

# THE EFFECTIVENESS OF MECHANISMS AND PROCEDURES FOR RESOLVING CUSTOMARY LAND DISPUTES BY ADAT JUDGES IN TANA TORAJA

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## Abstract

*This study examines the mechanisms and procedures for resolving customary land disputes by customary judges in Tana Toraja and the factors influencing their effectiveness. Through normative and empirical approaches, the study found that the dispute resolution process involves mediation, deliberation, and customary court sessions that emphasize local values. Factors such as community trust in customary judges, adherence to customary norms, local government support, availability of resources, and integration with the national legal system significantly affect the effectiveness of dispute resolution. The impact of globalization, customary law education, and active community participation are also important determinants. In conclusion, the customary land dispute resolution mechanism in Tana Toraja is effective in maintaining social harmony and community stability, but further harmonization with the national legal system and sustained support from various stakeholders are required.*

*Keywords: customary land disputes, customary judges, customary law.*

## 1. Introduction

Indonesia, as a country rich in cultural diversity and traditional customs, has various legal systems that are observed within its communities. One legal system that remains extant and respected to this day is customary law, which encompasses various aspects of indigenous people's lives, including the resolution of customary land disputes. Tana Toraja, a region in South Sulawesi, is renowned for its strong traditional customs and the continued use of customary courts to resolve various disputes, including land disputes.

Customary land disputes in Indonesia, particularly in Tana Toraja, are complex phenomena that often require different approaches compared to general land disputes. Customary land holds not only economic value but also significant social and cultural value for the local indigenous community. The resolution of customary land disputes in Tana Toraja heavily involves customary law, administered by customary judges who play a vital role in maintaining harmony and balance within the community.

In the context of Tana Toraja, customary land refers to land owned and managed by the indigenous community based on customary law passed down through generations. The existence of customary land is recognized by Indonesian law, which legitimizes the rights of indigenous communities to manage and resolve their land disputes according to local customary norms. However, conflicts and disputes often arise regarding the ownership and utilization of customary

land, necessitating the intervention of authorized figures within the indigenous community, namely the customary judges.

Customary judges in Tana Toraja play a significant role in resolving customary land disputes through mechanisms and procedures based on customary law. This dispute resolution process typically involves mediation, deliberation, and customary courts led by respected customary judges within the community. This procedure is considered effective as it prioritizes communal values and harmony within society. The uniqueness of this system lies in its ability to absorb and integrate the perspectives of all disputing parties, leading to solutions that are more acceptable to everyone involved.

According to data from the Central Bureau of Statistics (BPS), there has been an increase in the number of reported customary land disputes in Tana Toraja in recent years. In 2020, more than 50 customary land disputes were resolved through customary mechanisms. This highlights the importance of the role of customary judges in resolving land conflicts and maintaining social stability within the indigenous community. Furthermore, BPS reports that the percentage of land disputes resolved through customary means has seen a significant increase year by year, indicating high public trust in these customary mechanisms.

This study not only focuses on the dispute resolution mechanisms but also on the formal and informal procedures applied by customary judges. Informal processes, such as deliberation and mediation, often serve as initial steps before transitioning to formal customary court proceedings. In many cases, disputes are resolved at this stage without needing to proceed to court. This underscores the importance of a dialogical and persuasive approach in resolving customary land conflicts.

Additionally, the role of customary judges extends beyond dispute resolution to include preventive functions. Through socialization and education about customary norms and the importance of maintaining social harmony, customary judges work to prevent future disputes. Customary judges also have the authority to impose customary sanctions that are educational and restorative, rather than merely retributive, aiming to restore social relationships disrupted by disputes.

However, despite the advantages of dispute resolution mechanisms by customary judges, several challenges must be addressed. One major challenge is the limited formal recognition of customary judges' decisions by the national legal system. Although customary law is acknowledged, its implementation is often hampered by a lack of harmonization between customary law and national law. Furthermore, there are challenges related to human resources, as customary judges often lack formal legal training, which can lead to inconsistencies in the decisions rendered.

This study aims to thoroughly examine the mechanisms and procedures for resolving customary land disputes by customary judges in Tana Toraja. By understanding this process, it is hoped that greater insight can be gained into the role of customary law in resolving land disputes and its contribution to the national legal system in Indonesia. This research also seeks to identify the challenges and opportunities in integrating customary law with the national legal system and provide recommendations for improving the effectiveness of resolving customary land disputes.

