



## The Effectiveness of Traditional Mediation as an Alternative for Resolving Family Disputes in the National Legal System

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**Abstract:** Customary mediation is a dispute resolution mechanism based on local wisdom values that has long been practiced in Indonesian customary law communities, particularly in resolving family disputes. This study aims to analyze the effectiveness of customary mediation as an alternative for resolving family disputes within the national legal system, identify the structural and cultural barriers encountered, and formulate an appropriate integration model between customary law and state law. This study uses normative legal research methods with statutory, conceptual, and comparative approaches. The results show that customary mediation has proven effective in creating post-dispute relational harmony and has a high level of compliance because it is based on communal agreements respected by all parties. However, customary mediation faces challenges in terms of legal certainty, guaranteeing the protection of individual rights, and formal recognition in the judicial system. Integrating customary mediation into national law through a structured legal pluralism mechanism is a strategic step to strengthen access to justice for indigenous communities.

**Keywords:** Customary Mediation; Family Dispute Resolution; Customary Law; Legal Pluralism; Alternative Dispute Resolution

### Introduction

Law never exists in a cultural vacuum, but is always intertwined with the values, practices, and social structures that exist within a society. From the perspective of the sociology of law, as Eugen Ehrlich put it through the concept of living law, the norms that truly govern social life often do not originate entirely from state law, but rather from social customs and practices that are collectively internalized.<sup>1</sup> In Indonesia, the existence of customary law is a concrete manifestation of this living law, serving not only as a guide to behavior but also as an effective conflict resolution mechanism. Therefore, understanding customary mediation as part of the legal system cannot be separated from the theoretical framework of legal pluralism, which recognizes the coexistence of various normative systems within a single social space.<sup>2</sup> This confirms that state law is not singular, but rather coexists with other legal systems that have strong social legitimacy.

The cultural diversity of the Indonesian archipelago has given rise to various dispute resolution mechanisms based on customary deliberation and oriented toward social harmony. In practice, customary mediation aims not only to resolve conflicts but also to restore cosmic balance and disrupted social relations. This approach aligns with the principle of kinship, a hallmark of the Indonesian legal

<sup>1</sup> Deswita Fitri, Agusmidah, and Dedi Harianto, "Kajian Sosiologi Hukum Tanggung Jawab Sosial Dan Lingkungan Ptpn Ivrl Berdasarkan Teori Living Law," *Arus Jurnal Sosial Dan Humaniora* 5, no. 3 (December 20, 2025): 3975–84, <https://doi.org/10.57250/ajsh.v5i3.1830>; Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2000).

<sup>2</sup> John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55; Caroline Humfress, "Legal Pluralism's Other: Mythologizing Modern Law," *Law and History Review* 42, no. 2 (May 9, 2024): 155–68, <https://doi.org/10.1017/S0738248023000172>.

system, as reflected in various national legal norms. Theoretically, this approach can be linked to the theory of restorative justice, which emphasizes the restoration of relationships over punishment.<sup>3</sup> Thus, customary mediation has a strong philosophical basis because it integrates moral, social, and spiritual values in the dispute resolution process.

In family disputes, the complexity of the issues that arise often transcends formal legal dimensions. Disputes over divorce, inheritance, child custody, and conflicts between family members relate not only to rights and obligations but also involve emotions, cultural values, and deep interpersonal relationships. Formalistic positive law tends to prioritize legal certainty, but often neglects aspects of utility and substantive justice. Within Gustav Radbruch's theoretical framework, an imbalance between certainty, justice, and utility can cause the law to lose its social legitimacy.<sup>4</sup> Therefore, customary mediation offers a more contextual alternative in handling family disputes.

As a formal state institution, the courts are limited in addressing the sociological and psychological dimensions of family disputes. Court decisions based on win-lose solutions often deepen conflicts and damage the very social relations they should restore.<sup>5</sup> In many empirical cases across Indonesia, dispute resolution through litigation has actually led to prolonged conflict between families. Conversely, traditional mediation mechanisms, which prioritize dialogue and consensus, have been shown to produce win-win solutions that are more acceptable to all parties. This demonstrates that the effectiveness of a dispute resolution mechanism is measured not only by its legality but also by its level of social acceptance and the sustainability of post-settlement relationships.

Recognition of customary law in the national legal system has been normatively guaranteed in the constitution. Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly recognize the existence of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society.<sup>6</sup> However, this recognition remains declarative and has not been fully followed by comprehensive technical regulations. In practice, there is a gap between normative recognition and empirical implementation, particularly regarding the integration of customary mediation into the national dispute resolution system. This gap indicates a structural problem in harmonizing state law and customary law.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has actually opened up space for out-of-court dispute resolution. However, this regulation is more oriented toward modern mechanisms such as arbitration and professional-based mediation, so it does not explicitly accommodate customary mediation as part of the alternative dispute resolution system. Similarly, Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court requires mediation, but it remains within the formal framework of state justice.<sup>7</sup> This condition shows that customary mediation is still on the fringes of the national legal system, even though empirically it has a significant role in society.

