

Marginalized Wisdom: Empowering Customary Law in Family Conflict Resolution

M. Taufan B.¹, Sapruddin Sapruddin², Sitti Nurkhaerah³, Absori⁴, Arief Budiono⁴, Muhammad Amin Hanafi⁴

^{1,2,3} Faculty of Sharia, Universitas Islam Negeri Datokarama Palu, Indonesia

⁴ Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia

⁵ Faculty of Law, Universitas Khairun Ternate, Indonesia

Corresponding Email: ab368@ums.ac.id

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Abstract

This study aims to construct the form of customary law empowerment as a means of overcoming family conflict. The research design used is empirical legal research with a qualitative-naturalistic approach. The research was conducted in Palu City, especially in Birobuli Utara Village. The data for this study came from field observations and interviews with traditional leaders. The results of the study indicate that customary law empowerment as a means of overcoming family conflict is constructed in the form of implementing alternative dispute resolution, a method of resolving disputes outside the court with mediation and negotiation techniques. Customary law empowerment as a means of overcoming family conflict should continue to be strengthened from various aspects so that it can be more optimal in carrying out its function as an alternative dispute resolution institution, considering that this institution has been proven to be able to resolve family disputes simply, quickly, and at low cost (speedy administration of justice), while maintaining community harmony. Otherwise, this very valuable social capital will only become wisdom that is increasingly being marginalized.

I. Introduction

Weak law enforcement and equitable development as well as other discriminatory treatments continue to occur in the legal constellation in Indonesia.¹ This is triggered by legal practices that are oriented towards formal (procedural) justice from the political power authorities of the government which tend to be authoritarian and do not prioritize material (substantial) justice.² Alternative solutions continue to be sought to get out of this situation.

The search for alternative forms of law enforcement that are more in line with the legal awareness (*rechtgevoel*) of Indonesian society continues to be carried out. A form of law enforcement is sought that is more practical, solution-oriented, and adhered to by society. Efforts to realize material justice (substantive) in law enforcement can be presented through a legal pluralism approach and requires the ability of judges to interpret laws. Law enforcement must be carried out appropriately and effectively to measure the success of the state. The Indonesian legal state that is implemented must also always pay attention to aspects of divinity, humanity, unity, deliberation and justice.³ All of this can be found in customary law which is rich in local wisdom values (anthropological values).

In fact, the anthropological values of Indonesian society have been eroded by the current of modernization.⁴ That is why the refunctioning of customary institutions, amidst anthropological erosion, should be supported as one of the pillars of development, because of the local wisdom it possesses. This local wisdom can prevent the erosion of the anthropological values of Indonesian society. In this position, a policy is needed that can empower customary law communities as the subject of development, so that customary law communities can play a maximum role (bottom up).

Studies on customary institutions are common. These studies are divided into three categories. First, studies that examine the position of customary institutions in national law as reviewed by Thomas.⁵ Second, studies related to the traditional

¹ Muhammad Taufiq Ilham, "Penyelesaian Sengketa Dalam Perspektif Antropologi Hukum," *Teraju: Jurnal Syariah Dan Hukum* 2, no. 1 (2021): 13–23.

² Bernard L. Tanya, *Filsafat Hukum (Legal Philosophy)* (Surakarta: Bahan Kuliah Program Doktor Ilmu Hukum UMS, 2013).

³ Masduki, "Pendidikan Profetik: Mengenal Gagasan Ilmu Sosial Profetik Kuntowijoyo," *Toleransi: Media Komunikasi Umat Beragama* 9, no. 1 (2017): 1–22.

⁴ Mohammad Mulyadi, "Pemberdayaan Masyarakat Adat Dalam Pembangunan Kehutanan," *Penelitian Sosial Dan Ekonomi Kehutanan* 10, no. 4 (2013): 224–234.

⁵ Benedictus Julian Thomas, "Kedudukan Hukum Perkawinan Adat Dalam Sistem Hukum Perkawinan Nasional," *Jurnal Kewarganegaraan* VOL. 7, no. NO. 2 (2023): DESEMBER 2023 (2023): 223–29, <https://doi.org/https://doi.org/10.31316/jk.v7i2.5651>.

rights of indigenous peoples, including Kristhy.⁶ Third, studies that examine the protection of customary institutions, such as, among others, those studied by Chaerudin.⁷ These studies frame customary institutions as traditional institutions that have been marginalized so far and must receive protection as social capital and legal capital of the Indonesian nation.

Fourth, studies on the empowerment of traditional community institutions as seen in Angga⁸ and Sukirno⁹ which has positioned customary institutions as part of the wealth of the legal treasury of Indonesian society that must not only be preserved, but more than that must be empowered as an alternative to the legal methods that exist in society. However, these studies have not discussed how customary institutions are empowered as an alternative to resolving disputes that occur in society, especially in dealing with conflicts that occur within the family.

