

The Uniqueness of Mediation as an Alternative Dispute Resolution Method Outside the Court in Resolving Various Customary Disputes in Simalungun Regency

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Abstract

Mediation as an alternative dispute resolution outside the court has its own uniqueness in resolving various customary disputes. Generally, when a dispute arises between parties, the community tends to be more familiar with resolving disputes through customary means, or what they refer to as mediation. Mediation is a term commonly used by the community when disputes occur. Thus, mediation as an alternative dispute resolution holds a unique position among the people, particularly in Simalungun Regency, in resolving various customary disputes without the involvement of the courts. This article will further discuss the uniqueness of mediation in resolving customary disputes, the advantages and disadvantages of applying mediation as an alternative dispute resolution outside the court in Simalungun Regency. The importance of establishing mediation as an effective method for alternative dispute resolution outside the court for various customary disputes lies in its easy procedures, active involvement of the disputing parties, and respect for customary values and norms in maintaining social harmony and prioritizing win-win solutions. Moreover, mediation not only provides a practical and efficient solution but also helps to strengthen social relationships and preserve local cultural continuity. Therefore, mediation is considered a suitable and beneficial means for resolving customary disputes, offering a more familial approach compared to court resolution processes.

1. Introduction

In the legal process that upholds the law, if non-litigation or out-of-court resolution methods, which align with the will of the community, are neglected, it fails to embody the values of Pancasila, leading to logical consequences that could affect national development. Over the past 11 years, from 2004 to 2015, there have been 1,772 recorded conflicts triggered by issues related to ethnicity, race, religion, and specific groups in Indonesia.

In Indonesia, cultural diversity and traditional customs are invaluable assets. Each region has its unique traditions and norms, which often serve as the basis for dispute resolution within the community. However, in practice, resolving disputes through formal channels such as courts often does not align with the customary values held by local communities. Therefore, mediation, as a form of alternative dispute resolution outside the court, becomes an alternative method, particularly in handling cases that involve customary norms.¹

Mediation as an alternative dispute resolution outside the court provides space for disputing parties to reach an agreement in a familial manner, avoiding lengthy litigation processes and high costs. The mediation process allows for deeper and more personal meetings between the disputing parties, which often cannot occur in litigation or court proceedings. Mediation as a non-litigation dispute resolution method is unique in its ability to easily accommodate the interests of the disputing parties and to adapt to the prevailing cultural and customary contexts. This makes mediation particularly well-suited for resolving customary disputes, where the values of togetherness and deliberation serve as the main foundation.²

In the context of customary disputes, mediation not only serves as a mechanism for resolving conflicts but also as a means to maintain social harmony and preserve cultural values. The success of mediation is not only measured by the achievement of an agreement but also by its ability to uphold and respect existing customs. Therefore, understanding the uniqueness of mediation in resolving customary disputes becomes important, as it can provide new insights into developing locally-informed dispute resolution approaches.

In many cases, mediation allows parties to find more consensual solutions that are often not available through litigation. Mediation also provides an opportunity for the disputing parties to maintain good relationships in the future, which is crucial for preserving culture and customs that strongly emphasize togetherness and deliberation.

¹ Edo Arya Prabowo, 'Studi Literatur: Efektivitas Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis Di Luar Pengadilan', *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara*, 1.4 (2023), 277–287–287.

² Agnes Grace Aritonang, 'Peran Alternatif Penyelesaian Sengketa Di Luar Pengadilan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup', *CREPIDO*, 3.1 (2021), 1–12
<<https://doi.org/10.14710/crepido.3.1.1-12>>.

For example, in a customary dispute resolution handled by customary elders, such as the conflict between indigenous communities and a British plantation company in Kalimantan, the resolution was led by customary elders. When the villagers of Terusan discovered that the contractor's bulldozers had destroyed about 100 hectares of their forest and fields and disturbed burial grounds, a customary law hearing was held, and the community made serious demands. The decision, according to local customary law, required the HSL company to pay a symbolic fine for the damage to the forest and burial grounds. This fine included the delivery of traditional houses, musical instruments, and antique vases, as well as food and drinks – valued at 150 million rupiah in cash – and HSL agreed to pay the fine.³

Furthermore, disputes or cases experienced by the people of Maluku are often brought to informal mechanisms, including civil cases – particularly land disputes (land boundaries and inheritance) – and minor criminal cases such as fights between youths in the community, theft, and minor assaults. According to local customs, the raja or village head holds a central position and plays a significant role in resolving these informal disputes. The raja mediates and helps resolve various issues and cases within the community, both civil and criminal. The raja also coordinates with the police in cases of minor criminal offenses or land disputes. In the Maluku community, the raja is known as the final arbiter in disputes or cases that are difficult to resolve.

