the national and state levels is essential. The numerous benefits of dialogue in resolving conflicts and challenges are widely acknowledged. Through discussion, diverse perspectives are heard, enabling informed decisions that prioritize collective welfare. Dialogue fosters understanding, cooperation, and mutual respect, making it a more inclusive and peaceful approach compared to adversarial methods. This longstanding tradition of debate and

⁴⁷ Yesi Eka Pratiwi and Sunarso Sunarso, "Peranan Musyawarah Mufakat (bubalah) Dalam Membentuk Iklim Akademik Positif Di Prodi Ppkn Fkip Unila," *Sosiohumaniora* 20, no. 3 (2018): 199–206, <https://doi.org/10.24198/sosiohumaniora.v20i3.16254>.

discussion has been ingrained in Indonesia's cultural and social fabric, serving as a cornerstone of governance and conflict resolution. It reflects the values of harmony, unity, and collective responsibility that have been passed down through generations, ensuring that decision-making processes are centered around communal well-being rather than individual interests alone.

In contrast, conflict resolution in common law jurisdictions often reflects a more individualistic approach, rooted in capitalist principles that emphasize personal rights and individual freedoms. These societies tend to prioritize legal frameworks and adversarial processes, which can sometimes emphasize competition and litigation over cooperation. In Indonesia, however, conflict resolution is deeply embedded in a culture of discourse and mutual agreement, particularly among indigenous tribes and communities. Here, disputes are often approached through dialogue, consensus-building, and respect for communal relationships, emphasizing the importance of preserving togetherness. This method reflects the values of solidarity and harmony, which are fundamental to Indonesia's cultural heritage and governance practices.⁴⁸

In the context of minimizing the reliance on arbitration and alternative dispute resolution (ADR) for land issues, it is essential to recognize that every land-related matter, particularly disputes, must be approached through the lens of local knowledge values. Land issues in Indonesia are often deeply intertwined with cultural, communal, and traditional practices, making it critical to respect and incorporate local wisdom when addressing these disputes. Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution offers a range of mechanisms for conflict resolution, including mediation, negotiation, conciliation, consultation, arbitration, and expert evaluation. Each of these methods reflects the adaptability and flexibility of Indonesia's legal framework in facilitating dispute resolution tailored to the unique characteristics of land conflicts. By emphasizing localized approaches rooted in communal values, the law seeks to ensure that disputes are resolved in ways that uphold fairness, preserve social harmony, and foster the active participation of stakeholders, particularly in regions where

⁴⁸ As a note, in traditional societies in Indonesia, customary law is considered to be one of the rules that is highly valued and respected by them.

traditional practices play a significant role in land management and ownership.

The resolution of disputes by arbitration, which aligns more closely with societal legal principles or living law, is straightforward to implement, as it has historically been effective in settling conflicts across communities. The optimal moment is to establish and uphold the societal code, or living law, to align with the positive law inscribed in nature. Furthermore, it demonstrates that it is never too late to uphold and safeguard the significance of local knowledge in the administration of the Indonesian country and state.

The country and state are deemed to exist provided that the relevant legislation aligns with their inherent nature. Legislation that exists inside society, or “living law,” embodies the very character of a country or state, and Indonesia is no exception. One distinguishing aspect of Indonesian law is the preservation and promotion of arbitration as a means of resolving disputes, consistent with the spirit and character of the nation and state.

Ultimately, it may be said that alternative conflict resolution is more effective when grounded in the local knowledge values cultivated and upheld by the community, thereby ensuring continuity and benefit for the community itself. It is time for dispute resolution via negotiation governed by laws and regulations, specifically Law Number 30 of 1999, which was influenced by a foreign legal system, to be restructured in a manner that aligns more closely with our national ethos, incorporating local wisdom values. Moreover, it is imperative to amend Law Number 30 of 1999, which governs dispute settlement, to prioritize local knowledge values that align with our country’s essence and identity.