Empirically, various studies have shown that customary mediation has a high success rate in resolving family disputes. In several regions, such as Minangkabau, Bali, and Aceh, customary institutions such as the *ninik mamak* (head of the traditional village), the traditional village head

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<sup>3</sup> Herowati Poesoko, "Mediasi Berbasis Kearifan Lokal Dan Relevansinya Dengan Hukum Nasional," *Jurnal Hukum Dan Pembangunan* 49, no. 3 (2019): 594–618; Gusti Muhammad Raja Putra Perdana et al., "Badamai Sebagai Model Penyelesaian Sengketa Berbasis Kearifan Lokal: Kajian Efektivitas Budaya Hukum Adat Di Kabupaten Banjar," *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 4, no. 3 (January 6, 2026): 16423–27, <https://doi.org/10.31004/jerkin.v4i3.4815>.

<sup>4</sup> Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Yogyakarta: Kanisius, 1995).

<sup>5</sup> M Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2008); YOGA VERI SURYA WIJAYA, "THE EFFECTIVENESS OF MEDIATION IN RESOLVING LAND DISPUTES IN INDONESIA AND MALAYSIA," *ADHAPER: Jurnal Hukum Acara Perdata* 11, no. 01 (June 30, 2025): 30–47, <https://doi.org/10.36913/adhaper.v11i01.40>.

<sup>6</sup> Inas Zulfa Sulasno and Farina Firda Eprilia, "Menakar Eksistensi Dan Perlindungan Hukum Terhadap Sengketa Hak Atas Tanah Masyarakat Hukum Adat Berdasarkan Hukum Positif Indonesia," *Jurnal Hukum Lex Generalis* 3, no. 3 (March 17, 2022): 180–98, <https://doi.org/10.56370/jhlg.v3i3.197>.

<sup>7</sup> Republik Indonesia, "Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa" (1999); Mahkamah Agung, "Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan" (2016).

(bendesa adat), and the village apparatus play a crucial role in maintaining social harmony through mediation.<sup>8</sup> Compliance with customary mediation outcomes also tends to be higher than with court decisions, as they are based on mutual agreement and social legitimacy. Furthermore, the relatively low cost and expeditious process are additional factors that increase the effectiveness of customary mediation. However, customary mediation also faces various challenges, both structural and cultural. Structurally, the lack of clear formal recognition often results in customary mediation outcomes lacking enforceable power. Culturally, changing values due to modernization and globalization also impact the sustainability of customary practices, with younger generations tending to prefer formal channels for resolution.

From the perspective of the theory of legal pluralism, as put forward by John Griffiths, the existence of various legal systems in one society is not an anomaly, but rather a reality that must be recognized and managed.<sup>9</sup> The integration of state law and customary law does not have to be subordinate, but can be achieved through a dialogical and inclusive approach. In this context, customary mediation can be positioned as part of a complementary dispute resolution system, not a competitor to formal justice. From a legal perspective, customary mediation aligns with the principle of deliberation for consensus, a fundamental value in the Indonesian legal system, as reflected in the fourth principle of Pancasila.<sup>10</sup> Thus, strengthening customary mediation not only has a sociological basis, but also a philosophical and juridical one.

The urgency of strengthening customary mediation is growing as the number of family disputes in Indonesia increases. Empirical data from various judicial institutions shows a high number of divorces and inheritance disputes coming to court each year, reflecting both the heavy burden on the formal justice system and its limitations in handling complex and sensitive disputes.<sup>11</sup> Customary mediation can be a solution to reduce this burden while providing a more humane and sustainable solution. Based on the above description, this research is crucial for in-depth examination of the effectiveness of customary mediation in resolving family disputes, not only from a normative perspective but also from the empirical realities that occur in society. This research is expected to contribute to formulating a more comprehensive model for integrating customary mediation into the national legal system, capable of creating a dispute resolution system that ensures legal certainty, social justice, and sustainable human relations.

## Method

This research is normative legal research which places legal materials as the main object of study.<sup>12</sup> The normative legal research method was chosen because the issues studied touch on the conceptual, doctrinal, and philosophical dimensions of applicable legal norms, not merely empirical events. Within the legal tradition, normative research holds its own epistemological position as a study of *das sollen* how law should be constructed, understood, and applied which differs from studies in the sociology of

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<sup>8</sup> H Hendri, "Efektivitas Lembaga Mediasi Adat Dalam Penyelesaian Sengketa Keluarga Di Minangkabau," *UNES Law Review* 4, no. 2 (2021): 180–95.

<sup>9</sup> Griffiths, "What Is Legal Pluralism?"; Roziqin Roziqin, Muhammad Hakim, and Dimiyati Dimiyati, "Kepastian Hukum Pengaturan Hak Atas Tanah Dalam Pluralisme Hukum," *Journal de Facto* 11, no. 1 (July 30, 2024): 135–45, <https://doi.org/10.36277/jurnaldefacto.v11i1.228>.