This article is intended to explore how customary institutions are empowered in handling family conflicts that occur in society. This article seeks to understand how to empower customary institutions as a tool to resolve family conflicts. As part of this exploration, this article seeks to answer two questions. First, what form does the empowerment of customary institutions take as a means to resolve family conflicts? Second, how are the principles of customary institutions implemented in the process of resolving family conflicts? These questions are closely related to the conditions of legal plurality in Indonesia which seem too complicated and convoluted because they are trapped in various legal formalities. In addition, this is also closely related to the challenges faced by legal institutions, especially the courts, as institutions that are directly involved in handling various conflicts that occur in society.

This article is based on three assumptions. First, current law enforcement has not fulfilled the sense of justice in society. Second, dispute handling carried out by formal judicial institutions seems very slow and expensive. Third, customary institutions as the parent of local wisdom in society have not been empowered properly.

⁶ Mutia Evi Kristhy, "Pengakuan Dan Perlindungan Hukum Terhadap Hak-Hak Tradisional Masyarakat Hukum Adat Dayak Ma'anyan Di Kecamatan Awang Kabupaten Barito Timur," *Komunikasi Hukum* 8, no. 2 (2022): 27-43.

⁷ Muhammad Alvian Yudistira Chandra Chaerudin., "Perlindungan Hak Tinggal Bagi Masyarakat Pulau Rempang Terhadap Penggusuran Proyek Strategis Negara," *Jurnal Socia Logica* 3, no. 3 (2023): 385-95, <https://doi.org/https://doi.org/10.572349/socialogica.v3i3.1299>.

⁸ La Ode Angga, "Pemberdayaan Masyarakat Hukum Adat Dalam Pelaksanaan Program Desa Wisata Mangrove," *Pengabdian Hukum* 3, no. 1 (2023): 17-26, <https://doi.org/https://doi.org/10.47268/aiwadthu.v3i1.1191>.

⁹ Sukirno, "Pemberdayaan Hukum Adat Dalam Lintasan Waktu," n.d.

2. Research Method

This article is based on empirical legal research.¹⁰ Data were collected through three techniques, namely observation, interviews and literature studies.¹¹ Observations were conducted in Birobuli Utara Village, Palu City, Central Sulawesi. This location was chosen because this area is a locus of empowerment of customary institutions in dealing with family conflicts in accordance with the focus of the research, so it is considered appropriate to be used as the setting for this research. In addition, based on observations, customary institutions here are the most active in handling family dispute cases.

Further data were collected through a literature review on local wisdom and customary institutions.¹² Several works reviewed not only discuss customary institutions as part of local wisdom, but also their contribution to the development of national law. ¹³This literature review shows that customary institutions, especially customary judicial institutions that de facto work and are obeyed by the community, have encouraged the transformation and internalization of desired values and morals among community members. This reflects the fact that customary institutions are not only intended to resolve disputes, but also to inspire community members with values and morals. The research was not conducted in all customary institutions in the city of Palu, but focused on only one customary institution. Birobuli Utara Village was chosen for several reasons.

First, this area is one of the loci of empowerment of customary institutions in dealing with family conflicts in accordance with the focus of the research, so it is the right location to conduct this research. Second, based on observations, customary institutions here most often handle family dispute cases. Third, customary institutions in North Birobuli already have a clear structure, personnel, and process standards, making it easier for researchers to collect data.

Qualitative data were obtained through the above-mentioned approaches and analyzed descriptively and phenomenologically.¹⁴ Data were classified first, then interpreted according to the researcher's needs. This descriptive-phenomenological approach views family dispute resolution activities in

¹⁰ Khudzaifah Dimyati and Kelik Wardiono, *Metode Penelitian Hukum* (Surakarta: UMS Press, 2014), https://www.researchgate.net/publication/273144379_Metodologi_Penelitian_Hukum.

¹¹ Bambang Suggono, *Metodologi Penelitian Hukum* (Jakarta: Rajawali Press, 2010).

¹² S. Suryabrata, *Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2012).

¹³ Kelik Wardiono, Prophetic : An Epistemological Offer for Legal Studies, *Journal of Trancendental Law*, 1(1), pp 17-41

¹⁴ Z. Ali, *Metode Penelitian Hukum (Legal Research Methods)* (Sinar Grafika, 2021).

traditional institutions in North Birobuli as a series of texts that can be explained and interpreted. To complement and strengthen this analysis, previous research findings are also used as texts.

3. Results and Discussion

Conflicts in families occur more frequently when compared to conflicts in other social contexts. Indonesian society has actually long practiced resolving household conflicts similar to mediation, namely by means of peace. The mediator is a person or group of people who are gathered into a traditional institution who are considered older in age and experience in the family environment, who are considered competent and able to resolve the conflict.¹⁵ In this segment, it is interesting to examine the empowerment of traditional institutions as a means of overcoming family conflicts.

Along with the emergence of progressive legal ideas as a result of the saturation of the normative-formalistic justice system, the term mediation is increasingly popular as an alternative dispute resolution, not only among academics, but also among legal practitioners. Practitioners have begun to apply mediation in the practice of dispute resolution and problem solving in society.

