

Legal Reform and Mediation in Non-Litigation Dispute Resolution: A Case Study of Sebambangan Tradition

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Abstract

Dispute resolution in indigenous communities tends to be based on family values. This is evident in the Sebambangan tradition where a man elopes with a girl and marries her as his wife. In these cases, dispute resolution is done through mediation (non-litigation) as it is considered more effective for creating harmonization, avoiding conflict, and justice. This research examines the process of non-litigation dispute resolution, namely mediation, in the tradition. This study is a qualitative study using a socio-legal approach. The study was conducted in the Mergo Sekampung indigenous community in East Lampung. Data were collected through observation and interviews with traditional leaders in five villages. The research findings show that the mediation process in the tradition begins with the male party apologizing for the mistakes made. This process is carried out in deliberation and is accompanied by traditional leaders as mediators. Mediation in Sebambangan is part of the living law that prioritizes kinship in dispute resolution. In positive law, the mediation process in the tradition of the Sekampung Marga community in East Lampung follows the material legal basis in Indonesia as in Article 1338 of the Civil Code and Articles 1851 to 1864 of the Civil Code concerning Peace. Thus, dispute resolution in the Sebambangan tradition makes it an alternative dispute resolution in a conflict carried out with family principles to achieve peace and contribute to legal reform in Indonesia and beyond.

Keywords

Tradition, Sebambangan, Mediation, Living Law.

Introduction

The effectiveness of custom-based dispute resolution systems and formal justice mechanisms is currently the subject of international debate. Some scholars argue that customary law approaches are more effective in maintaining social harmony because they emphasize reconciliation and mutual agreement (restorative justice) as applied to customary law systems in Canada and Australia.¹ Several other countries have also implemented customary or community-based dispute resolution mechanisms. Japan, for example, through the *chotei* system, offers a custom-based negotiation model that is considered more flexible than formal justice.² Similarly, in the Philippines, the *Katarungang Pambarangay* system is a community-based dispute resolution mechanism at the village level that prioritizes mediation by the *barangay* captain in resolving disputes.³

Additionally, in small countries such as Timor-Leste, local communities tend to resolve disputes through customary law mechanisms, as they are considered effective in resolving conflicts by considering similar social and cultural backgrounds.⁴ However, there are some criticisms that customary dispute resolution tends to lack clear legal protection, especially for vulnerable groups. For example, in South Africa, the Truth and Reconciliation Commission (TRC) was successfully used as an instrument of peace after apartheid. Still, it was

¹ Howard Zehr and Ali Gohar, *The Little Book of Restorative Justice* (United States: Good Books, 2002).

² Hideo Tanaka and Malcolm D. H. Smith, *Smith, The Japanese Legal System: Introductory Cases and Materials* (Japan: University of Tokyo Press, 1976).

³ Jayson Verdad, "Mediating Disputes in the Barangays: The Work World of Lupon Chiefs," *International Journal of Law and Politics Studies* 6, no. 5 (October 5, 2024): 205–25. <https://doi.org/10.32996/ijlps.2024.6.5.11>.

⁴ Dhesy Arisandielis Kase, "Model Penyelesaian Sengketa Internasional Di Perbatasan Negara Indonesia Dan Timor Leste Berbasis Hukum Adat" (Disertation, Surabaya, Universitas Airlangga, 2017). https://all.fh.unair.ac.id/index.php?p=show_detail&id=18456.

also criticized for its lack of formal sanctions for violators.⁵ Nonetheless, customary dispute resolution still has an important position in resolving disputes. In New Zealand, Māori Restorative Justice is applied in resolving disputes, which focuses on restoring social relations and balance in society, in line with the principles of Māori customary law recognized in the country's legal system.⁶

The essence of dispute resolution through custom that prioritizes the restoration of social relations and balance in various countries is in line with the practices that occur in Indonesia, which is known to have diverse customary practices. This practice is illustrated in the Sebambangan tradition of Lampung Indigenous people. Sebambangan is a customary act carried out by a man who runs away from his home to take her as his wife.⁷ This practice is carried out without knowing anyone's family, even the girl's.⁸

The Sebambangan tradition involves resolving disputes through customary mediation by conducting deliberations in order to reach a mutual agreement.⁹ Dispute resolution is carried out by finding the best solution together but still adhering to applicable customary norms.

Mediation is conducted as a means of dispute resolution, carried out by both parties and supervised by religious and traditional leaders in order to get the best agreement.¹⁰ This aligns with the values of the Lampung people's philosophy of life, which prioritizes a harmonious

⁵ Desmond Tutu, *No Future Without Forgiveness* (United States: Doubleday, 2009).

⁶ Alethia Z. Fenney, "Navajo Peacemaking and Māori Restorative Justice: A Comparison of Process and Procedure" (Thesis, United States, Regis University, 2012). <https://epublications.regis.edu/theses/247>.

⁷ Fauzi, Interview with Traditional Leaders of Gunung Raya Village, 2023.

⁸ Sabaruddin Sa, *Sai Bumi Ruwa Jurai Lampung Pepadun Dan Saibatin* (Jakarta: Buletin Way Lima Manjau, 2013).

⁹ Hadikusuma Hilman, *Hukum Perkawinan Adat Dengan Adat Istiadat Dan Upacara Adatnya* (Bandung: Citra Aditya Bakti, 2003).