In addition, regarding disputes in Simalungun Regency, such as the one in Silau Paribuan between disputing parties, the resolution was carried out in the Nagori (village) through the role of the Pangulu (village head), where the parties agreed and documented their agreement in a Joint Declaration to establish peace regarding the land boundary issue. The outcome of the peace agreement included one party agreeing to remove the oil palm trees that had crossed the land boundary, while the other party retained ownership of their rice crop until it could be harvested, without seeking compensation for the issue. However, one party agreed to provide pako-pako money to the other party. In such disputes, resolution based on the principles of deliberation and consensus is necessary to achieve harmony in community and national life, fostering justice, peace, welfare, and happiness in the midst of rapid societal development and change.⁴

In relation to dispute resolution in Simalungun Regency, when conflicts arise among the community, they are typically resolved not through the courts, but through deliberation processes rooted in traditional methods practiced by

³ Abdurahman Sidik and Elvi Soeradji, 'Implementasi Singer (Denda Adat) Sebagai Alternative Penyelesaian Perkara Pidana Melalui Konsep Restorative Justice Pada Masyarakat Adat Dayak Bakumpai Di Kabupaten Barito Utara', *Action Research Literate*, 8.6 (2024) <<https://doi.org/10.46799/ar.v8i6.405>>.

⁴ Abdul Rahman Maulana Siregar and Abdul Razak Nasution, 'Hukum Dalam Pendidikan Islam: Sebuah Metode Penyelesaian Sengketa Di Luar Pengadilan Sebagai Alternatif Penyelesaian Sengketa Antar Masyarakat Nagori Di Kabupaten Simalungun', *Edukasi Islami: Jurnal Pendidikan Islam*, 12.001 (2023).

earlier generations. This approach is deeply influenced by the strong sense of familial ties that remains prevalent in the local community.

The Unitary State of the Republic of Indonesia will remain intact as a free and sovereign nation if its people continue to uphold and cultivate the values of unity (the third and fourth principles of Pancasila). These values of unity are implemented by fostering the spirit of "Diversity and deliberation in resolving disputes among communities to achieve the unity of Indonesia." In Indonesian society, particularly in dispute resolution, legal pluralism is observed, where not only statutory law applies, but also customary law, which is maintained as a behavioral guide and can play an effective role.

Mediation is unique in its respect for the local values and norms within the community. Dispute resolution through mediation does not only focus on fulfilling rights and obligations but also considers other aspects such as honor, dignity, and the balance of customs and culture. These aspects are often overlooked in litigation processes. This sensitivity to customary values makes mediation more accepted by the community, as its resolution methods align more closely with the living law within the society.⁵

In various disputes involving conflicting parties, the issues that arise are not taken to court but are resolved through mediation and deliberation processes conducted by the parties involved. This is largely due to the strong sense of familial ties, and the influential roles played by village heads, traditional leaders, religious figures, community leaders, and other significant parties within the local community.⁶

Mediation as an alternative dispute resolution method holds a unique significance for the community, particularly in Simalungun Regency, in resolving various disputes without involving the court. Further discussion will explore the uniqueness of mediation in resolving customary disputes, the advantages and disadvantages of using mediation as an alternative dispute resolution method outside the court in handling various customary disputes in Simalungun Regency.

It is important to establish mediation as an effective method for resolving customary disputes outside the court due to its simple procedures, active involvement of the disputing parties, and respect for customary values and

⁵ Apriliani Kusnadi and Devi Siti Hamzah Marpaung, 'Efektifitas Penyelesaian Sengketa Konsumen Melalui Proses Di Luar Pengadilan (Melalui Jalur Mediasi)', *Wajah Hukum*, 6.1 (2022), 80 <<https://doi.org/10.33087/wjh.v6i1.710>>.

⁶ Muhammad Rizaldi, Dian Aries Mujiburohman, and Dwi Wulan Pujiriyani, 'Mediasi Sebagai Alternatif Penyelesaian Sengketa Tumpang Tindih Tanah Antara Hak Guna Usaha Dan Hak Milik', *Widya Bhumi*, 3.2 (2023), 137–51 <<https://doi.org/10.31292/wb.v3i2.62>>.

norms in maintaining social harmony, while prioritizing a win-win solution for all parties involved.⁷

2. Research Method

This research is descriptive in nature, defining and assessing the difficulties that will be presented, and is conducted using a normative juridical approach and an empirical juridical approach, particularly through field research. The normative juridical approach involves studying literature or relying solely on secondary data, with the aim of addressing the issue by examining the relevant laws and regulations, as well as literature pertinent to the research theme. This includes legal principles, legal systematics, legal history, sources of law, and theoretical and scientific regulations that can analyze the issues discussed and supplement the data obtained. The research utilizes both primary and secondary data, specifically: Primary data, which is information obtained directly from the field about the issues to be discussed through interviews.⁸ Secondary data is collected through a literature study of the research materials used, which include primary, secondary, and tertiary legal materials, as follows: Primary legal materials: These are authoritative, meaning they have binding authority and are the fundamental elements, such as laws and regulations. Secondary legal materials: These are legal documents that explain primary legal elements, such as books on out-of-court dispute resolution, research findings, and academic works. Tertiary legal materials: These include magazines, the internet, legal dictionaries, and other sources that provide guidance and explanations for primary and secondary legal texts. Data analysis is conducted qualitatively by collecting data, tabulating, organizing, systematizing, analyzing, and relating it to the applicable regulations, incorporating expert legal opinions, and then drawing conclusions using a deductive method.⁹