In relation to customary institutions, it is necessary to understand the tradition of dispute resolution through customary courts. From observations in the field, it was found that there are always philosophical values behind the decision by considering all its impacts on the values and communities of customary institutions. This is important to be able to understand the decisions taken by customary leaders (customary figures) and their institutions in resolving problems.¹⁶

The tradition of resolving problems in customary institutions tends to use a family pattern which in its process is based on the principle of deliberation.¹⁷ Customary leaders (customary figures), whether or not included in the customary institution structure, always direct the flow of customary trials towards a consensus, the essence of which is that no party is declared the loser (win-win solution principle).

This principle is applied by the Kaili indigenous community through the empowerment of the customary council (*potangara nuada*) in resolving problems (customary violations). Potangara Nuada is a mechanism for resolving customary violations and social problems organized by customary leaders (*totua nuada*). This institution aims to ensure that speech (*posumba*), behavior (*ampena*), and actions (*kainggua*) as values and norms that have been agreed upon for generations can

¹⁵ A. Suriyaman Mustari Pide, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Prenada Media, 2014).

¹⁶ Kuswardani kuswardani, Marisa Kurnianingsih, Andria Luhur Prakoso. Spiritual Values Of Customary Law, *jurnal Jurisprudence*, 1 No. 2, 2018, pp 19-27

¹⁷ Pide.

continue to be organized, alive and developing as regulators of the social order of life in Palu City (Tanggugade, North Birobuli Customary Leader, interview, June 17, 2023).

1. Authority of Kaili Customary Court

The authority or competence possessed by customary courts in Kaili land is of course not the same as the competence possessed by state courts. As with customary law, the Kaili community's customary courts do not clearly distinguish between civil and criminal cases. The authority of the Kaili customary courts used to be broad in scope and could not be limited in its application with the aim of regulating the lives of fellow Kaili people and other tribes. This was reaffirmed by local customary leaders who stated that Kaili customs cannot be limited in their use in community life, because these customs have regulated life since ancient times ("*Ada ta to Kaili hi ledo ma mala rabatasi riara katuvua ntodea, apa ada ta hi dako nggaulunamo mbaaturu katuvuata to kaili ante gera dako ri savalikuna ante mbaaturu kita mboto*") (Tanggugade, interview, June 17, 2023).

The competence of customary justice, among other things, covers matters of sala kana, sala baba and sala mbivi.

a. Sala Kana/Nakaputu Tambolo

Wrong right is a sanction imposed on someone who violates customary norms relating to speech, actions and behavior in a serious category. The types of customary sanctions (givu) that can be imposed for this violation include (Tanggugade, interview, June 17, 2023):

- 1) Nilabu, is a customary sanction by drowning in the sea;
- 2) *Nipali*, is a customary sanction in the form of exile (expulsion from the village);
- 3) *Nibeko*, customary sanctions in the form of alienation (exclusion from social life);
- 4) *Bangu mate*, is a fine by handing over large animals and other traditional equipment according to applicable provisions.

b. Sala Baba/Sala Mpale

Father's room/father's room is a sanction imposed for violations of customary norms related to speech, actions and behavior in the moderate category. The sanction is called bangu mate, which is paying a fine by handing over small animals (goats), at least 2, along with other customary equipment.

c. Sala Mbivi

The place is quiet is a sanction for violations of customary norms related to speech,

actions, and behavior in the light category. The sanction is to pay a fine in the form of a small animal (goat) of at least one and other customary equipment according to the provisions.

Other customary law sanctions (*nu ada*) that were once in effect include *nilabu* or *nipali*. *Nilabu* means being drowned in the sea by tying the feet to large stones. As for *nipali*, being exiled from the village, the locus of the crime. This sanction was imposed on couples who committed adultery, even though they were blood relatives (*nosimpogau santina*/incest), and adultery with the queen or the king's family.

In addition, Kaili customary law recognizes a number of crimes related to family law, including *nobualo*, which is adultery by a woman who has a legal husband with another man at the woman's request. This act is subject to a fine of a large male buffalo, a set of white cloth, a traditional machete, a *dulang*, a white ceramic bowl, paying a dowry equivalent to 11 to 99 reals, and handing over fifteen plates with traditional motifs. Other forms of crimes are stated below (Tanggugade, interview, June 17, 2023).

Nebulousis adultery committed by a man who has a wife and it happens because of the temptation of the man. As for *nopangadi*, it is adultery committed by a married woman at the request of the man.

Nepenekiis an act of a man intentionally visiting the home of a young woman, widow, or married woman without a third person who is believed to be doing something indecent. If the woman objects/screams, the act is subject to sanctions. If the woman does not scream, but someone witnesses the act, sanctions are still imposed.

Nolipa singgani ante berei ntona, is the act of a man who deliberately walks hand in hand with a married woman without a third person, and is believed to have bad intentions, while there are witnesses and the woman's family objecting.

Netatopo/netadilo, is an act of a man who intentionally peeks at women bathing, women sleeping, women changing clothes and peeking at husband and wife who are in the bathroom. While *nosinggarau njamboko*, is a quarrel in the household by committing abuse and destroying household equipment/furniture or the like.