¹⁰ Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Abkam: Jurnal Ilmu Syariah* 21, no. 2 (2021). <https://doi.org/10.15408/ajis.v21i2.21864>; Mursyid Djawas and Sri Astuti Abdul Samad, "Conflict, Traditional, and Family Resistance: The Pattern of Dispute Resolution in Acehese Community According to Islamic Law," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (June 30, 2020): 65. <https://doi.org/10.22373/sjhk.v4i1.5271>.

life. In principle, peace and unity are essential teachings of customary law, so that the law is determined by deliberation. This position will create harmony and justice in society without eliminating one's rights.¹¹ The presence of traditional leaders becomes spiritual leaders and mediators in the community who help resolve conflicts and disputes.¹² Therefore, this research is interesting to study the non-litigation dispute resolution process in the Sebambangan tradition of Lampung indigenous people and its existence in legal reform, especially in integrating customary law and national law.¹³

There are at least several reasons, in the view of juridical law, mediation in the context of resolving customary disputes in the Sebambangan tradition has a strong legal basis in the Indonesian Civil Code such as Articles 1338 and 1851-1864 of the Civil Code, and national policies related to mediation (Supreme Court Regulation (PERMA) No. 1 of 2016). In addition, philosophically, this practice reflects the values of restorative justice, which has long been embraced by Lampung indigenous people in maintaining social harmony as an implementation of the Lampung people's philosophy of life (*Piil Pesenggiri*), which upholds harmony and deliberation. In addition, from a sociological point of view, the Sebambangan tradition shows how living law functions in community life, which is demonstrated by the role of customary leaders as mediators in reducing conflict. Thus, it is important to understand how the Sebambangan tradition can contribute to legal reform in Indonesia and how its integration with national law can be done without losing the essence of justice recognized by indigenous peoples.

¹¹ Kamaruddin Kamaruddin et al., "Justice, Mediation, and Kalosara Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law," *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (June 10, 2023): 1077. <https://doi.org/10.22373/sjhk.v7i2.13183>.

¹² Emma Ellyani et al., "The Position Medical Forensics and Visum Et Repertum in Adultery (Overspel) Cases in the Jenang Kutei Traditional Trial in Bengkulu, Indonesia," *Indian Journal of Forensic Medicine & Toxicology* 14, no. 1 (January 25, 2020). <https://doi.org/10.37506/ijfmt.v14i1.307>.

¹³ Tody Sasmita Jiwa Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 269–89. <https://doi.org/10.1080/07329113.2021.1945222>.

Several studies have examined the tradition of mining. There are at least three groups, and the first group describes the practice of the Sebambangan tradition and its shift.¹⁴ The shift is caused by several factors, such as education and social media, but the most striking is the change caused by modernization and globalization. The second group is to examine Sebambangan in the review of Islamic law. This group sees the tradition using various reviews such as *maqashid*,¹⁵ *mashlahah*,¹⁶

¹⁴ Nanang Khoirul, Sumiyatun Sumiyatun, and Bobi Hidayat, "PROSES ADAT PERKAWINAN SEBAMBANGAN MARGA SEKAMPUNG LIBO DI JABUNG LAMPUNG TIMUR," *SWARNADWIPA* 3, no. 1 (April 12, 2019). <https://doi.org/10.24127/sd.v3i1.1941>; Akhmad Riduan, "Tradisi Sebambangan Pada Masyarakat Adat Lampung Pepadun Perspektif Islam (Studi Di Kelurahan Terbanggi Besar Kecamatan Terbanggi Besar Kabupaten Lampung Tengah)" (Bachelor thesis, Lampung, Institut Agama Islam Negeri Raden Intan, 2016). <https://repository.radenintan.ac.id/1220/>; Azhaar Afaf Hanifah, "PERUBAHAN TRADISI SEBAMBANGAN (Studi Etnografi Tentang Eksistensi Dan Perubahan Tradisi Sebambangan Pada Masyarakat Suku Lampung Sai Batin Di Desa Canggu, Kalianda, Lampung Selatan)" (Master Thesis, Surakarta, Universitas Sebelas Maret, 2019). <https://digilib.uns.ac.id/dokumen/detail/73823/Perubahan-tradisi-sebambangan-studi-etnografi-tentang-eksistensi-dan-perubahan-tradisi-sebambangan-pada-masyarakat-suku-lampung-sai-batin-di-desa-canggu-kalianda-lampung-selatan>; Azzahra Kesuma Dewi, "Faktor Penyebab Memudarnya Tradisi Sebambangan Pada Masyarakat Lampung Saibatin Pekon Banjarmasin Kabupaten Tanggamus" (Bachelor thesis, Bandar Lampung, Universitas Lampung, 2022). <http://digilib.unila.ac.id/64540/>; Agam Kesuma Yuda, "Pergeseran Adat Kawin Lari Atau Sebambangan Di Kelurahan Menggala Kota Kecamatan Menggala Kabupaten Tulang Bawang," *Storia: Jurnal Pendidikan Sejarah Dan Humaniora* 3, no. 1 (2022). <https://jurnal.stkippgribl.ac.id/index.php/storia/article/view/930>.

¹⁵ Alfikrul Akbar, Hamdan Arief Hanif, and Sofyan Munawar, "Tradisi Sebambangan Perspektif Maqashid Al-Syariah Dan Hukum Positif," *An Nawawi: Jurnal Hukum Dan Ekonomi Islam* 4, no. 1 (2024). <https://doi.org/10.55252/annawawi.v4i1.40>.

¹⁶ M. Aziz Indrayanto, "DINAMIKA TRADISI SEBAMBANGAN DALAM PERKAWINAN MASYARAKAT ADAT LAMPUNG PEPADUN (Studi Di Desa Lehan Kecamatan Bumi Agung Kabupaten Lampung Timur)" (Master Thesis, Yogyakarta, UIN Sunan Kalijaga Yogyakarta, 2023). <https://digilib.uin-suka.ac.id/id/eprint/63869/>.

urf,¹⁷ and integration between Islamic law and Customary law.¹⁸ In addition, the third group examines more from the point of view of feminism, the finding is that the culture of Sebambangan makes women marginalized and subordinated in the community environment.¹⁹ Therefore, this research generally has similarities with the second group, namely the study of the Sebambangan tradition in Islamic law. Still, this research is focused on dispute resolution through mediation in the tradition.