The attributes and unique characteristics of Arbitration and Alternative Dispute Resolution (ADR) must reflect and embody Indonesia’s national culture. Our national legal foundation, Pancasila, provides the moral and philosophical underpinnings that guide Indonesia’s legal framework, including methods of dispute resolution. As a system derived from Pancasila, Arbitration and ADR are not merely legal mechanisms but systems that should resonate with the values of deliberation, mutual respect, and consensus-building that Pancasila emphasizes. These mechanisms should therefore be deeply rooted in Indonesia’s cultural context, contributing to the broader aim of fostering

justice aligned with the country's identity. By drawing from the principles of Pancasila, Arbitration and ADR become instruments for resolving disputes that reflect the cultural and social fabric of Indonesian society, rather than adopting foreign or externally imposed methods.

Moreover, Arbitration and ADR emerge from and evolve with the cultural attributes and practices of our society, becoming legal frameworks that are organically integrated into the community. These systems are not merely formalities imposed by the state but become part of the living law, in which the community actively participates in resolving disputes. The development of Arbitration and ADR legislation must therefore take into account the unique characteristics of Indonesian society, especially the communal, familial, and consensual values that have long shaped dispute resolution in local communities. The outcomes of such legal frameworks should aim to facilitate adjustments that respect and align with the lived experiences and norms of the Indonesian people. By grounding these legal mechanisms in local wisdom, Arbitration and ADR can better address the specific needs and challenges faced by different regions and communities across Indonesia.

Conceptually, legal reform in Arbitration and ADR is essential to enhance, transform, and rejuvenate these processes to serve the aspirations of national law better, as enshrined in statutory regulations and societal norms. The primary objective of such reform should be to ensure that these systems reflect the local wisdom, cultural values, and the collective identity of the Indonesian people. This involves refining and adapting Arbitration and ADR mechanisms in ways that respect the diversity and complexity of Indonesia's social and legal landscape. By incorporating the principles of Pancasila and embracing the indigenous values of consensus, cooperation, and harmony, legal reform can ensure that Arbitration and ADR continue to serve as effective, culturally relevant means of resolving disputes while maintaining fairness, justice, and social cohesion.⁴⁹

⁴⁹ Kiki Kristanto, Muhamad Adystia Sunggara, Mas Putra Zenno Januarsyah, Pita Permatasari, and Vicko Taniady. 2025. "Embezzlement in the Private Sector: Legal Challenges and Regulatory Gaps in Corporate Governance". *Indonesian Journal of Criminal Law Studies* 10 (2): 801-850. <https://doi.org/10.15294/ijcls.v10i2.24881>.

The role of local governments and relevant institutions in supporting customary-based Alternative Dispute Resolution (ADR) has been increasingly reinforced through various local regulations and facilitation programs.⁵⁰ For instance, the Mamasa Regency Government issued Regional Regulation No. 10 of 2021, which explicitly respects and recognizes indigenous dispute resolution mechanisms in accordance with local customary law. In Luwu Regency, Regional Regulation No. 8 of 2018 affirms funding support and infrastructure for customary institutions to manage internal conflicts within customary law communities. Meanwhile, Melawi Regency enacted Regional Regulation No. 4 of 2018, which mandates that disputes over indigenous community rights be resolved through customary deliberation facilitated by the local government.

Under Law No. 6 of 2014 on Villages and Government Regulation No. 43 of 2014, village governments are authorized to issue Village Regulations (Perdes) on amicable customary dispute resolution. This has been implemented, for example, by Koting D Village through Village Regulation No. 07 of 2018 on the Implementation of Solo Hulir Se'ang Hala Customary Sanctions.⁵¹ In Dero Village, Village Regulation No. 06 of 2022 established a Customary Institution tasked with mediating conflicts and imposing customary sanctions, supported by village government facilities.

Local governments have also provided grants to preserve customary villages. For instance, the Bali Provincial Government allocates an annual grant of IDR 55 million to each desa pakraman (customary village) and an additional IDR 20 million at the regency level to support the roles of LPD (Village Credit Institutions) and subak

⁵⁰ Ahmad Ahmad, "Analysis of Abuse of Authority by Government Apparatus in the State Administrative Legal System," *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 1; Ahmad Ahmad et al., "Antara Otoritas dan Otonomi : Pertautan Hak Asasi Manusia dalam Praktik Eksekusi Putusan PTUN: Perlindungan HAM dalam Eksekusi Upaya Paksa Terhadap Putusan Peradilan Tata Usaha Negara," *Jurnal Konstitusi* 21, no. 3 (2024): 3, <https://doi.org/10.31078/jk2133>.