3. Results and Discussion

Advantages and Disadvantages of Mediation as an Alternative for Resolving Customary Disputes in Simalungun

In Law No. 6 of 2014 on Villages, Article 103 regulates the authority of Customary Villages to resolve legal issues of their citizens as recognized by the state. It emphasizes that the authority based on customary rights is a living legacy and community initiative as mentioned in Article 19 Letter a, which includes:

⁷ Firda Ainun Fadillah and Saskia Amalia Putri, 'Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika)', *Jurnal Ilmu Manajemen Terapan*, 2.6 (2021), 744–56 <<https://doi.org/10.31933/jimt.v2i6.486>>.

⁸ Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel* (Yogyakarta: Mitra Buana Media, 2020).

⁹ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Perss, 2020).

1. Regulation and Implementation of Government: Based on the original structure.
2. Management of Customary Land: Regulation and administration of customary or communal lands.
3. Preservation of Socio-Cultural Values: Preservation of the social and cultural values of the Customary Village.
4. Resolution of Customary Disputes: Resolving disputes based on applicable customary law within the village, in accordance with human rights principles, with a focus on consensus-based resolution.
5. Conducting Peace Trials: Holding peace hearings in the Customary Village court according to legal regulations.
6. Maintenance of Public Order: Maintaining peace and order in the Customary Village based on the applicable customary law.
7. Development of Customary Legal Life: Developing customary legal life in accordance with the socio-cultural conditions of the Customary Village community.¹⁰

According to the provisions in Article 26 Paragraph (4) letter (k) of Law No. 6 of 2014 on Villages, the Pangulu or village head is obligated to resolve community disputes within the village. Additionally, Article 103 letters (d) and (e) specify that the resolution of customary disputes should be based on applicable customary law within the village, in accordance with human rights principles, and prioritize settlement through deliberation, as well as the organization of peace hearings in the Customary Village court according to legal regulations.

In addition to Law No. 6 of 2014 on Villages, which regulates the resolution of disputes among communities, this is further emphasized by Regional Regulation of Simalungun Regency No. 2 of 2016 on Nagori. The Pangulu is authorized to resolve and reconcile disputes or conflicts within the Nagori as stipulated in Article 24 paragraph (4) letter (k). This regulation aligns with Law No. 6 of 2014 on Villages. According to the Village Law in Article 26 paragraph (4) letter (k), in carrying out their duties, the Pangulu is obligated to resolve community disputes within the village.¹¹

Legally, under Article 18B of the 1945 Constitution of the Republic of Indonesia, the state recognizes and respects customary law communities and their traditional rights as long as they remain alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law. When the state acknowledges customary law

¹⁰ Mufid Mufid, 'Mediasi Dalam Hukum Adat', *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 2.2 (2020), 128 <<https://doi.org/10.19105/al-manhaj.v2i2.3490>>.

¹¹ Zainul Arifin and others, 'Peran Perangkat Desa Terhadap Penyelesaian Sengketa Lingkungan Hidup Dalam Perspektif Green Constitution', *Lex Librum : Jurnal Ilmu Hukum*, 6.2 (2020), 158 <<https://doi.org/10.46839/ljih.v6i2.186>>.

communities and their traditional rights as long as they remain alive, communities residing in a village/area have the rights of origin and traditional rights to regulate and manage local interests and contribute to realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia.

Textually, it is clearly stated regarding "the resolution of customary disputes and peace trials in customary village courts," which implies that customary village courts have been revitalized to resolve customary disputes based on the applicable customary law in the Customary Village, in accordance with human rights principles, with an emphasis on resolving issues through deliberation.¹²

In Simalungun Regency, when disputes arise between parties, the community tends to prefer resolving disputes through customary processes or, as commonly referred to, mediation. Mediation is a term used by the community to describe the process of resolving disputes. In this context, mediation is a unique alternative for resolving various customary disputes without the involvement of the court system.

Disputes among community members typically involve issues such as theft, receiving stolen goods, fights, assault, harassment attempts, property damage, damage caused by pets, divorce, domestic violence, land boundary disputes, debt settlement, and inheritance.