This research examines the non-litigation dispute resolution process through customary mediation in the Sebambangan tradition of Lampung indigenous people. This research departs from the argument that indigenous people, in solving problems, tend to uphold family values. The implementation of mediation in the tradition shows that problem-solving is done peacefully and avoids conflict. Thus, this article will provide insight into how communities can resolve conflicts through peaceful (non-litigation) means and still maintain their traditions. In addition, through this practice it can contribute to legal reform in

¹⁷ Hanifa Amalia Sururi, "Tradisi Sebambangan Dalam Perspektif Hukum Islam (Studi Kasus Kawin Lari Antar Pemuda Di Kelurahan Kuripan Kecamatan Teluk Betung Barat Kota Bandar Lampung)" (Master Thesis, Surabaya, Universitas Islam Negeri Sunan Ampel, 2018). <https://digilib.uinsa.ac.id/25746/>; Zikrul Alfa Nurohim, "Tradisi Sebambangan Masyarakat Adat Lampung Dalam Perspektif Hukum Islam (Studi Di Desa Mulang Maya Kecamatan Kotabumi Selatan Kabupaten Lampung Utara)" (Bachelor thesis, Jakarta, Universitas Islam Negeri Syarif Hidayatullah, 2022). <https://repository.uinjkt.ac.id/dspace/handle/123456789/59679>; Dela Puspita, "THE SEBAMBANGAN TRADITIONAL MARRIAGE IN 'URF PERSPECTIVE (Study in Tebing Village, Melinting Sub-District, East Lampung District)" (Master Thesis, Malang, UIN Maulana Malik Ibrahim, 2021). <http://etheses.uin-malang.ac.id/33634/>.

¹⁸ Claudia Amanda et al., "Tradisi Sebambangan Dan Eksistensinya Bagi Masyarakat Muslim," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 5 (2021): 923–30; Muhammad Iqbal Juliansyahzen, "DIALEKTIKA HUKUM ISLAM DAN HUKUM ADAT PADA PERKAWINAN LELARIAN DI LAMPUNG TIMUR," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 1 (July 24, 2020): 1. <https://doi.org/10.14421/ahwal.2019.12101>.

¹⁹ Ririn Setiawati and Zulkipli Lessy, "Diskriminasi Terhadap Perempuan: Analisis Budaya Sebambangan Perspektif Feminisme," *Jurnal Inada: Kajian Perempuan Indonesia Di Daerah Tertinggal, Terdepan, Dan Terluar* 5, no. 2 (December 31, 2022): 101–15. <https://doi.org/10.33541/ji.v5i2.4548>.

Indonesia on how customary law and national law can be integrated without compromising substantive justice for the whole community.

Method

Qualitative research is the type of this research, also in this research using a socio-legal approach. The research was conducted in Mergo Sekampung Village indigenous community of East Lampung, the data was collected by observation and interviews, and interviews were conducted with five traditional leaders of the Mergo Sekampung indigenous community of East Lampung. Secondary or additional data were obtained from various literature that have relevance to the research theme. Analysis using analysis techniques from Miles and Huberman, namely data collected is reduced, presented, interpreted, and conclusions are drawn.

Result and Discussion

A. Sebambangan Tradition in Mergo Sekampung Udik, Lampung: Practice and Philosophy

Sebambangan traditional marriage (without a proposal) is a marriage by running away the girl who will be married by the bachelor to the bachelor's parent's house with the consent of the girl. This Sebambangan marriage is still being preserved by the Lampung Mergo Sekampung Udik community located in East Lampung Regency. Sebambangan consists of two words, namely the word "*se*" which means mutual, and "*bumbang*" which means carry or leave.²⁰ It is a customary act carried out by a man who takes a girl from his home intending to make the girl his wife.²¹ This practice is carried out without the knowledge of anyone's family, even the girl's family.

Bujang (unmarried man) and the girl who was taken away basically knew and loved each other. However, for some reason, such as being

²⁰ Rizki Dwi Saputri, Ridhah Taqwa, and Eva Lidya, "Tradisi Sebambangan Masyarakat Adat Lampung Pepadun Di Kelurahan Kelapa Tujuh Kecamatan Kotabumi Selatan Kabupaten Lampung Utara," *Media Sosiologi: Jurnal Sosiologi Universitas Sriwijaya* 24, no. 1 (2021): 71–92.

²¹ Fauzi, Interview with Traditional Leaders of Gunung Raya Village.

blocked by the blessing of the difference in social status. They take the initiative to do *Sebambangan* by bringing the girl they like to the house of the footman's parents.²² This action is carried out because the girl is the girl he loves, and then he asks to be married to her. According to Hadikusuma, *Sebambangan* occurs due to several factors: a. The girl has not been allowed by her parents to get married, b. There is a rejection of the man's proposal by the girl's family, c. the girl has been proposed by another man but does not like him, d. the footman's economy is not yet established, and e. girls who still have unmarried siblings.²³

In addition to social and economic factors, *Sebambangan* occurs because the bachelor is considered not to meet the criteria of the girl's parents,²⁴ so both do not get their blessing. However, the most dominant factor in *Sebambangan* is the high cost incurred if going through the traditional process.

“Usually, to get married using the honest marriage mechanism, the costs that must be incurred are quite expensive, from the first proposal to the wedding reception process. Usually, the entire extended family helps to donate money or staples for the wedding reception”.²⁵

But something is interesting: the amount of honest money requested by the girl's side can also be used as a way to reject a footman's proposal. Thus, the man is discouraged from proposing to the girl because he cannot afford it.²⁶ A traditional proposal marriage generally

²² Hasan Basri, Interview with Traditional Leaders of Bojong Village, 2023.

²³ Hilman, *Hukum Perkawinan Adat Dengan Adat Istiadat Dan Upacara Adatnya*.

²⁴ Muh Zaitun Ardi and Nadyatul Hikmah Shuhufi, “KAFA’AH IN ISLAMIC LAW AND CUSTOMARY LAW: The Dynamics of Prospective Spouse Equality in A Syariifah Family Environment,” *Usrotuna: Journal of Islamic Family Law* 1, no. 1 (2024).

²⁵ Tulin, Interview with Traditional Leaders of Toba Village, 2023.