Nosimpalaisakais the act of a man who takes a woman away at their mutual will. Furthermore, *nosintutu* is an act of intentionally spreading false news or other people's disgrace even though it is true, which can tarnish the good name of a person or group. *Nedavai* is a lying act that results in harm to others.



Figure 1. Customary Devices in Trial

Sanctions (*givu*) are given in the form of fines (*sompoh*) to the perpetrators in a customary court, which must be paid to the customary treasurer (*polisa*). If the fine that has been set is not paid on time, the customary institution will give warnings to the perpetrators in stages. When the due date comes and the perpetrator has not paid, the perpetrator in question will be subject to the sanction of being exiled from his residence (*salakana nipali*).

The imposition of fines is carried out by considering all aspects, starting from the economic situation of the perpetrator, the severity of the act committed, the willingness of the victim to forgive the perpetrator's mistake, as well as aspects relating to the survival of the perpetrator's family (Ladjaru, Head of the North Birobuli Traditional Institution, interview, June 22, 2023).

This study found that several cases resolved through customary courts (*potangara nu ada*) were not subject to sanctions as explained above. Several cases brought to customary courts ended only with the making of a statement signed on stamped paper made by the perpetrator (*to sala*) in front of the court chair (*balengga potangara*) and witnessed by the victim (*to rugi*). The statement contains a promise from the perpetrator not to repeat his actions in the future.

This is a manifestation of wisdom, flexibility, and breadth of insight (*nonoto pangantoakana*) possessed by the customary leaders in Kaili land in deciding a case. Customary leaders in deciding a case try hard to restore the situation to its original state (restorative justice). In cases of family disputes, customary leaders try hard not to break off existing marital ties (family ties), and as much as possible to normalize the kinship of each party in dispute.

2. *Parties in the Kaili Customary Court*

The parties involved in the Kaili customary justice system are the perpetrators (*to sala*), victims (*to rugi*), the head of the customary court (*balengga potangara*), the elders in the custom (*totua nuada*), and the trusted people in the customary institution (*suro*). These parties are those who are directly involved in the implementation of customary justice (*potangara nuada*). Thus, there are five elements in the construction of the Kaili customary justice, namely (Suralele, Secretary of the North Birobuli Customary Institution, interview, June 24, 2021):

- a. Perpetrator (*to the door*) is a person who, due to actions, deeds or words, based on reports and initial evidence, can be suspected of being the perpetrator who causes harm to the victim (to loss);
- b. Victim (*to lose*) is a person who feels aggrieved or hurt by the actions, deeds and words of the perpetrator (to sala);
- c. Chairman of the customary council (*the grove of the potangara*) is a traditional elder who is appointed to lead a traditional hearing until a verdict is reached;
- d. Old people who understand customary law (*the color of the moon*) are traditional elders who are also invited to attend the customary trial (*potangara nuada*). They also provide input to the *balengga nuada* in the trial process, and provide advice to the parties involved in the case; and
- e. Trusted person of traditional institution (*Suro*) is a person appointed by the traditional leader to receive and follow up on reports of words or actions of someone that are suspected of violating or harming other people.

The five elements above are directly involved in the process of organizing a customary trial. Without the presence of one of these elements, the trial cannot be carried out.

3. *Family Conflict Resolution Mechanisms in Customary Institutions*

A. Report Acceptance Procedure

When community members, both individuals and groups, come to report to traditional institutions about an event, action, or statement that is considered to violate customary rules, legal issues or other social issues, the mechanism for submitting and receiving reports is as follows (Suralele, interview, June 24, 2023):

- 1) There is a report from a victim, whether the person concerned reports directly or is represented by the family, or the community comes directly to report to the management of the traditional institution or to the head of the Neighborhood Association (hereinafter abbreviated as: RT) where the victim is domiciled;

- 2) The administrator of the traditional institution or the RT head who receives the report then forwards the report to the chairman or secretary of the traditional institution;
- 3) Furthermore, at the request of the customary institution administrator, the institution staff invited the victim to provide a direct explanation regarding the customary case that had befallen him;
- 4) The victim and staff met with the management of the traditional institution to explain the incident that had occurred and to express their objection to the perpetrator's actions towards them, and to give authority to the traditional institution to resolve the problem up to deciding and sanctioning the perpetrator;
- 5) After receiving the report and listening directly to the explanation from both parties, then the administrators of the traditional institution determine the time and place of the traditional hearing. The hearing is usually held at the house of the administrator of the traditional institution or at the village head's house;
- 6) Before the session was held, the head of the traditional institution divided the tasks to be carried out to each of the institution's administrators;
- 7) The administrators of the traditional institution sent staff to convey the court invitation to the perpetrator. In doing this, the staff conveys the contents of the report and objections from the victim. The staff also conveys that the case has been handled by the customary institution, and asks the perpetrator to provide information and explanations for the actions accused of him;
- 8) Invitation customary hearings are also given to village heads, representatives of religious figures, and representatives of customary figures (*pila-pila nuada*).