Mediation as an alternative for resolving disputes outside the court has several advantages, making it an effective choice, especially in the context of resolving customary disputes. One of the main advantages is the simplicity of the process, where the disputing parties have the freedom to shape the mediation according to their needs and cultural values. This process is not constrained by rigid legal rules as in litigation, allowing for more equitable solutions that align with customary norms. Additionally, mediation often provides a more effective and quicker resolution compared to court proceedings, which can be time-consuming and costly.¹³

Another advantage of mediation is that the parties are encouraged to negotiate and seek a joint solution rather than facing each other as in litigation. This is crucial in resolving customary disputes, where social relationships and interactions among community members are highly valued. Mediation allows parties to maintain good relationships after the dispute is resolved, which is often a priority in customary communities. In the long term, this approach can prevent prolonged conflicts and ensure stable and sustainable social relationships.

The distance or difficulty of access also presents an advantage in choosing mediation as an alternative dispute resolution outside the court for communities in Simalungun Regency. For example, poor road conditions, slippery or bumpy

¹² Sri Anggraini Kusuma Dewi and Rezky Panji Perdana Martua Hasibuan, 'Legitimasi Kedudukan Kepala Desa Dalam Penyelesaian Sengketa Agraria', *Jurnal Kajian Pembaruan Hukum*, 1.2 (2021), 309 <<https://doi.org/10.19184/jkph.v1i2.24474>>.

¹³ Arina Novizas Shebubakar and Marie Remfan Raniah, 'Hukum Tanah Adat/Ulayat', *Jurnal Magister Ilmu Hukum*, 4.1 (2021), 14 <<https://doi.org/10.36722/jmih.v4i1.758>>.

roads, difficult or distant access to police stations, prosecutors' offices, and courts, as well as other factors like bad weather, can be obstacles. In contrast, with mediation, the disputing parties can choose the location or place for resolving the dispute, such as at the village office, the home of one of the parties, or a customary house, among other options.¹⁴

In addition, the advantage of implementing mediation is the expected emergence of a win-win solution for the disputing parties, which is a dispute resolution where all parties feel that they have won and there is no win-lose outcome. The community adheres to and implements the results of mediation or deliberation because they believe that reconciling is the best way to end the dispute, compared to resolving disputes through court which involves very high costs and is perceived as unfair because court decisions prioritize legal certainty over justice.

The fulfillment of reconciliation from choosing mediation as an alternative dispute resolution outside the court includes apologies, advice and warnings, compensation, wages or *pago-pago*, traditional ceremonies, cleaning of places of worship, schools, and roads, providing meals, or expulsion from the village, which are the benefits of the resolution and based on the agreement of the parties without coercion. The purpose of these sanctions is to correct behavior and serve as a warning to the offender not to repeat the offense in the future.

However, despite the many advantages of mediation, there are also some weaknesses that need to be considered. One major weakness is that the success of mediation heavily relies on the willingness and good faith of the disputing parties to resolve the dispute. If one party is unwilling to cooperate or does not have a strong commitment to reach an agreement, mediation may fail and the dispute remains unresolved.¹⁵

Another weakness is the possibility of an imbalance of power between the disputing parties. In some disputes, the stronger or more influential party within the customary community might leverage their position to influence the outcome of mediation, thereby preventing justice from being achieved. This imbalance can hinder reaching a fair agreement and disadvantage the weaker party. Therefore, the role of a neutral party or mediator is crucial to ensure that the mediation process is conducted fairly and without pressure or intimidation from any side.

Overall, despite its weaknesses, mediation remains a valuable solution and alternative for resolving customary disputes, especially when used appropriately and with support from all parties involved, such as the community, disputing parties, village heads, sub-district heads, customary leaders, religious leaders, community figures, or other stakeholders. By understanding its weaknesses,

¹⁴ Depri Liber Sonata and others, 'Optimalisasi Peran Mediator Desa Dalam Penyelesaian Sengketa Di Desa Hanuran Kecamatan Teluk Pandan Kabupaten Pesawaran', *Jurnal Sumbangsih*, 3.1 (2022).

¹⁵ Alexander Alexander, 'Alternative Dispute Resolution Dalam Mediasi Sengketa Hukum Adat Di Papua', *Jurnal Syntax Transformation*, 2.09 (2021), 1215–24 <<https://doi.org/10.46799/jst.v2i9.325>>.

mediation can become a more effective alternative for dispute resolution that aligns with local values and culture compared to court resolutions. This makes mediation an important mechanism in efforts to maintain social relationships and preserve customs within a pluralistic society.¹⁶

The reasons or importance of choosing mediation as a non-litigious dispute resolution method in the community of Simalungun Regency are as follows:

1. There is a desire from the community and agreement among the disputing parties for a dispute resolution mechanism outside the court that fulfills a sense of justice within the community.
2. The procedure for resolving disputes outside the court is simple and involves the participation of local community leaders.
3. It does not require significant costs or a long time.
4. The distance or inaccessibility from the village to the police station, court, or other institutions makes the community or parties reluctant to choose litigation.
5. The involvement and participation of parties in the decision-making process regarding the dispute in the community.
6. Maintaining good relations or familial ties within the community.
7. The sanctions imposed are not burdensome and are in accordance with the agreement of the disputing parties.¹⁷

When disputes occur within the community, resolution is carried out through mediation as the primary option, while resorting to the police and courts is considered a last resort. Dispute resolution outside the court through mediation is not dependent on legislation created by the legislature but rather based on customs that have long been practiced and work well within the community. This process does not require formal procedures like those in court.