## **2. Methodology**

This research employs both normative and empirical legal research methods to examine the mechanisms and procedures for resolving customary land disputes by customary judges in Tana Toraja. The normative approach is used to analyze the relevant legislation and legal literature, while the empirical approach is applied to gather field data through interviews and direct observation.

The normative approach involves analyzing various legal sources, including laws, regional regulations, and court decisions related to customary land and its resolution. A literature review is also conducted to understand the concepts and theories of customary law as well as the role of customary judges in resolving customary land disputes.

The empirical approach is carried out through qualitative methods, collecting primary data from the field. Data collection techniques include in-depth interviews with customary judges, community leaders, and parties involved in customary land disputes in Tana Toraja. Participant observation is also conducted to directly observe the dispute resolution process by customary judges. The data obtained is then analyzed descriptively to describe the mechanisms and procedures applied, as well as the factors influencing the effectiveness of the dispute resolution.

The validity of the data is ensured through source triangulation, which involves comparing and confirming the information obtained from various sources and literature. The results of this research are expected to contribute significantly to understanding the role of customary law in land dispute resolution and to provide recommendations for better integration between customary law and national law in Indonesia.

### **3. Discussion**

#### **A. Mechanisms and Procedures for Resolving Customary Land Disputes Implemented by Customary Judges in Tana Toraja**

The mechanisms and procedures for resolving customary land disputes in Tana Toraja have distinctive characteristics that set them apart from other dispute resolution systems in Indonesia. Customary judges play a crucial role in managing and resolving these disputes by emphasizing local values that have been passed down through generations. The following are the stages of the mechanisms and procedures for resolving customary land disputes in Tana Toraja.

##### **1. Initial Mediation**

The resolution process for customary land disputes in Tana Toraja typically begins with mediation facilitated by the customary judge. This mediation is conducted in the form of a deliberation involving the disputing parties, community leaders, and other community members. The goal of this initial mediation is to reach a peaceful agreement without proceeding to the customary court stage. This mediation strongly emphasizes the principle of consensus through deliberation, where each party is given the opportunity to express their views.

##### **2. Evidence and Witness Gathering**

If the initial mediation does not result in an agreement, the customary judge will proceed by gathering evidence and hearing testimonies from relevant witnesses. The evidence collected may include land ownership documents, oral testimonies, and other physical evidence that

supports each party's claims. This evidence gathering is conducted carefully to ensure that each claim can be properly verified.

### **3. Customary Court Hearing**

Once the evidence and witnesses have been gathered, the customary judge will hold a customary court hearing. This hearing is usually conducted at a location agreed upon by all parties and is presided over by a respected customary judge within the community. The customary court serves as a forum to hear arguments from both sides, examine the evidence, and listen to testimonies. During the hearing, the customary judge will consider all the evidence and testimonies collected to make a fair decision.

### **4. Decision and Sanctions**

The decision made by the customary judge is based on the prevailing customary norms and principles of justice accepted within the community. This decision not only emphasizes the legal aspects but also considers the social and cultural aspects present in the Tana Toraja society. If one party is found to have violated customary law, the customary judge may impose educational and restorative sanctions, such as an apology, land restitution, or specific compensation.

### **5. Implementation of the Decision**

After the decision is made, the customary judge is responsible for ensuring that the decision is properly implemented. The implementation of the decision is monitored by community leaders and members to ensure that each party complies with the decision. In many cases, the implementation of customary decisions is more effective due to the legitimacy and trust the community has in the customary system.

### **6. Conflict Prevention for the Future**

In addition to resolving existing disputes, the customary judge also plays a role in preventing future conflicts. This is done through the socialization of customary norms and educating the community on the importance of maintaining social harmony. Customary judges often hold regular meetings with the community to discuss issues that have the potential to cause disputes and to find solutions before conflicts arise.

The procedures for resolving customary land disputes in Tana Toraja demonstrate that an approach that prioritizes deliberation and collective agreement can be effective in resolving disputes. This also highlights the importance of the role of customary law in maintaining stability and harmony within the community. However, there are challenges in terms of formal recognition by the national legal system, which often hinders the broader implementation of customary decisions.

## **B. Factors Influencing the Effectiveness of Customary Land Dispute Resolution by Customary Judges in Tana Toraja**

The effectiveness of customary land dispute resolution by customary judges in Tana Toraja is influenced by various factors. These factors encompass social, cultural, economic aspects, as well as support from the national legal system. The following is an in-depth analysis of these factors:

### **1. Community Trust in Customary Judges**

One of the key factors influencing the effectiveness of customary land dispute resolution is the level of community trust in customary judges. In Tana Toraja, customary judges are typically chosen based on their wisdom, integrity, and knowledge of customary law. A high level of community trust in the customary judges facilitates the acceptance and implementation of the decisions made. This trust also encourages active community participation in the dispute resolution process, which in turn strengthens the legitimacy of the customary judges.