Hasan Suralele, Secretary of the Customary Institution of North Birobuli Village, said that not all reports of customary violations that come to the customary institution are immediately processed by the customary institution. The reported cases are first mediated to be resolved internally within the family. This is done with the consideration that those who are in dispute are actually only due to a difference of opinion (misunderstanding). In addition, in one family group (*santina*), there is usually an elder who is considered capable of reconciling the disputed problems. That is why the administrators of the customary institution encourage the disputing parties to resolve their cases within the family. When they cannot resolve the dispute amicably, or there is a party who is dissatisfied, only then is the problem resolved through customary law (interview, June 24, 2023).

B. Trial Process

- a. The victim came to the courtroom accompanied by family or the hamlet head of the place where he lives. The administrator of the traditional institution invites him

to sit in the designated position;

b. The management of the traditional institution has previously arranged the positions of the parties to the case and other invitees to anticipate the occurrence of undesirable things. The victim's sitting position is on the left, the suspect is on the right, and the chairman of the trial is in the middle of the two;

c. The chairman of the meeting checks the completeness of the customs and the readiness of the members of other traditional institutions, to whom their respective tasks have been assigned;

d. Before the trial opened, the prepared traditional instruments are placed on a traditional tray, then the tray is held by all those present in the courtroom in turn. The traditional instruments consist of betel, areca nut, *gambir*, betel lime and tobacco as a symbol of the nobility of Kaili customs which is a requirement for the validity of the implementation of traditional rituals. The use of a tray to place traditional instruments is a symbol of the openness of the Kaili community in carrying out traditional court sessions;

e. Chairman starts the customary institution opens the session by asking, "Excuse me, can we start this customary session, is that enough? Are you ready?" (*Tabe, mamalamo rapamulata potangara, naganamo? Nagopamo?*), then greeted by the session participants with the answer, "That's enough and you're ready," (*naganamo, nagopamo*);

f. The chairman of the session then opened the session with saying prayers and greetings to the prophet Muhammad SAW, followed by explaining in detail the circumstances behind the trial. Starting from the victim's report to the determination of the trial time;

g. The chairman of the trial asked the perpetrator about his attitude towards the accusations against him;

h. The perpetrator was given the opportunity to speak to express his feelings. The facts of the case according to his version, if according to him there is something different from what the previous chairman of the trial explained. If he feels guilty and the allegations against him are true, then the perpetrator usually immediately admits it. If the perpetrator firmly denies and defends himself against the allegations, then the chairman of the trial asks one by one the chronology of the incident while matching it with the victim's report;

i. After listening to the perpetrator's detailed explanation, the chairman of the trial then invited the victim to provide additional explanations regarding the case. In this customary trial, nothing should be covered up or not explained even if it is a disgrace. This is intended so that the customary elders there is no error in imposing sanctions and no party is harmed;

j. After hearing the explanation from both parties, the chairman of the trial examines and listens to the witnesses present along with the available evidence. Furthermore, the chairman of the trial and the traditional elders deliberate to determine the sanctions and the amount of the fine;

a. To bind the parties, at the end of the trial, the disputing parties forgive each other for the incident that has occurred in front of the traditional elders. This indicates that the problem has been resolved in the traditional court.

l. The customary meeting was closed with a prayer for safety led by representatives of the religious figures present.

In a customary trial, the chairman of the trial plays an important role in determining whether the perpetrator is guilty or not. However, in terms of evidence, the aspect of the chairman's belief is "limited" by the values that live and develop in the Kaili tribe, because the chairman's belief alone is not enough without the support of these values. The aspects of being intelligent and wise (*natada untona*), having broad insight (*nanoto pangantoakana*), being polite (*nabelo sumba nojarita*), listening to the parties (*nanasa talingana*), and being fair in deciding cases (*nanoa riarantai ritimbanga*), are unwritten requirements that must be possessed by the administrators of customary institutions so that in making decisions they are always based on the values that live and develop in the Kaili tribe, so that the decision is a manifestation of the community's sense of justice that can restore the balance that has been disturbed due to customary violations (Ladjaru, interview, June 22, 2023).



Figure 2. Atmosphere of Family Conflict Case Trial

4. Institutions and Principles of Kaili Customary Justice

Kaili customary institutions are a forum for community participation in government administration, environmental-scale development, community development and a place to resolve social problems based on Kaili customary law. The Head of North

Birobuli explained that long before the Dutch colonized Indonesia, customary institutions with their customary laws had been in effect in the community. In 2012, the Central Sulawesi Province Research and Development Agency formed a team to search for, inventory and re-arrange customary rules in Kaili land into one book which was then used as a guide by all customary institutions in forty-five sub-districts in Palu City, as a guideline in implementing the customary trial mechanism (*potangara nuada*). In 2016, customary institutions were strengthened by the issuance of Regional Regulation (hereinafter abbreviated as Perda) No. 9 of 2016 concerning Kaili Customary Institutions by the mayor. This Perda was then strengthened again by the issuance of Palu Mayor Regulation No. 38 of 2017 concerning Guidelines for the Implementation of Kaili Customary Institutions. This became a turning point in the rise of customary law in Palu City legally.