⁵¹ Paulina Lawi et al., "Peran Pemerintah Desa Dan Lembaga Adat Dalam Menerapkan Hukum Adat Solo Hulir Se'ang Hala Di Desa Koting D Kabupaten Sikka," *Journal Civics & Social Studies* 5, no. 2 (258 AD), <https://doi.org/10.31980/civicos.v5i2.1517>.

(traditional irrigation associations) in resolving internal disputes. Community and Village Empowerment Agencies across various regions frequently facilitate outreach and training for *prajuru* (customary village officials) in managing traditional ADR. In practice, when *prajurus* are unable to find internal solutions, they often involve village government officials as additional mediators.⁵²

Furthermore, the Draft Law on Indigenous Peoples grants local governments the authority to establish procedures for mediating disputes among indigenous communities through local regulations. This aligns with ongoing formal-informal efforts carried out at the village level. However, the capacity and commitment of local governments to support these initiatives vary across regions, highlighting the need for cross-agency collaboration and stronger local regulations to ensure that customary-based ADR in the Tomini Bay area can be implemented more effectively and sustainably.

In general, the implementation of customary-based Alternative Dispute Resolution (ADR) in the Tomini Bay area is influenced by social and cultural dynamics, including gender, age, and social status. These factors affect who gets to speak, how decisions are made, and the extent to which the community recognizes outcomes. Patriarchal norms often limit women's participation, although some communities have begun to create space through special groups or local initiatives. Customary leaders and elders, typically older men, hold primary authority in deliberations, while younger generations are usually involved as assistants or record-keepers rather than key decision-makers. Meanwhile, social status, whether inherited through lineage or earned through economic roles, determines one's level of influence in discussions, with high-status families or individuals often positioning themselves as consensus-makers.

1. Gender Dynamics

Women in many Indigenous communities in Indonesia still face structural barriers to full participation in customary deliberations due to social norms that prioritize male voices in

⁵² ANTARA News Bali, "Hibah 100 Desa Adat Masih Tertunda," ANTARA News Bali, Desember 2012, <https://bali.antaranews.com/berita/31248/hibah-100-desadadat-masih-tertunda>.

decision-making.⁵³ Nevertheless, initiatives such as the National Women's Deliberation Forum reflect growing efforts to advocate for women's participation in decision-making forums, including at the village level.⁵⁴ A WRI study highlights the participation gap in customary resource management, stating that women are often involved as technical support or data collectors rather than primary mediators, despite their crucial knowledge for environmental preservation.⁵⁵ A report by Green Network Asia further emphasizes that Indigenous women play a key role in transferring traditional knowledge and climate adaptation strategies, yet are frequently excluded from official customary decision-making mechanisms.⁵⁶

2. Age Dynamics

Traditional customary deliberations are typically led by elders—senior customary figures regarded as the wisest. At the same time, youth tend to play supporting roles in the proceedings rather than being involved in substantive decision-making.⁵⁷ However, Indigenous youth organizations such as the Indigenous Youth Front of the Archipelago (BPAN) are actively promoting youth engagement in policy debates and advocacy for land rights, signaling a gradual shift in the structure of customary forums. In Minahasa, for instance, young Indigenous women have organized workshops to educate youth about their roles and rights in customary forums,

⁵³ Kemitraan, "The State of Indonesian Women," *KEMITRAAN*, Oktober 2023, <https://kemitraan.or.id/en/publication/the-state-of-indonesian-women/>.

⁵⁴ Yayasan BaKTI, "Musyawarah Perempuan Nasional | BaKTI," July 8, 2023, <https://bakti.or.id/berita/musyawarah-perempuan-nasional>.

⁵⁵ Ibid.

⁵⁶ Nikodemus Niko, "Nasib Perempuan Adat di Tengah Kerusakan Lingkungan Indonesia Green Network Asia - Indonesia," Opini, *Green Network Asia - Indonesia*, May 23, 2023, <https://greennetwork.id/opini/nasib-perempuan-adat-di-tengah-kerusakan-lingkungan-indonesia/>.