Uniqueness of Mediation as an Alternative for Resolving Customary Disputes in Simalungun Regency

The judiciary is not always the best means for resolving disputes between community members. Resolving disputes through the court system can also damage familial relationships, disrupting what was once a peaceful, harmonious, and serene environment. For this reason, the resolution of disputes within communities should not rely solely on the judiciary but also involve effective non-litigious dispute resolution methods, such as those at the village level, as they offer advantages not found in the judicial system.

¹⁶ Kadek Idy Rosy, Dewa Gede Sudika Mangku, and Ni Putu Rai Yulianti, 'Peran Mediasi Dalam Penyelesaian Sengketa Tanah Adat Setra Karang Rupit Di Pengadilan Negeri Singaraja Kelas 1B', *Ganesha Law Review*, 2.2 (2021), 155–66 <<https://doi.org/10.23887/glr.v2i2.207>>.

¹⁷ Megawati Ihyamuis, Farida Patittingi, and Kahar Lahae, 'Alternatif Penyelesaian Sengketa Pertambahan: Studi Sengketa Tanah Antara Masyarakat Karunsi'e Dongi Dan PT Vale Indonesia Tbk', *Amanna Gappa*, 30.1 (2022), 1–14.

Dispute resolution can broadly be categorized into two methods: litigation (court-based) and non-litigation (out-of-court). Each community or disputing party has its own way of reaching an agreement on the choice of dispute resolution. The method chosen for resolving a particular dispute will have consequences for both the parties involved and the broader community. Therefore, when selecting the most appropriate mechanism, parties need to consider the nature of the dispute, their expectations for resolution, the sanctions involved, and the costs that may be borne by the parties.¹⁸

Mediation as a dispute resolution mechanism has its own uniqueness, especially in resolving customary disputes. One of these is the familial approach. In mediation, all parties involved have an equal opportunity to express their views, interests, and desires. This aligns with the principle of deliberation, which is often a foundation in many regions of Indonesia. By involving all parties in the decision-making process, mediation can produce solutions that are fairer and accepted by all involved, thereby preventing ongoing disputes.

Another unique aspect is the ability to adapt to local norms and values. Unlike court processes, which often adhere to general and uniform legal rules, mediation can be tailored to local wisdom. In mediation, parties can adjust to the traditions, customs, and norms prevalent in their community. This allows for dispute resolution that is not only legally valid but also in line with the values respected by the community. Mediation addresses not only legal issues but also maintains harmony and social relationships.

Additionally, mediation often involves respected customary leaders or community leaders as mediators. Their presence provides additional legitimacy to the mediation process and the outcomes achieved. Customary leaders typically have deep knowledge of local traditions and norms, as well as moral authority recognized by the community. By involving these leaders, mediation can enhance the sense of justice and trust among the community, as it is perceived to align with cherished values. This trust makes mediation more effective and sustainable in resolving customary disputes.¹⁹

The uniqueness of mediation also lies in its peaceful approach. The mediation process emphasizes dialogue and cooperation between disputing parties, unlike the often adversarial approach seen in courts. In mediation, parties are encouraged to work together to find mutually beneficial solutions, rather than facing off to prove who is right and who is wrong. This approach aligns well with customary cultures that emphasize maintaining good relationships among

¹⁸ Gunawan Djajaputra, Endang Pandamdari, and Endyk M. Asror, 'Analisis Hak Atas Tanah Dalam Sengketa Kepemilikan Tanah Beserta Penyelesaiannya', *Synotic Law: Jurnal Ilmu Hukum*, 1.1 (2022), 45–56 <<https://doi.org/10.56110/sl.v1i1.4>>.

¹⁹ Uswatun Hasanah, Afdolul Anam, and Mohammad Hamzah, 'Kekuatan Mengikat Mediasi Penyelesaian Sengketa Waris Masyarakat Madura', *Arena Hukum*, 13.02 (2020), 300–313 <<https://doi.org/10.21776/ub.arenahukum.2020.01302.6>>.

community members. By resolving disputes peacefully, mediation helps prevent fragmentation and ensures the sustainability of social relationships within the community.