Kaili customary court is a peace court through deliberation and consensus led by customary leaders and assisted by community/religious leaders (*ipasipi*). The substance of the Kaili Customary Court contains the following meanings (Ladjaru, Head of the North Birobuli Customary Institution, interview, June 22, 2023):

- a. Kaili customs are rules that have become customs or a form of cultural ideas consisting of culture, norms, laws and rules that are related to each other to form one system.
- b. Kaili Customs are good habits or traditions that live in a society and are always followed, practiced, obeyed and complied with.

The implementation of customary justice in the Kaili customary community adheres to several important principles as guidelines that bind the organizers of customary justice and the parties involved in every problem resolution in customary institutions. The principles in question are as follows:

- a. Customary justice is carried out after a request to resolve a case. Customary justice is carried out with voluntary submission from the parties (customary justice is carried out after a family deliberation decides to resolve a problem or conflict through a customary justice mechanism). In the context of national law, this principle is known as the principle of fast, simple and light justice (speedy administration of justice);
- b. Customary justice is led by customary leaders and assisted by community leaders who are free and impartial and because of their experience in deciding customary violations are considered customary law functionaries (*totua nuada*). This principle is intended so that in the implementation of customary justice, these figures are always placed as independent role models and gain legitimacy from the wider community. In this aspect, customary justice functions to maintain balance, peace, and legal certainty in society;
- c. Customary justice is carried out by a council of customary law functionaries

(customary stakeholders), not individuals. This principle means that the implementation of customary justice only recognizes trials led by a panel of judges, not individuals;

d. Everyone is equal before the law;

e. The place where the customary court procession takes place is determined based on the principle of flexibility (can be held at the village head's office, mosque, in other public places, and at the home of a customary law official or at the home of a village official);

f. There is a confession from the perpetrator, because the imposition of sanctions is based on the severity of the violation committed and the condition of the perpetrator and victim, so that the sanctions can be fulfilled by the perpetrator and/or his/her family;

g. Court costs are taken from part of the fine and/or compensation imposed on the perpetrator or his/her family;

h. The customary justice process is recorded and signed by the customary functionary assembly and is known to the sub-district officials where the perpetrator and victim reside;

i. The customary court decision is pronounced in a courtroom open to the public, accompanied by a thanksgiving ceremony and joint prayer after the parties have agreed and forgiven each other; and

j. Customary court decisions are implemented in customary court sessions with the agreement of the parties.

In its current structure, customary justice is divided into 3 institutional layers, namely (Ladjaru, Head of the North Birobuli Customary Institution, interview, June 22, 2023):

a. The Traditional Council is a community institution that protects, maintains, preserves and preserves the traditional values of the Kaili community both within and outside the Palu City area;

b. The Traditional Council is a community institution that protects, maintains and preserves the traditional values of the Kaili community in the sub-district area; and

c. Customary Institutions are social institutions that protect, guard, maintain, preserve and carry out customs in the sub-district area.

The management structure of the Customary Institution in Birobuli Utara Village is the result of a deliberation of customary figures, the results of which were submitted to the Head of Birobuli Utara Village to create a Decree (SK) for its management for a five-year period. The following is the management structure of the Customary

Institution of Birobuli Utara Village.

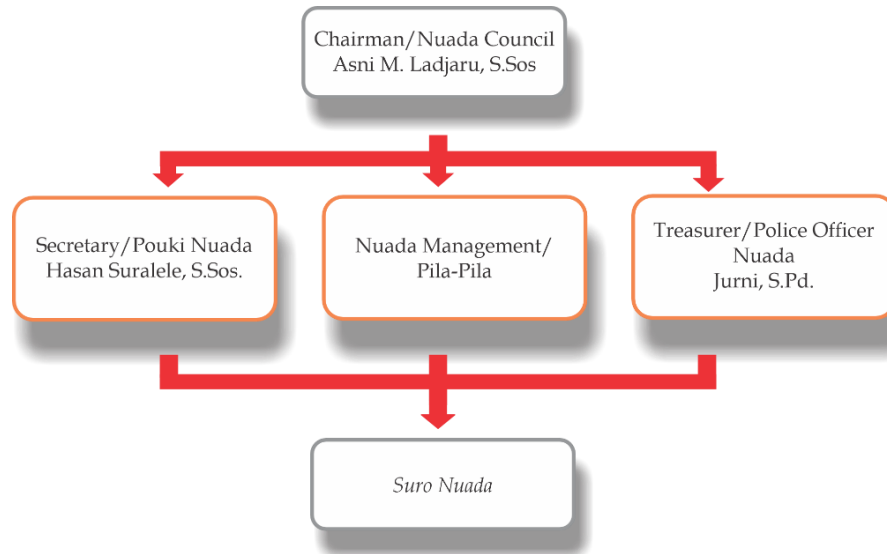


Figure 3. Structure of *Potangara Nuada*

In 2021, there were 12 cases submitted to the customary institution, 4 cases were related to family conflicts. Throughout 2022, 15 cases were resolved at the Customary Institution of North Birobuli Village, while in 2023 from January to July, 8 cases were resolved. Of the 15 cases in 2022, 9 of them were related to households, and the rest were cases related to sala mbivi cases (violations of customary norms related to speech, actions, and behavior in the minor category). Meanwhile, from January to July 2023, out of 8 cases, 4 were related to households and the remaining 4 were cases related to sala mbivi cases.