²⁶ Yayan Sopyan et al., “Degradation of Customary Inheritance Law in the Sai Batin Lampung Tribe,” *AL-ADALAH* 17, no. 2 (March 19, 2021): 295–314. <https://doi.org/10.24042/adalah.v17i2.7137>.

costs around 100-300 million, whereas a Sebambangan marriage generally only costs IDR10-20 million.²⁷

In the next stage, after the footman brings the girl to his house, the footman will ask her parents for their blessing to marry the girl. Then, the *bujang's* parents report the incident and ask the traditional leaders for advice that their son has brought a girl to his house. In this case, the traditional leader is not only an elder figure but also a place of consultation and is responsible for resolving conflicts that occur in his area of authority.²⁸

After the traditional leader receives the report, the traditional leader then asks the girl who she is, where she comes from, and whether she is forced or willing to do the ritual. This question is important to ask, considering that if it is her own will, then Sebambangan will be carried out, but if the girl is forced, there will be legal consequences, namely kidnapping and breaking the law. If the girl answers of her own free will, the traditional leader asks for proof of what she said. In this process, there is a dialog that is not only limited to confession but also a detailed examination process. The evidence that can be used is generally a letter, but sometimes the girl will leave a letter saying "I went with the bachelor because we like each other and want to get married". In addition, the girl will also leave other evidence, such as a sum of money and gold that came from the footman. The evidence is generally placed under the pillow or the clothes in the closet.²⁹

After the traditional leader asks for clarification, the traditional leader will gather all the bachelor's family and inform them that this is indeed Sebambangan. The traditional leader will advise the boy's family to send a delegation to the girl's parents' house to provide information

²⁷ Dian Anisa Fitri, Nani Suwarni, and Zulkarnain, "Pudarnya Perkawinan Semanda Dalam Masyarakat Lampung Di Desa Negeri Ratu Kabupaten Lampung Utara," *Jurnal Penelitian Geografi* 1, no. 2 (2012). <http://dx.doi.org/10.23960%2Fjpg.v4i5.12464>.

²⁸ Kamaruddin, "Model Penyelesaian Konflik Di Lembaga Adat," *Walisono* 21, no. 1 (2013). <https://doi.org/10.21580/ws.21.1.236>.

²⁹ Tulin, Interview with Traditional Leaders of Toba Village.

and apologize.³⁰ This is the examination process carried out by traditional leaders.

B. Mediation in the Sebambangan Tradition: Conflict Resolution, Cost Efficiency, and Custom Preservation

The next stage in this Sembambangan is *Ngattak Senjato* or *Ngattak Salah*. This stage is where the mediation process is carried out, the bachelor's family sends the *Penyimbang* (the eldest son who inherits the father's leadership as head of the family or head of the relatives in Lampung society) to inform the *Penyimbang* of the girl and apologize for the mistake of his son who has left with his child. The family representative brings a traditional weapon, the keris, to be presented to the girl's elders.

"The parents or representatives of the footman apologize to the parents of the girl for their son's impertinence in bringing the girl and wanting to marry her off."³¹

After the apology is delivered, the male family will hand over a weapon as a sign of regret for the mistake that has been made. In this case, the elders on the girl's side must receive and convey the message to the girl's parents. The message that is delivered signifies that the girl is now under the responsibility of the Adat head of the *bujang* family, reflecting the involvement and official recognition of *Adat*. Upon notification that the girl's side is willing to accept, the *bujang* family will send a parent from *Adat* to formally apologize and start negotiating between the two parties to reach an agreement. This approach aims to bridge the gap, create conducive conditions, and steer towards a positive journey towards marriage. In addition, there are also tokens of respect given, which can include *sirih pinang* (betel nut), *gambir* (gambier), and others.

³⁰ Sabaruddin, *Lampung Pepadun Dan Saibatin/Pesisir Dialek O/Nyow Dan Dialek A/Api* (Jakarta: Buletin Way Lima Manjau, 2013).

³¹ Basri, Interview with Traditional Leaders of Bojong Village.

“In addition to the weapons/weapons given by the male party, usually the male party will give several objects as a sign of respect to the female family in the form of *sirih pinang* (betel nut), *gambir* (gambier), cigarettes, and cakes in the form of diamonds and or *dodol*.”³²

If the apology is accepted, the girl’s parents or representatives will understand and all items that have been brought by the boy’s family will be accepted. There will then be a discussion about the wedding reception process.

“After the apology from the male party is accepted, everyone expresses gratitude and then (if at the same time / maybe at another time) continues to talk about the marriage plan. That what happened was the fault of the children (*rasan sanak*) and we agreed to understand. Furthermore, from now on it is our business as parents (*rasan Tuho*) or *rasan sanak cakak adek rasan tuho*. The point is that we need to discuss the wedding plan until the reception, including the financing.”³³

Since the girl is already in the male family’s house, the male party will ask to be able to hold the marriage contract at the male party’s house and at the same time ask for consideration of the time of implementation. If the girl has no objections, the man will assist/gifts (if needed) for the reception. The assistance provided by the male party also varies according to the request of the female party.

“Usually the girl will express her gratitude for the help offered. As for the amount given, it varies, if the assistance provided is greater, the more the female party is present, for the sake of *Fiil Pesenggiri: Sakai sambayyan, nemuin nyimah, nengah Nyappur, ragem* (consensus), and *bejuluk beadok*. The matter of the amount of money or other alternatives is returned for consideration (other alternatives here are vehicles).”

³² Fauzi, Interview with Traditional Leaders of Gunung Raya Village.

³³ Ibrahim, Interview with Traditional Leaders of Gunung Sugih Besar Village, 2023.

The male party hands over a sum of money either directly or afterward. At this stage, the conversation is still internal, namely between families represented by *Penyimbang*. It is the eldest son who has the highest customary position in the family.³⁴ He will then ask whether the marriage will be conducted according to custom or not.