Overall, the uniqueness of mediation in dispute resolution lies in its ability to bridge positive law with local traditions. Mediation allows for dispute resolution that is not only formal but also fair and in line with local values. By combining legal principles with local wisdom, mediation becomes an effective alternative for maintaining a balance between change and preservation within the community. This makes mediation a unique and valuable alternative to court-based dispute resolution, especially in addressing disputes within culturally and traditionally diverse communities.²⁰

In general, in Simalungun Regency, when a dispute occurs, the affected parties can follow these procedures or mechanisms for dispute resolution:

1. If a dispute arises, the affected parties can report it to the Gamot or the Pangulu.
2. Upon receiving a report from the Gamot or from the victim, the Pangulu should promptly schedule a resolution meeting by inviting the Gamot, the Nagori Secretary, and the Maujana Nagori. This meeting is usually held at the Pangulu's office, the village hall, or at the homes of the parties involved, according to what has been agreed upon by the parties.²¹

Before the dispute resolution is carried out, the Pangulu or Gamot usually approaches the parties involved to understand the issues and reach a mutual agreement for a peaceful resolution. During the dispute resolution process, the parties are represented by witnesses, who are usually from each family. The resolution is conducted by the Pangulu with the involvement of Nagori officials such as Gamot, Maujana Nagori, customary leaders, community leaders, and religious leaders. The process is conducted formally and openly, except for sensitive disputes like divorce and domestic violence. Throughout the process, the Pangulu presents the issues to the parties involved, and if there are witnesses who know the details of the problem, they are allowed to provide testimony.

The Pangulu also provides an opportunity for parties such as Gamot, Maujana Nagori, as well as customary leaders, community leaders, and religious leaders to propose solutions or alternatives for dispute resolution. Together with the involved parties, the Pangulu conducts deliberations to determine the terms of reconciliation, which can be given or decided either orally or in writing. If written, it will be in the form of a Statement Letter, Agreement Letter, or Reconciliation Document. Once the parties agree on the terms of reconciliation,

²⁰ Herma Diana and Mastriati Hermala Dewi, 'Analisis Penyelesaian Sengketa Internasional Wilayah Kepulauan Indonesia (Studi Kasus Kepulauan Natuna, Sipadan Dan Ligitan)', *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)*, 4.1 (2024), 345–54 <<https://doi.org/10.36908/jimpa.v4i1.371>>.

²¹ Rahmi Situmorang and Amiruddin Ketaren, 'Konflik Perebutan Lahan Perkebunan PTPN IV Dengan Masyarakat Desa Silampuyang Kecamatan Siantar Kabupaten Simalungun', *Jurnal Sosiologi Dialektika Sosial*, 7.2 (2022), 111 <<https://doi.org/10.29103/jsds.v1i2.5119>>.

the Pangulu will instruct the disputing parties to implement the reconciliation and arrange compensation for any damages incurred, which will then be formalized in the form of a Statement Letter, Agreement Letter, or Reconciliation Document.²²

If either or both parties do not agree with the results of the Statement Letter, Agreement Letter, or Reconciliation Document, they can submit the dispute to the Police or Court based on those documents. The reconciliation results and their copies are provided to each party and kept by the Pangulu. Based on the reconciliation results, either or both parties may be subjected to sanctions according to the actions taken, with the severity of the sanctions depending on the type of dispute.

Sanctions typically include apologies, compensation, providing meals, or social sanctions such as cleaning places of worship, schools, or roads. The implementation of sanctions from the reconciliation decision is carried out through deliberation after announcing the agreement results and depends on the nature of the dispute. Some sanctions can be immediately implemented and accepted by the parties, while others are carried out at a later time.

To address disputes arising in community life, various dispute resolution mechanisms are often developed, tailored to the living laws of the community or the mechanisms used by previous communities. These mechanisms range from family deliberations, mediation involving third parties such as village heads, sub-village heads, religious leaders, customary leaders, community leaders, or other trusted parties, to the use of customary law that relies on traditions and cultural norms as guidelines for dispute resolution. Through these mechanisms, communities aim to resolve disputes fairly and peacefully, strengthen relationships within the community, and ensure the continuation of peaceful relations and social balance.²³

4. Conclusion

Mediation as an alternative dispute resolution outside the court has several advantages, making it an effective option, especially in the context of customary dispute resolution. One of the main advantages is its simplicity; it is not constrained by rigid legal rules like litigation, allowing for fairer solutions tailored to prevailing customary norms. Additionally, mediation is quicker and less costly compared to litigation. Another benefit is that the parties are

²² Elizabeth Nela Sari, Muhammad Yamin, and Edy Ikhsan, 'Peran Dalihan Natolu Dalam Penyelesaian Sengketa Tanah Hak Ulayat Untuk Pengadaan Kepentingan Umum Di Kabupaten Humbang Hasundutan', *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah*, 3.2 (2022).