Table 2. Cases Resolved by Traditional Institutions

No.	Year	Total Cases	Family Conflict	Other Cases
1	2023	8	4	4
2	2022	15	9	6
3	2021	12	4	8
	Total	23	26	12

Source: *Processed from primary sources, 2023.*

From the data presented above, it appears that family conflict issues dominate cases resolved by customary institutions. One thing that needs to be underlined is that all family conflicts handled by customary institutions end in peace. This means that the

parties who submitted their cases to customary institutions are satisfied with the decisions made. This can be concluded from the fact that not a single case of family conflict was submitted to the court after being decided by the institution. Why is that?

From the researcher's observation, there are a number of factors that support this customary institution in carrying out its role in the community. First, the factor of community legal awareness. This was concluded, among others, from ZJL, a resident who had submitted a case of family conflict that he experienced to the customary institution:

"I am sure that the problem that my brother and I reported to the village customary institution can be handled seriously by the customary institution. We chose to report to the customary institution rather than to the police station, so that our problem can be resolved peacefully and amicably, because the person we are reporting is not someone else, if you could say it still affects our own family" (interview, June 25, 2023).

From the statement of one of these informants, it appears that the community brought their family conflict cases to traditional institutions because they felt that the way traditional institutions resolved cases was in accordance with their intrinsic values (internalization). A person brings their case to a legal institution that is in accordance with their intrinsic values or mindset. Legal institutions that obtain compliance due to internalization factors are institutions with the best level of compliance and law enforcement.

Law enforcement as implemented by traditional institutions in North Birobuli places moral supremacy as its mainstay. Law and law enforcement like this will bring peace and tranquility. The community will feel safe and secure when dealing with the law through the interactions they carry out. Law enforcement like this should continue to be empowered so that it will truly make Indonesia a country of law, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a country of law (*rechtstaat*) not a country of power (*machtstaat*).

Second, natural conditions (geographical) factors. It is undeniable that the geographical conditions of an area will have a major impact on the local community service process. The same is true for the geographical conditions of North Birobuli Village which has an area of 415 ha. Consisting of 43 Neighborhood Associations (RT) and 11 Citizens Associations (RW). Its area, which is 100% lowland, has a positive impact on the community service process, the rotation of the economic wheels in the service sector, offices and trade. The topography of lowland areas makes community services faster and more efficient.

This also applies to the service of family conflict cases at the Customary Institution of North Birobuli Village. Natural conditions are supportive, so that the service process starting from receiving reports, public complaints about family conflicts that occur, to holding customary hearings (*potangara nuada*) can be carried out easily and

quickly without experiencing significant obstacles. This means that in carrying out its role in society, customary institutions do not experience obstacles due to geographical factors, such as having to cross rivers, or having to go to mountainous areas to resolve customary problems reported by the community. It should be underlined that natural factors are one of the factors that should be considered in law enforcement.

Third, there is legal strengthening. In order to provide legal certainty in the protection, empowerment, preservation of customs which are part of efforts to maintain cultural resilience, and efforts to strengthen Kaili traditional institutions, the local government has made Regional Regulation (hereinafter abbreviated as Perda) No. 09 of 2016 concerning Kaili Traditional Institutions which is the legal umbrella for the existence of Kaili traditional institutions. This Perda was then strengthened by Mayor Regulation Number 38 of 2017 concerning Guidelines for the Implementation of Kaili Customs. This is a manifestation of the local government's concern and seriousness in efforts to empower Kaili traditional law, with the main objective of strengthening the basis for cultural development and community character that works together, fostering a spirit of family deliberation, and tolerance in community life based on local wisdom.

Given that the community has felt the role of customary institutions that have functioned as alternative dispute resolution institutions, especially in handling family conflicts, based on observations in the field, there are a number of things that still need to be prioritized in the empowerment of Kaili customary law. These things include the following.

First, facility aspect. As part of the community service, and in order to be able to maximize its role, this Kaili traditional institution still needs to be equipped with more adequate facilities. In an interview with the Head of Birobuli Utara Village, it was stated that this traditional institution does not yet have facilities that support it as a judicial institution, such as a *baruga* as a place to hold trials and a traditional deliberation forum (*libu nuada*). The Head of the Village revealed (Asmin Bado, Head of Birobuli Utara Village, interview, August 4, 2023):

"For the facilities of traditional institutions, we still lack a lot, especially the *baruga* for us to use in *potangara* and *libu nuada*. We in the village government have tried to do that, even in the 4th quarter of 2018 it will be built in our village, but the budget that has been plotted is used for handling the earthquake and tsunami disaster in September 2018."