⁵⁷ Liputan6.com, "Ciri Masyarakat Pedesaan: Karakteristik Unik dan Kehidupan Tradisional," liputan6.com, December 6, 2024, <https://www.liputan6.com/feeds/read/5813528/ciri-masyarakat-pedesaan-karakteristik-unik-dan-kehidupan-tradisional>.

challenging colonial-influenced patriarchal norms and creating space for youth voices in the protection of ancestral territories.⁵⁸

3. Social Status Dynamics

Social status, often shaped by land ownership, noble lineage, or economic roles, carries weight in customary deliberations.⁵⁹ While, ideally, every community member has an equal right to speak, in practice, influential figures such as customary village heads or religious leaders often dominate the agenda and shape interpretations of outcomes.⁶⁰ This imbalance sometimes leads to apathy among ordinary villagers who feel their contributions are undervalued.

E. Comparison of Customary-Based ADR Practices

Alternative Dispute Resolution (ADR) mechanisms rooted in customary practices have long served as effective methods for resolving conflicts within indigenous and local communities. These systems prioritize consensus-building, restoration of social harmony, and the reinforcement of communal values over adversarial litigation. Despite sharing common principles, customary ADR practices differ significantly across regions, reflecting variations in cultural norms, legal recognition, institutional structures, and enforcement mechanisms. This section compares customary-based ADR practices in several regions, Teluk Tomini, Bali, Kalimantan, and the Philippines, to highlight both their shared foundations and their unique adaptations to local contexts.

1. In Teluk Tomini, the Bajo community resolves disputes through a customary deliberation process known as Libu Nuada, led by the traditional leader at the customary house (Baruga). Each stage, summoning (Mpolele), deliberation (Libu), and conclusion (Botu Mo Libu), aims to achieve

⁵⁸ Kalfein Wuisan, "Tiga Kualitas Hidup Pemuda Adat Minahasa – Barisan Pemuda Adat Nusantara," Bpan.Aman.or.Id, January 13, 2021, <https://pemudaadat.org/tiga-kualitas-hidup-pemudi-adat-minahasa/>.

⁵⁹ Liputan6.com, "Ciri Masyarakat Pedesaan."

⁶⁰ admindesa, "Musyawarah Desa Sebagai Mekanisme Penegakan Hukum Adat," Bhuana Jaya, September 14, 2023, <https://www.bhuanajaya.desa.id/musyawarah-desasebagai-mekanisme-penegakan-hukum-adat/>.

consensus and restore social harmony.⁶¹ The process is informal, without court documentation, and sanctions include communal fines or social ostracism (Bua) for violators.⁶²

2. In Bali, the desa pakraman (customary villages) handle indigenous land disputes through mediation conducted by the Prajuru Desa Adat (customary village officials) who summon both parties to the village temple (Pura Desa). This mechanism is regulated by local regulations, such as Regional Regulation No. 3/2001, and emphasizes familial relationships, joint prayer before mediation, and the imposition of compensation or customary ceremonies as sanctions.⁶³ While the process is informal, it is supported by a formal local legal framework that strengthens its decisions.
3. In Kalimantan (Dayak Customary Law), the Dayak indigenous communities mediate disputes through customary deliberations led by customary leaders (Dewan Adat Dayak or Damang), with stages including complaint submission, investigation, and the imposition of customary sanctions such as fines or the restoration of indigenous land rights (hak ulayat).⁶⁴ In some regions, the Sub-District Dayak Customary Council (Dewan Adat Dayak Kecamatan, or DAD) formally facilitates the resolution of land conflicts between communities

⁶¹ BRWA, “Badan Registrasi Wilayah Adat,” berita BRWA, April 29, 2025, http://brwa.or.id/wa/view/VWltMWILLUNrZzg?utm_source=chatgpt.com.

⁶² JulisaAprilia Kaluku, “Penggunaan Hukum Adat Bajo Sebagai Alternatif Penyelesaian Perkara Anak Pelaku Tindak Pidana Kesusilaan (Studi Pada Masyarakat Adat Bajo Di Desa Jaya Bhakti, Kecamatan Pagimana, Sulawesi Tengah)” (Magister, Universitas Brawijaya, 2014), <https://repository.ub.ac.id/id/eprint/156294/>.