²³ Irmawan Susastra and Tri Reni Novita, 'Penyelesaian Perselisihan Sengketa Tanah Antara Masyarakat Kotari Dengan Pihak Perusahaan PT. SRA Kotari Kecamatan Kotari Kabupaten Serdang Bedagai', *Jurnal Hukum Dan HAM Wara Sains*, 2.04 (2023), 267–83 <<https://doi.org/10.58812/jhhws.v2i04.300>>.

encouraged to negotiate and find a joint solution rather than facing off against each other as in litigation. Mediation also accommodates situations where geographical distance or difficult access is an issue and can lead to a win-win solution where all parties feel they have achieved a satisfactory outcome without a winner-loser dynamic. The results can include apologies, advice and reprimands, compensation, customary ceremonies, cleaning places of worship, schools, and roads, providing meals, or even expulsion from the village, all based on mutual agreement without coercion.

However, mediation has some weaknesses. Its success largely depends on the willingness and good faith of the disputing parties. If one party is unwilling to cooperate or lacks a strong commitment to reach an agreement, mediation may fail and the dispute remains unresolved. Another drawback is the potential imbalance of power between the parties involved. Overall, despite these weaknesses, mediation remains a highly valuable solution and alternative for resolving customary disputes, particularly when implemented properly with support from the community, the disputing parties, village heads, sub-village heads, customary leaders, religious leaders, community leaders, or other involved parties.

Overall, the uniqueness of mediation in dispute resolution lies in its ability to bridge positive law with local traditions. Mediation allows for dispute resolution that is not only formal but also fair and aligned with local values. By integrating legal principles with local wisdom, mediation becomes an effective alternative for maintaining a balance between change and preservation within a community. This makes mediation a unique and valuable out-of-court dispute resolution option for resolving conflicts in diverse cultural and traditional settings.

To address disputes arising in community life, communities themselves often develop various dispute resolution mechanisms adapted to the living laws or practices of previous communities. These range from family deliberations, mediation involving third parties such as village heads, sub-village heads, religious leaders, customary leaders, community leaders, or other trusted parties, to the use of customary law relying on traditions and cultural norms as guidelines for dispute resolution. Through these mechanisms, communities aim to resolve disputes fairly and peacefully, strengthen relationships within the community, and ensure the continuity of peaceful relations and social balance.

References

- Alexander, Alexander, 'Alternative Dispute Resolution Dalam Mediasi Sengketa Hukum Adat Di Papua', *Jurnal Syntax Transformation*, 2.09 (2021), 1215–24 <<https://doi.org/10.46799/jst.v2i9.325>>
Arifin, Zainul, Yunal Laily Mutiari, Irsan Irsan, and Muhammad Syahri Ramadhan, 'Peran Perangkat Desa Terhadap Penyelesaian Sengketa

- Lingkungan Hidup Dalam Perspektif Green Constitution', Lex Librum : Jurnal Ilmu Hukum, 6.2 (2020), 158
<<https://doi.org/10.46839/lljih.v6i2.186>>
- Aritonang, Agnes Grace, 'Peran Alternatif Penyelesaian Sengketa Di Luar Pengadilan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup', CREPIDO, 3.1 (2021), 1-12 <<https://doi.org/10.14710/crepido.3.1.1-12>>
- Dewi, Sri Anggraini Kusuma, and Rezky Panji Perdana Martua Hasibuan, 'Legitimasi Kedudukan Kepala Desa Dalam Penyelesaian Sengketa Agraria', Jurnal Kajian Pembaruan Hukum, 1.2 (2021), 309
<<https://doi.org/10.19184/jkph.v1i2.24474>>
- Diana, Herma, and Mastriati Hermala Dewi, 'Analisis Penyelesaian Sengketa Internasional Wilayah Kepulauan Indonesia (Studi Kasus Kepulauan Natuna, Sipadan Dan Ligitan)', Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA), 4.1 (2024), 345-54
<<https://doi.org/10.36908/jimpa.v4i1.371>>
- Djajaputra, Gunawan, Endang Pandamdari, and Endyk M. Asror, 'Analisis Hak Atas Tanah Dalam Sengketa Kepemilikan Tanah Beserta Penyelesaiannya', Synotic Law: Jurnal Ilmu Hukum, 1.1 (2022), 45-56
<<https://doi.org/10.56110/sl.v1i1.4>>
- Fadillah, Firda Ainun, and Saskia Amalia Putri, 'Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika)', Jurnal Ilmu Manajemen Terapan, 2.6 (2021), 744-56 <<https://doi.org/10.31933/jimt.v2i6.486>>
- Hasanah, Uswatun, Afdolul Anam, and Mohammad Hamzah, 'Kekuatan Mengikat Mediasi Penyelesaian Sengketa Waris Masyarakat Madura', Arena Hukum, 13.02 (2020), 300-313
<<https://doi.org/10.21776/ub.arenahukum.2020.01302.6>>
- Ihyamuis, Megawati, Farida Patittingi, and Kahar Lahae, 'Alternatif Penyelesaian Sengketa Pertambangan: Studi Sengketa Tanah Antara Masyarakat Karunsi'e Dongi Dan PT Vale Indonesia Tbk', Amanna Gappa, 30.1 (2022), 1-14
- Irwansyah, Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel (Yogyakarta: Mitra Buana Media, 2020)
- Kusnadi, Apriliani, and Devi Siti Hamzah Marpaung, 'Efektifitas Penyelesaian Sengketa Konsumen Melalui Proses Di Luar Pengadilan (Melalui Jalur Mediasi)', Wajah Hukum, 6.1 (2022), 80
<<https://doi.org/10.33087/wjh.v6i1.710>>
- Mufid, Mufid, 'Mediasi Dalam Hukum Adat', Al-Manhaj: Journal of Indonesian Islamic Family Law, 2.2 (2020), 128 <<https://doi.org/10.19105/al-manhaj.v2i2.3490>>
- Muhaimin, Metode Penelitian Hukum (Mataram: Mataram University Perss, 2020)