“Reminding these residents that they live in society, the majority of which use cultural customs, so all of them certainly want to use customs. If they choose to use custom, this issue will be discussed further.”³⁵

The term *Penyimbang* in this case gives the choice to the bride and groom, meaning that although custom generally applies to the community, there is still leeway in the law to realize a system that can be felt by the indigenous community. The law should be guided by social forces to realize the effectiveness of law in society.³⁶

Furthermore, the traditional leader explained that because the marriage was initiated by way of *Lelarian* instead of through *Ippun* (proposing), it was an act against customary law (*cepalo*), namely *cepalo banguk* (no permission or proposing), *cepalo caluk*, and *salah capang*. This means that it is a wrongful act. By custom, this can be fined with a sum of money (*luwah dau*) of 60,000 multiplied by three mistakes, which means 180,000 rupiah.

The fine procedure is carried out in a traditional session called “Marwatin”. There is another procedure before the imposition of sanctions, namely the discussion of kinship status that will occur after marriage. If a man enters a woman’s custom, *semenda* occurs. If the girl enters the man’s kinship, then *ibal* occurs. *Semenda* and/or *ibal* will be legally valid if the parties have paid a sum of money as a ransom; the amount of the ransom is based on demand and consensus.³⁷

³⁴ Toto Sucipto, *Kebudayaan Masyarakat Lampung Di Kabupaten Lampung Timur* (Jakarta: Kementrian Kebudayaan dan Pariwisata, 2003).

³⁵ Basti, Interview with Traditional Leaders of Bojong Village.

³⁶ David Nelken, “Eugen Ehrlich, Living Law, and Plural Legalities,” *Theoretical Inquiries in Law* 9, no. 2 (January 23, 2008). <https://doi.org/10.2202/1565-3404.1193>.

³⁷ Basti, Interview with Traditional Leaders of Bojong Village.

After the ransom is paid, the next step is to transfer the *Penyimbang*, which is traditionally referred to as *lepas batu* (stone release), meaning that this transfer is like entering water, it will sink forever or if it is released, the original family no longer has the right to interfere in all matters. Meanwhile, if they return to their respective families, it is called *lepas burung* (bird release), meaning that like a bird, no matter how far it flies, it will also return to its home. However, if something bad happens (divorce), then the man and woman will return to each *Penyimbang* and bring their respective rights.

Furthermore, the customary hearing (*merwatin*) is held at the place of the customary court (*sesat/nuwo sesat*), and the inviting party will bear the cost of *merwatin*. The costs consist of *duit galang silo* (120,000), *duit becaro* (120,000), and *duit lighting* (120,000) as well as serving food to the *Penyimbang* who attend.

“It is estimated that a traditional session (*merwatin*) will cost 500-800 thousand rupiah. The *Penyimbang* of custom, in this case act as listeners and witness the *ragom mufakat* (variety of consensus) that occurs. The decision of the trial remains with the parties, the *Penyimbang* only validates if there is an agreement. The fines and meals are a form of fee for the invitation and presence of the *Penyimbang*, who are tasked with explaining the custom to all parties who ask. This form of customary decision is not written and is carried out openly and in cash.”³⁸

Decisions in customary trials are carried out based on the principle of kinship; *ragom mufakat* is contingent, and nothing is made in writing.³⁹ This shows that although customary law is not written, the community still upholds the law, because it has been passed down from generation to generation. This shows that customary law exists as a living law in the community. In addition, the existence of traditional leaders (local leadership) has a significant role and is an actor in the sustainability of customary law. According to Seftyono et al. (2018) local leadership requires various elements to ensure its existence, such as character, group, situation, purpose, and interaction. At the same time, it is impossible

³⁸ Tulin, Interview with Traditional Leaders of Toba Village.

³⁹ Ahmad Kausar, Interview with Traditional Leaders of Bojong Village, 2023.

without authority and social support, both of which require honesty, ability, and trust.⁴⁰

After the traditional session (*merwatin*) is over, the traditional leaders will discuss the wedding reception to be held. The *Penyimbang* will offer the reception to be held simply or *begawi* (large-scale). If the wedding reception is held on a large scale (*begawi*), the traditional leader will explain the things that must be prepared such as *dodol*, *wajik*, curry/meat vegetables, satay, and others; if not fulfilled, then a customary fine will be imposed. Each thing that is not fulfilled will be subject to a fine of 60 thousand. The same applies to other facilities, such as the gate/*lawang kuri adat begawi*, the king's staircase, and weapons and *siger/mahkota*. It can be seen that customary rules/laws are enforced as social control (a tool of engineering); social control can also be interpreted as a form of inappropriate or deviant behavior that can lead to demands, compensation, and prohibitions.⁴¹

Philosophically, the concept of compliance with customary law inevitably involves issues of conformity and adaptation. Society must comply with all applicable laws and become a reference to the extent to which a law functions (living law).⁴² However, compliance with customary law is also determined by the social and cultural conditions of the community. If it doesn't go together, it may become a fertile ground for conflict if it cannot be controlled.

⁴⁰ Cahyo Seftyono et al., "Accelerating Rural Development in Central Java Indonesia: Connecting Leadership, Social Capital and Policy in Local Context," *IOP Conference Series: Earth and Environmental Science* 175 (July 24, 2018): 012185. <https://doi.org/10.1088/1755-1315/175/1/012185>.

⁴¹ Sri Warjiyati, "EKSISTENSI HUKUM ADAT DALAM PENYELESAIAN KONFLIK PADA DAERAH OTONOM," *Abkam: Jurnal Hukum Islam* 6, no. 2 (November 1, 2018): 389–410. <https://doi.org/10.21274/ahkam.2018.6.2.389-410>.

⁴² Luciano Martínez Valle and Diego Martínez Godoy, "Territorial Dynamics and Social Differentiation among Peasants in the Northern Highlands of Ecuador," *Journal of Agrarian Change* 19, no. 4 (October 2019): 635–53. <https://doi.org/10.1111/joac.12322>.

C. The Existence of Living Law in the Sebambangan Tradition of Lampung Indigenous People

Indigenous peoples are known for their solidarity in society, relationship built on feelings and beliefs in moral values that are felt to be shared and reinforced by shared emotional experiences.⁴³ Sociologically, the people of Lampung have unique cultures and customs, which not only serve as entertainment but also become their identity as an ethnic group. Dogmatically, Lampung people have strong customary laws, as in the book of Kuntara Raja Niti. This book is a written law and becomes a guideline for behavior.