⁶³ Maris Dewi Fatikasari, *Penyelesaian Sengketa Tanah Karang Ayahan yang Terjadi di Desa Adat Peliatan Ubud Bali*, November 17, 2022, <https://repository.unej.ac.id/xmlui/handle/123456789/113728>; I. Putu Prana Suta Arsadi et al., “Peran Desa Pakraman Dalam Menyelesaikan Sengketa Tanah Adat Di Desa Bungkulan, Kabupaten Buleleng,” *Jurnal Komunitas Yustisia* 1, no. 1 (2018): 1, <https://doi.org/10.23887/jatayu.v1i1.28655>.

⁶⁴ PINTER Hukum, *Hukum Adat dalam Penyelesaian Sengketa Tanah: Studi Kasus di Suku Dayak Kalimantan*, March 29, 2025, <https://pinterhukum.com/hukum-adat-dalam-penyelesaian-sengketa-tanah-studi-kasus-di-suku-dayak-kalimantan/>.

and companies.⁶⁵ Decisions are made by consensus and are strongly upheld within the community, even though they are not formally documented.

4. Barangay Justice System in the Philippines, The Katarungang Pambarangay (Barangay Justice System) is a mandatory ADR mechanism that must be undertaken before bringing a case to formal court. It is administered by the Lupon Tagapamayapa, chaired by the barangay captain and composed of 10–20 members, following standard procedures (15 days for initial mediation, followed by 15 days for formal proceedings) as outlined in Presidential Decree 1508 and the Local Government Code of 1991.⁶⁶ Sanctions may include compensation agreements, minor fines, or restorative justice measures to reduce the court system's burden and maintain community harmony.⁶⁷

⁶⁵ Sumarno, "DAD Sekayam Mediasi Sengketa Lahan Perusahaan Dengan Masyarakat," Rri.Co.Id - Portal Berita Terpercaya, 2025, <https://www.rri.co.id/entikong/hukum/1361017/dad-sekayam-mediasi-sengketa-lahan-perusahaan-dengan-masyarakat>.

⁶⁶ Respicio & Co, "Barangay Dispute Resolution in the Philippines," Respicio & Co., 2021, <https://www.lawyer-philippines.com/articles/barangay-dispute-resolution-in-the-philippines>.

⁶⁷ Silvia Sanz and Ramos Rojo, "The Barangay Justice System in the Philippines: Is It an Effective Alternative to Improve Access to Justice for Disadvantaged People?" (University of Sussex, 2002), <https://www.gsdr.org/docs/open/ssaj15.pdf>.

Table 1. Summary of Customary-Based ADR Comparison

Aspect	Tomini Bay	Bali	Kalimantan (Dayak)	Philippines (Barangay)
Legal Customary Basis	/ Bajo customary law (<i>Libu Nuada</i>)	Regional Regulation on <i>Desa Pakraman</i> + <i>Pakraman</i> customary law	Dayak customary law (DAD, <i>Damang</i>)	PD 1508 & LGC 1991 (<i>Katarungang Pambarangay</i>)
Administrator	Traditional leader at <i>Baruga</i>	<i>Prajuru Desa Adat</i> at <i>Pura Desa</i>	Dayak Customary Council / customary leader	Barangay Captain & <i>Lupon Tagapamayapa</i>
Mechanism	<i>Mpolele</i> → <i>Libu</i> → <i>Botu Mo Libu</i>	Prayer → Mediation → Agreement	Complaint → Deliberation → Customary Decision	Initial mediation (15 days) + formal process (15 days)
Formality	Informal, no official documentation	Semi-formal (based on regional regulation), unwritten	Informal, community consensus-based	Formal, structured, mandatory before the court
Sanctions	Communal fine, ostracism (<i>Bua</i>)	Compensation, customary ceremony	Customary fines, restoration of <i>hak ulayat</i>	Compensation, restorative justice, minor fines
Objective	Restoration of harmony & restorative justice	Strengthening kinship, clarifying land boundaries	Restorative justice, preservation of <i>hak ulayat</i>	Quick and fair access to justice & reduction of court burden

Thus, although all four customary-based ADR practices emphasize deliberation and the restoration of harmony, the regulatory contexts, involvement of formal institutions, and sanction mechanisms vary according to each region's unique cultural characteristics and legal systems.⁶⁸

⁶⁸ Gregorius Widiartana, Vincentius Patria Setyawan, and Ariesta Wibisono Anditya, "Exploring Restorative Justice in Domestic Violence Cases," *Journal of Sustainable Development and Regulatory Issues* 3, no. 3 (2025), <https://doi.org/10.53955/jsderi.v3i3.87>.