## **2. Adherence to Customary Norms**

Community adherence to customary norms also plays a crucial role in the effectiveness of land dispute resolution. Customary norms in Tana Toraja regulate various aspects of life, including land ownership and usage rights. When the community generally adheres to these norms, the dispute resolution process can proceed more smoothly. This adherence reflects the strong internalization of customary values in the daily lives of the Toraja people.

## **3. Support from Local Government**

Support from the local government, whether in the form of formal recognition of customary judges' decisions or through the provision of necessary facilities, also significantly impacts the effectiveness of customary land dispute resolution. A local government that supports the role of customary law can provide additional legitimacy to the decisions made by customary judges and ensure that these decisions are respected and implemented.

## **4. Availability of Resources**

The availability of resources, both human and material, is also a critical factor. Customary judges who have access to training and education on both customary and national law tend to be more effective in carrying out their duties. Additionally, material support, such as facilities for holding customary court sessions and resources for mediation, also contributes to the effectiveness of the dispute resolution process.

## **5. Integration with the National Legal System**

The effectiveness of customary land dispute resolution is also influenced by the level of integration between customary law and the national legal system. In Indonesia, although customary law is recognized, there is often a lack of harmony between customary decisions and national legislation. Better integration between the two legal systems can enhance the effectiveness of customary dispute resolution. Efforts towards harmonization can be made through dialogue between the government, legal institutions, and indigenous communities to ensure that customary decisions are recognized and respected by the national legal system.

## **6. Impact of Globalization and Modernization**

Globalization and modernization bring significant changes to the social and economic structures of indigenous communities. These changes can affect the effectiveness of customary land dispute resolution. Modernization tends to introduce new values and practices that may not align with traditional customary norms. Therefore, customary judges need to adapt to these changes without disregarding the fundamental principles of customary law.

## **7. Role of Education and Outreach**

Education and outreach about customary law and the rights of indigenous communities are crucial in enhancing the effectiveness of customary land dispute resolution. Educational and outreach programs organized by the government, NGOs, or educational institutions can help the community understand their rights and the procedures to follow in resolving disputes. This

also helps reduce misunderstandings and conflicts that may arise due to a lack of knowledge about customary law.

#### **8. Active Community Participation**

Active participation from all community members in the dispute resolution process is vital. This participation is not only in the form of physical presence at customary court sessions but also in the form of moral and social support. When the community is actively involved, they feel ownership and responsibility for the process and outcomes of the dispute resolution, thereby increasing acceptance and compliance with the decisions made by the customary judges.

The effectiveness of customary land dispute resolution by customary judges in Tana Toraja is influenced by various interacting factors. Community trust, adherence to customary norms, government support, resource availability, integration with the national legal system, the impact of globalization, education, and active community participation are some of the main factors that determine the success of this dispute resolution mechanism. Understanding and effectively managing these factors can enhance the contribution of customary law in resolving land disputes and maintaining harmony within indigenous communities.

#### **4. Conclusion**

The mechanisms and procedures for resolving customary land disputes applied by customary judges in Tana Toraja have demonstrated significant effectiveness in resolving land conflicts within the indigenous community. The resolution process, which emphasizes mediation, deliberation, and customary court sessions, allows for solutions that are accepted by all disputing parties. Decisions made by customary judges, based on customary norms and principles of local justice, have successfully maintained harmony and social stability in Tana Toraja society.

The factors influencing the effectiveness of customary land dispute resolution by customary judges in Tana Toraja are diverse. Community trust in the customary judges, adherence to customary norms, support from the local government, availability of resources, and integration with the national legal system all play important roles in determining the success of dispute resolution. Additionally, the influence of globalization and modernization, education and outreach on customary law, as well as active community participation, also contribute significantly to the effectiveness of this dispute resolution mechanism.

The success of resolving customary land disputes by customary judges in Tana Toraja demonstrates that a local approach that prioritizes deliberation and collective agreement can be effective in resolving land conflicts. However, to further enhance effectiveness, there needs to be harmonization between customary law and national law, along with sustained support from various stakeholders, including the government and educational institutions. In this way, the role of customary law in resolving land disputes can continue to be strengthened and contribute positively to the national legal system in Indonesia.

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