The existence of indigenous peoples and their norms is an inseparable part. This is what makes the existence of legal diversity in various aspects of a country's life.⁴⁴ According to Kusumaatmaja, the existence of positive law (state) will run effectively if its formation takes into account the living law that has been running in the community.⁴⁵ Living law is a legal system that applies and is implemented by the community, the concept of living law cannot be separated from the idea of *volkegeist*. because living law also considers the enforceability of law based on the community's desire for certain values that follow the personality of the community.⁴⁶ Even Ehrlich explains that the real law is the law that comes from society itself.⁴⁷

The existence of customary law is inseparable from the existence of norms that are always adhered to by the community in various aspects of

⁴³ Muhammad Abduh Lubis, "Budaya Dan Solidaritas Sosial Dalam Kerukunan Umat Beragama Di Tanah Karo," *Jurnal Sosiologi Agama* 11, no. 2 (2017): 239–58. <https://doi.org/10.14421/jsa.2017.112-06>.

⁴⁴ Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7, no. 4 (1973): 719–46. <https://doi.org/10.2307/3052967>.

⁴⁵ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Pusat studi Wawasan Nusantara, Penerbit Alumni, 2002).

⁴⁶ Harison Citrawan, "The 'Life' in the Living Law: Law, Emotion and Landscape," *Journal of Contemporary Sociological Issues* 1, no. 2 (August 31, 2021): 124. <https://doi.org/10.19184/csi.v1i2.25443>.

⁴⁷ Svitlana Karvatska, "Socio-Historical Factors of Law Perception in 'Living Law' Concept by Eugen Ehrlich," *Erlibiv'skij Žurnal* 1 (December 25, 2017): 42–51. <https://doi.org/10.31861/ehrlichsjournal2017.01.042>.

life, including in matters of marriage.⁴⁸ The implementation of marriage in Indonesia is influenced by the customary marriage system which continues to be maintained as the existence of the custom itself. This is also done by the indigenous people of Lampung, where they implement customary law as part of their customary system, including family affairs (marriage). For example, in the implementation of the Sebambangan marriage. Sebambangan marriage is an unwritten customary legal identity and is carried out based on family principles and various consensuses.⁴⁹ Even though it is not written, the marriage has legal force and is binding for indigenous peoples. This is as Ehrlich argues that law is not only written but also unwritten.⁵⁰

Unwritten law originates from the community that regulates and shapes behavior in customary life.⁵¹ Therefore, the Sebambangan marriage is a customary law that lives, is accepted and obeyed by the community.⁵² As a living law, Sebambangan is a tangible form of legal expression from the community. Although it is not written, it has a strong binding force in society, and there are separate sanctions if there are people who violate it.⁵³ According to Kryger, the development of

⁴⁸ Muhamad Hasan Sebyar, "Harmonization of Islamic Legal Institutions and Customary Law in Marriage Dispensation Cases at The Panyabungan Religious Court," *MILRev : Metro Islamic Law Review* 2, no. 2 (November 12, 2023): 155. <https://doi.org/10.32332/milrev.v2i2.7809>.

⁴⁹ Kausar, Interview with Traditional Leaders of Bojong Village.

⁵⁰ Eugene Ehrlich and Klaus A Ziegert, *Fundamental Principles of The Sociology of Law* (Milton Park: Routledge, 2017). https://www.routledge.com/Fundamental-Principles-of-the-Sociology-of-Law/Ehrlich-Ziegert/p/book/9780765807014?srsId=AfmBOopJRx_YjiuusR1Ak_h8dQFR-RmXVSwKcZ0Nfn9GLhUMYxG7EIUue.

⁵¹ Muh Zaitun Ardi and Nadyatul Hikmah Shuhufi, "Islamic Law and Local Tradition: Living Appasili Marriage in Takalar Regency Indonesia," *Indonesian Journal of Islamic Law* 7, no. 1 (June 30, 2024): 40–62. <https://doi.org/10.35719/ijil.v7i1.2114>.

⁵² Senior Lecturer at Faculty of Law, Halu Oleo University, Southeast Sulawesi, Indonesia. and Deity Yuningsih., "THE ESSENCE OF JUSTICE FOR THE LIVING LAW IN THE ALTERNATIVE DISPUTE RESOLUTION OF INDONESIA LEGAL SYSTEM.," *International Journal of Advanced Research* 5, no. 3 (March 31, 2017): 1927–30. <https://doi.org/10.21474/IJAR01/3712>.

⁵³ Mohammad Ainul Hakim, "Marriage Dispute Resolution in Muslim Populated Countries: A Comparative Study of Divorce Law in Indonesia and Singapore,"

tradition will be directly proportional to the development of law in society.⁵⁴

The existence of the Sebambangan tradition in society cannot be separated from the reasons that construct and preserve the tradition. Sebambangan itself continues to be practiced in society for several reasons, such as:

1. Ease of Terms and Process, the traditional marriage procession is known for its lengthy procession. Unlike Sebambangan, which is done simply without a *begawi* event.
2. Cheaper Wedding Costs. The reason for cost is often an obstacle to carrying out a marriage. This is what makes the male party and his family object or even unable to fulfill this request, so they choose to Sebambangan.
3. Parents sometimes do not permit their children to marry because they are still in school, not working, and parents want the best prospective son-in-law for their children.
4. Pregnant Women Before Marriage, Lampung people if there is a problem of pregnancy outside of marriage, the couple will be married off by their family using the Sebambangan tradition, although it does not rule out the possibility of getting married using the proposal method.⁵⁵

Therefore, sociologically, the majority of Lampung indigenous people choose the Sebambangan tradition as an alternative solution to marriage problems, including the high cost of traditional marriage processions. Furthermore, this Sebambangan tradition is part of the legal adjustment to the practices carried out by the community. Such laws, according to Reimann, are laws that live, grow, and exist in people's

Legitima: Jurnal Hukum Keluarga Islam 6, no. 2 (2024).
<https://doi.org/10.33367/legitima.v6i2.4775>.