- Prabowo, Edo Arya, 'Studi Literatur: Efektivitas Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis Di Luar Pengadilan', *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara*, 1.4 (2023), 277-287-287
- Rizaldi, Muhammad, Dian Aries Mujiburohman, and Dwi Wulan Pujiriyani, 'Mediasi Sebagai Alternatif Penyelesaian Sengketa Tumpang Tindih Tanah Antara Hak Guna Usaha Dan Hak Milik', *Widya Bhumi*, 3.2 (2023), 137-51 <<https://doi.org/10.31292/wb.v3i2.62>>
- Rosy, Kadek Idy, Dewa Gede Sudika Mangku, and Ni Putu Rai Yulianti, 'Peran Mediasi Dalam Penyelesaian Sengketa Tanah Adat Setra Karang Rupit Di Pengadilan Negeri Singaraja Kelas 1B', *Ganesha Law Review*, 2.2 (2021), 155-66 <<https://doi.org/10.23887/glr.v2i2.207>>
- Sari, Elizabeth Nela, Muhammad Yamin, and Edy Ikhsan, 'Peran Dalihan Natolu Dalam Penyelesaian Sengketa Tanah Hak Ulayat Untuk Pengadaan Kepentingan Umum Di Kabupaten Humbang Hasundutan', *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah*, 3.2 (2022)
- Shebubakar, Arina Novizas, and Marie Remfan Raniah, 'Hukum Tanah Adat/Ulayat', *Jurnal Magister Ilmu Hukum*, 4.1 (2021), 14 <<https://doi.org/10.36722/jmih.v4i1.758>>
- Sidik, Abdurahman, and Elvi Soeradji, 'Implementasi Singer (Denda Adat) Sebagai Alternative Penyelesaian Perkara Pidana Melalui Konsep Restorative Justice Pada Masyarakat Adat Dayak Bakumpai Di Kabupaten Barito Utara', *Action Research Literate*, 8.6 (2024) <<https://doi.org/10.46799/ar.v8i6.405>>
- Siregar, Abdul Rahman Maulana, and Abdul Razak Nasution, 'Hukum Dalam Pendidikan Islam: Sebuah Metode Penyelesaian Sengketa Di Luar Pengadilan Sebagai Alternatif Penyelesaian Sengketa Antar Masyarakat Nagori Di Kabupaten Simalungun', *Edukasi Islami: Jurnal Pendidikan Islam*, 12.001 (2023)
- Situmorang, Rahmi, and Amiruddin Ketaren, 'Konflik Perebutan Lahan Perkebunan PTPN IV Dengan Masyarakat Desa Silampuyang Kecamatan Siantar Kabupaten Simalungun', *Jurnal Sosiologi Dialektika Sosial*, 7.2 (2022), 111 <<https://doi.org/10.29103/jsds.v1i2.5119>>
- Sonata, Depri Liber, Muhammad Farid, Andre Arya Pratama, Deni Achmad, Aisyah Muda C., and Octa Ridho Pangestu, 'Optimalisasi Peran Mediator Desa Dalam Penyelesaian Sengketa Di Desa Hanuran Kecamatan Teluk Pandan Kabupaten Pesawaran', *Jurnal Sumbangsih*, 3.1 (2022)
- Susastra, Irmawan, and Tri Reni Novita, 'Penyelesaian Perselisihan Sengketa Tanah Antara Masyarakat Kotarih Dengan Pihak Perusahaan PT. SRA Kotarih Kecamatan Kotarih Kabupaten Serdang Bedagai', *Jurnal Hukum Dan HAM Wara Sains*, 2.04 (2023), 267-83 <<https://doi.org/10.58812/jhhws.v2i04.300>>