The Head of the North Birobuli Village Customary Institution also expressed a similar sentiment, "*Kakuranga kita ri Birobuli hi dopa naria baruga tampa kita motangara, ane rapeintata ri kelurahan ntanina, naria puramo baruga ra, hai muni najadi harapana kami nte pamarentah baru hi agar kitat ri biro mate peili sakide*" (our shortcoming in Birobuli is the absence of a *baruga* as a means to hold a trial, whereas if we look at other places, they have all been facilitated with *baruga*. Such a thing is

also our hope for the government, at least there is attention for us in Birobuli) (Ladjaru, interview, June 22, 2023).

Second, aspects of regeneration of traditional leaders. As far as the author has observed, a number of traditional leaders have died. The average age of the current traditional leaders is over fifty years. This is quite concerning considering that until now there have been no signs of rejuvenation (regeneration) in traditional institutions. If this continues, it is possible that this cultural heritage will become extinct because no one will inherit and study it. In addition, another challenge in this process is the low interest of the generation in this cultural heritage. This is due to the image of traditional institutions which are always associated with mystical things, as expressed by the Head of the Traditional Institution of North Birobuli Village (Ladjaru, interview, June 22, 2023):

"We, the old people, are afraid because our old heritage will be extinct. What are you doing to learn about our customs? Don't think that our customs are only about mystical things, ancestral spirits. Don't let that be your mindset, because in customs there are many important values that we must inherit from each generation."

ML, a resident of North Birobuli who had a case in the Customary Institution of North Birobuli Village, also said that efforts to regenerate the structure in the customary institution must be started, according to him, it is better not to wait for something to happen with the custom before the movement starts. He emphasized (ML, Informant, interview, June 25, 2025):

"We hope that there is interest and desire among young people/millennials today to take part in the preservation and regeneration movement in our village's traditional institutions, so that nothing happens to our customs, only then will we all be aware of it."

Third, Welfare Aspect. Community participation in preserving culture through Kaili traditional institutions is the main objective of the issuance of Palu City Regional Regulation No. 09 of 2016 concerning Kaili Traditional Institutions. The regulation has been in effect for seven years, of course with a number of notes. Community participation in traditional institutions should receive attention and support from the local government, so that the main objective of the issuance of the regulation can be achieved, and the customs of the Kaili tribe continue to be maintained from generation to generation. Of course, direct government support is highly expected by traditional institutions. However, to further increase community participation, the welfare aspect of traditional stakeholders is an important factor. This was concluded from the statement of the Chairperson of the North Birobuli Traditional Institution, "our hope as *totua nuada ringata biro hi*, is that the government will pay more attention to our welfare in traditional institutions, perhaps by increasing our incentives in traditional institutions" (interview, June 21, 2023).

In addition to support in the form of monthly incentives to the administrators of customary institutions, the regional government is also expected to revise regional regulations on Kaili customary institutions, in order to expand the scope of customary law in the era of technological development, so that customary rules can regulate various acts of violation that may occur in an era with rapid advances in information and electronic transactions. Thus, peace, harmony in society, where all physical and spiritual needs are sufficiently met, which is the goal of the regional government, can be realized. The main purpose of the Kaili customary institution is to regulate and organize the life of the community so that it is safe and peaceful, because with the existence of this customary institution, conflicts, especially family disputes, and divisions in the community can be prevented and resolved in a family way, so that the community can work calmly to meet their daily needs.

4. Conclusion

Empowerment of customary law as a means of overcoming family conflicts in Birobuli Utara Village is constructed in the form of implementing alternative dispute resolution, a method of resolving disputes outside the court with mediation and negotiation techniques. Family conflicts are resolved through mechanisms applicable to customary institutions with several approaches, including establishing standard behavioral procedures, negotiation, confrontation (bringing together conflicting parties to identify problems and resolve them, and exchanging), and *defis* (not suppressing differences between conflicting parties), as well as implementing the principle of *audi et alteram partem* (listening to the disputing parties) in the trial process.

As an institution whose existence is legally and constitutionally recognized, the empowerment of customary law as a means of overcoming family conflict should continue to be strengthened from various aspects so that it can be more optimal in carrying out its function as an alternative dispute resolution institution, considering that this institution has been proven to be able to resolve family disputes simply, quickly, at low cost (speedy administration of justice), and still maintain social harmony (social balance).

As a social capital that has developed from generation to generation over a long period of time, the mechanism for resolving family conflicts in customary institutions should be an example for other judicial institutions. Therefore, more in-depth research is needed with the perspective of legal psychology and legal sociology related to legal compliance with the decisions of this customary institution. In addition, it is also necessary to examine the possibility of formal judicial institutions grafting the mechanisms that apply to customary courts. Otherwise, this very valuable social capital will only become wisdom that is increasingly marginalized.

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