⁵⁴ Martin Krygier, "Law as Tradition," *Law and Philosophy* 5, no. 2 (August 1986).
<https://doi.org/10.1007/BF00190762>.

⁵⁵ Saputri, Taqwa, and Lidya, "Tradisi Sebambangan Masyarakat Adat Lampung Pepadun Di Kelurahan Kelapa Tujuh Kecamatan Kotabumi Selatan Kabupaten Lampung Utara."

lives.⁵⁶ Although sometimes viewed negatively, this Sebambangan tradition is part of the preservation of customs in the marriage of Lampung people, so that in the future, the next generation of customs will continue to preserve and not forget the Sebambangan tradition as a marriage custom of Lampung people.

D. Customary Mediation and the Sebambangan Tradition: Legal Reform in Non-Litigation Dispute Resolution

The reality of community life often encounters various disputes and has various ways of resolving them, one of which is out-of-court dispute resolution or through a customary approach. Likewise, the Sebambangan tradition is in line with Indonesian positive law and can be linked to community-based dispute resolution practices applied in various countries.⁵⁷ This contribution to legal reform through customary mediation in the Sebambangan tradition contributes to the resolution of disputes quickly and efficiently, so as to unravel the accumulation of cases in the courts, the need for alternative dispute resolution has become an international concern.⁵⁸

The customary law approach is more effective in maintaining social harmony because it emphasizes reconciliation and mutual agreement (restorative justice).⁵⁹ This is related to the history and culture of Indonesian society, which upholds a family approach. When disputes

⁵⁶ 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. <https://doi.org/10.2307/840443>.

⁵⁷ Naomi Creutzfeldt, "Regulating Dispute Resolution. ADR and Access to Justice at the Crossroads," *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 80, no. 3 (2016): 709. <https://doi.org/10.1628/003372516X14672884720699>.

⁵⁸ Stephen B. Goldberg et al., *Dispute Resolution: Negotiation, Mediation and Other Processes* (Netherlands: Wolters Kluwer, 2014).

⁵⁹ William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*, 1st ed. (United States: Jossey-Bass, 1988).

occur, indigenous people prefer to resolve them through custom.⁶⁰ Indeed, this customary dispute resolution is the seed of alternative dispute resolution (APS) in Indonesia. APS has long lived in the community and made it a dispute resolution mechanism outside the Court (non-litigation) in the community.⁶¹ In general, the alternative dispute resolution that is often used is mediation. Mediation is an attempt to resolve a dispute by involving a neutral third party, who has no decision-making power, to assist the disputing parties in reaching a mutually acceptable agreement (solution).⁶²

Dispute resolution through tradition/custom can be seen in the Sebambangan tradition. In this tradition, there is a mediation process between disputing parties related to marriage issues. The Sebambangan tradition was previously a solution for couples who faced obstacles such as parental blessing or cost problems in carrying out marriage following Lampung traditional customs. However, in this tradition, the male party runs away with the female party (*lelarian*) to the male family's house without the knowledge of the female family. This can certainly lead to conflict between families because they are running away without the permission of their parents. Furthermore, the male party will come to the female family to apologize for the boy's act of running away with a daughter.

In this process, mediation is carried out by bringing together the families of both parties to the dispute accompanied by local traditional leaders. This process is carried out with a family spirit and through deliberation between the two parties. The agreement to be reached in mediation is basically based on mutual understanding so that the parties jointly formulate a solution to the dispute resolution mediated by a third

⁶⁰ Abdullah Taufik and Muhammad Fajar Sidiq Widodo, "Implementation of Regulation of the Minister of Religious Affairs Number 20 of 2019 in the Practice of Changing the Biodata of the Marriage Certificate in Krian District," *Legitima : Jurnal Hukum Keluarga Islam* 6, no. 1 (n.d.): 51–67. <https://doi.org/10.33367/legitima.v6i1.4256>.

⁶¹ Sudiarto, Kurniawan, and Aris Munandar, "Penyelesaian Sengketa Di Luar Pengadilan," *Jurnal Kompilasi Hukum* 8, no. 1 (2023). <https://doi.org/10.29303/jkh.v8i1.131>.

⁶² Phillip Green, Virginia Goldblatt, and Laurence Boulle, *Mediation: Principles, Process, Practice*, 2nd ed. (New Zealand: LexisNexis, 2009).

party.⁶³ Sociologically, this process is carried out with the principle of deliberation, deliberation is considered the most effective method to find peace.⁶⁴

Therefore, customary mediation is conducted as a means to seek justice together.⁶⁵ Thus, the order built in Indigenous society is to create peace among fellow Indigenous peoples, including in problem-solving. Through mediation the parties get the opportunity to take the initiative, to resolve the dispute assisted by a third party as a mediator. So that both sides can feel the same victory (win-win solution) and will also eliminate grudges and strengthen relationships.⁶⁶

Dispute resolution in the Sebambangan tradition in Marga Sekampung East Lampung through mediation is an important stage that requires agreement and compromise from both parties. This tradition usually requires a settlement involving the prospective groom and bride, as well as traditional leaders. Several aspects of this settlement process affected the course of the tradition. First, mediation in the Sebambangan tradition is usually carried out by deliberating together between the two parties. This stage is important for dialog to provide mutual understanding and understand the conditions between the two parties.

Second, the mediation process often requires reconciling the wishes of both parties and adherence to existing customary norms. This process emphasizes the importance of maintaining harmony between personal interests and customary interests, as well as adapting traditions to the times while still respecting cultural values passed down from generation to generation.⁶⁷ Finally, dispute resolution/mediation is

⁶³ Rachmadi Usman, *Mediasi Di Pengadilan Dalam Teori Dan Praktik* (Jakarta: Sinar Grafika, 2012).