F. Model of ADR Reconstruction Based on Local Wisdom

The reconstruction of Alternative Dispute Resolution (ADR) in the context of land disputes in the coastal area of Tomini Bay requires developing a more contextual and integrative model. This study proposes a local wisdom-based ADR model that combines formal legal procedures with community-based practices. The model is designed to ensure that dispute resolution processes are not only legally valid but also socially acceptable and culturally relevant, particularly in regions where customary law continues to play a significant role.

The proposed model is structured around three main components: (1) community-based participation, (2) integration of local wisdom into procedural stages, and (3) alignment with formal legal frameworks. First, community-based participation emphasizes the involvement of traditional leaders, community elders, and respected local figures as integral actors in the dispute resolution process. Their role extends beyond facilitation, as they help ensure that the outcomes reflect fairness, social balance, and communal acceptance. This participatory approach strengthens the legitimacy of ADR outcomes at the community level.

Second, the integration of local wisdom into procedural stages involves embedding values such as deliberation (*musyawarah*) and consensus (*mufakat*) into each phase of the ADR process, including dispute initiation, negotiation, mediation, and agreement formulation. Unlike conventional ADR models that prioritize procedural neutrality, this approach recognizes that culturally grounded processes can enhance the effectiveness of dispute resolution by addressing the social and relational dimensions of conflicts.⁶⁹ As a result, dispute resolution outcomes are more likely to be sustainable and accepted by all parties involved.

Third, alignment with formal legal frameworks ensures that the reconstructed ADR model remains consistent with national legal standards, particularly those set out in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. This alignment is crucial to maintain legal certainty and the enforceability of agreements,

⁶⁹ Sukriono et al., “Local Wisdom as Legal Dispute Settlement.”

while still providing flexibility for incorporating local practices. In this regard, the reconstructed model functions as a hybrid mechanism that bridges the gap between formal law and living law.

In practical terms, this model can be operationalized through a multi-stage process. The initial stage involves community-based consultation to identify the nature of the dispute and the applicable customary norms. The second stage focuses on facilitated deliberation led by both formal mediators and local leaders, ensuring a balance between procedural fairness and cultural sensitivity. The final stage involves the formalization of agreements, which may be documented and, where necessary, registered within formal legal institutions to ensure their legal validity.

Through this model, ADR is transformed from a purely procedural mechanism into a context-sensitive system that reflects the community's socio-cultural realities. This reconstruction not only enhances the effectiveness of dispute resolution but also strengthens the role of local wisdom as a living legal system that continues to evolve alongside formal law.

Conclusion

This study demonstrates that land disputes in the coastal area of Tomini Bay are characterized by the coexistence of formal legal systems and customary practices, which often create legal complexity and social tension. Although Alternative Dispute Resolution (ADR) has been formally recognized as an effective mechanism, its implementation remains largely procedural and has not fully accommodated the socio-cultural realities of local communities. Consequently, ADR mechanisms, while legally valid, do not always produce socially acceptable or sustainable outcomes. At the same time, local wisdom continues to play a significant role in dispute resolution through practices that emphasize deliberation, consensus, and the preservation of social harmony.

In response to these conditions, this study proposes reconstructing ADR based on local wisdom, conceptualized as a hybrid model integrating formal legal procedures with community-based practices. This model emphasizes the importance of community participation, the

incorporation of local values into each stage of the dispute resolution process, and alignment with national legal frameworks to ensure both legal certainty and social legitimacy. Through this approach, ADR is transformed from a purely procedural mechanism into a more contextual and responsive system capable of addressing both the legal and social dimensions of land disputes.

This study contributes to socio-legal scholarship by offering a framework for integrating local wisdom into formal dispute resolution mechanisms, particularly in culturally diverse regions such as Tomini Bay. It also provides practical implications for policymakers and legal practitioners, including the need for regulatory support, institutional collaboration, and capacity building for mediators. Ultimately, the reconstruction of ADR based on local wisdom represents a strategic effort to enhance the effectiveness, fairness, and sustainability of dispute resolution in Indonesia, while strengthening the relationship between formal law and living law.

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