⁶⁴ Dara Quthni Effida, Ilka Sandela, and Asmaul Husna, "Resolusi Konflik: Penyelesaian Sengketa Non-Litigasi Melalui Komunikasi Peradilan Adat Di Desa Bumi Sari," *Jurnal Lok Seva* 1, no. 1 (2022). <https://doi.org/10.35308/lok%20seva.v1i1.6355>.

⁶⁵ Günther Schlee, "Customary Law and the Joys of Statelessness: Idealised Traditions versus Somali Realities," *Journal of Eastern African Studies* 7, no. 2 (May 2013): 258–71. <https://doi.org/10.1080/17531055.2013.776276>.

⁶⁶ Lorna Gilmour, *Collins English Dictionary & Thesaurus* (California: HarperCollins, 2006).

⁶⁷ Ferdian Arianto, Beni Ahmad Saebani, and Yana Sutiana, "CUSTOMARY DELIBERATION IN CONTEMPORARY ISLAMIC LAW: EXAMINING

ultimately carried out by reflecting the spirit of unity in Lampung's indigenous communities. This process requires close collaboration between the two families and the community to maintain a warm and intimate relationship. Thus, in this series of processes, it indicates that non-litigation dispute resolution has advantages compared to dispute resolution through litigation, including voluntariness, speed, non-judicial decisions, and a high probability of implementing a fair agreement.

The application of mediation in custom (*adat*) is an alternative for the community in resolving marital problems as this practice is considered easier and does not require special procedures such as through the Religious Court and is more family-oriented and reconciliatory.⁶⁸ Customary dispute resolution also aims to ensure greater justice and compliance with the existing laws of the community. From the perspective of legal application, the application of customary law is often the first choice of the community in dealing with various disputes. The reason is that the family value of customary law is a living right believed and experienced by the community.

When viewed juridically, the mediation process in the Sebambangan tradition in the Sekampung clan community in East Lampung aligns with Indonesia's material legal framework. This is in accordance with Article 1338 of the Indonesian Civil Code, that all agreements made legally shall apply as laws for those who make them. In the context of non-litigation dispute resolution, this provision is significant as it reminds the disputing parties that the grants them the freedom to choose a method for resolving their conflicts, which can be formalized in an agreement. However, such an agreement must be made legally and fulfill the validity requirements as outlined in Article 1320 of the Civil Code.

THE IMPLEMENTATION SYSTEM OF WEST MALALAK KENAGARIAN IN INDONESIAN FIKIH AND SIYASAH DUSTURIYAH," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (2025). <https://doi.org/10.20885/mawarid.vol7.iss1.art2>.

⁶⁸ Muhammad Luthfi, Yaris Adhial Fajrin, and Hasnan Bachtiar, "The Existence of 'Urf in the Resolution of Marriage Disputes in Islamic Law: A Living Law Perspective," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 30, 2024): 146–58. <https://doi.org/10.29303/ius.v12i1.1356>.

In addition, Articles 1851 to 1864 of the Indonesian Civil Code explain that peace is part of an agreement. Thus, an agreement for peace becomes valid if it has fulfilled the legal requirements of an agreement and has been made in writing.⁶⁹ As for peace efforts, they can be carried out in court or out of court. Thus, dispute resolution within the Sebambangan tradition serves as an alternative dispute resolution in a conflict based on family principles to achieve peace. This is consistent with research by Laura Nader and Harry F. Todd, who found that social dispute resolution relies on a variety of approaches, including facilitation, avoidance, coercion, negotiation, mediation, arbitration, and adjudication.⁷⁰ Additionally, customary mediation can provide efficiency and greater access to justice. As a dispute resolution mechanism that does not require high costs nor does it rely on complex formal procedures, it reduces the burden on the judiciary while ensuring greater access to justice for indigenous peoples.⁷¹ The findings of this study, therefore, offer valuable insights for policymakers in developing dispute resolution models that are more responsive to the needs of local communities.

Conclusion

Education in the Sebambangan tradition begins with the male party apologizing for any mistakes against the female party. This process is carried out in deliberation and accompanied by traditional leaders as mediators. Philosophically, indigenous peoples' compliance with customary law is a way in which a law functions in society (living law). From a sociological perspective, however, compliance with customary law is also determined by the social and cultural context of the community. Similarly, Lampung people have a culture and customs that refer to the Kuntara Raja Niti book as a guide in behavior.

⁶⁹ Ahmad Kholiyudani and Muhammad Hipni, "TRADISI SANGKOLAN DI DESA KARDULUK: PERSPEKTIF ANTROPOLOGI TERHADAP FIQIH ISLAM," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 6, no. 2 (2024). <https://doi.org/10.20885/ijjis.vol.6.iss2.art6>.

⁷⁰ Laura Nader and Harry F. Todd, eds., *The Disputing Process—Law in Ten Societies* (Columbia University Press, 1978). <https://doi.org/10.7312/nade93322>.

⁷¹ Laura Nader, *The Disputing Process in Ten Societies* (United States: Columbia University Press, 1978).

The Sebambangan tradition is an unwritten customary legal identity and is carried out based on family principles and various deliberations. Although unwritten, Sebambangan marriages have legal force and are binding for indigenous communities. The majority of Lampung indigenous people choose the Sebambangan tradition as an alternative solution to marriage problems including the high cost of traditional wedding processions. Furthermore, this Sebambangan tradition is part of the legal adjustment to the practices carried out by the community.

Juridically, the Sebambangan tradition aligns with Indonesian positive law and can be associated with community-based dispute resolution practices. This makes it a viable alternative dispute resolution method, emphasizing family-based conflict resolution to achieve peace. Mediation in Sebambangan adheres to Indonesia's material legal framework, as outlined in Article 1338 of the Civil Code and Articles 1851 to 1864 of the Civil Code concerning Peace. Thus, dispute resolution in the Sebambangan tradition makes it an alternative dispute resolution in a conflict with family principles, fostering peace and contributing to legal reform both in Indonesia and beyond. The findings of this research offer valuable insights for policymakers in developing a dispute resolution model that is more responsive to the needs of local communities.

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All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.