<sup>10</sup> Adnan Hamid and Nurul Ain Syahrina R, "Prinsip Masalah Dalam Penyelesaian Sengketa Tanah Adat," *Tasyri' : Journal of Islamic Law* 4, no. 2 (July 15, 2025): 1297–1322, <https://doi.org/10.53038/tsyr.v4i2.423>.

<sup>11</sup> Sonia Nahda, Emy Hajar Abra, and Pristika Handayani, "Pelaksanaan Mediasi Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi," *JURNAL USM LAW REVIEW* 8, no. 3 (September 9, 2025), <https://doi.org/10.26623/julr.v8i2.12696>.

<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011); Peter Mahmud Marzuki, *Penelitian Hukum*, 2007; Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005); Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2019).

law, which place greater emphasis on *das sein*, or the reality of law in practice.<sup>13</sup> The approach used in this research includes three complementary approaches.<sup>14</sup> First, the statute approach, which analyzes various relevant laws and regulations, starting from the constitution, organic laws, supreme court regulations, to regional regulations that regulate or intersect with customary mediation and family dispute resolution.<sup>15</sup> Second, a conceptual approach explores the theoretical framework of legal philosophy, dispute resolution theory, legal pluralism theory, and restorative justice theory to build a cohesive normative argument. Third, a comparative approach compares the regulation and practice of customary mediation in the legal systems of several countries with similar legal pluralism characteristics to Indonesia.

The legal materials used in this study consist of three layers. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 6 of 2014 concerning Villages, Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, and various regional regulations governing customary institutions. Secondary legal materials include academic literature, dissertations, scientific journal articles, research reports, and seminar results related to customary mediation and family dispute resolution. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and glossaries of customary law terms. The legal material collection technique is carried out through systematic library research utilizing national and international legal databases.<sup>16</sup> The collected legal materials were then analyzed using qualitative analysis methods with a deductive-inductive pattern of thought: from general propositions about legal theory to specific propositions about customary mediation, and back again to universal normative conclusions. The interpretations used included grammatical, systematic, teleological, and historical interpretations to understand the meaning of legal norms comprehensively and contextually.<sup>17</sup>

## Findings and Discussion

### Customary Mediation in Family Disputes in the National Legal System

Within the realm of legal philosophy, customary mediation cannot be understood merely as a neutral dispute resolution technique or procedure. It is a value system that reflects a particular cosmology about human relationships with each other, with nature, and with the transcendental order that surrounds them. As Soepomo argued in his magistral analysis of Indonesian customary law, customary law is not simply a norm governing external relations between humans, but rather an expression of the spirit of togetherness (*Gemeinschaft*) that binds individuals into a total community.<sup>18</sup> Indigenous mediation, in this case, operates on the basis of at least four philosophical principles that fundamentally distinguish it from modern formal mediation.<sup>19</sup> The first principle is the principle of cosmological balance: disputes are viewed not simply as interpersonal conflicts, but as disturbances to the balance of the universe that must be restored through ritual, offerings, and reconciliation. The second principle is the principle of deliberation and consensus, which places collective agreement above unilateral decisions. The third principle is the principle of communal justice, which prioritizes community interests over

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<sup>13</sup> Achmad Ali, *Menguak Teori Hukum Dan Teori Peradilan* (Kencana, 2009); Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, 2001.

<sup>14</sup> Philipus M Hadjon, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2017).

<sup>15</sup> Republik Indonesia, Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa; Republik Indonesia, "Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (1974).

<sup>16</sup> Burhan Asofa, *Metode Penelitian Hukum*, 2001.

<sup>17</sup> Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Liberty, 2011).

<sup>18</sup> Soepomo, *Hukum Adat Indonesia* (Jakarta: Pradya Paramita, 1962).

<sup>19</sup> Fikri Danang Himawan and Pramudya Bumishambara, "Resiliensi Hutan Adat Tenganan Pegringsingan Menghadapi Tekanan Pariwisata Dan Regulasi Negara," *JURNAL NAWALA POLITIKA* 4, no. 1 (March 31, 2026): 43–63, <https://doi.org/10.24843/jnp.v4i1.2220>.

individual interests. The fourth principle is the principle of relational continuity, which makes restoring relationships among community members the primary goal of dispute resolution.

Operationally, the customary mediation mechanism in the context of family disputes in various Indonesian customary communities ranging from Batak, Minangkabau, Javanese, Balinese, Toraja, to Dayak shows rich variations but has a relatively uniform structural framework.<sup>20</sup> The process begins with a complaint to the traditional authorities or authorized traditional figures, followed by the summons of the disputing parties and their respective extended families, followed by a traditional meeting session (customary deliberation) led by traditional elders (ninik mamak in the Minangkabau tradition, Dalihan na Tolu in the Batak tradition, or Krama Desa in the Balinese tradition), and ends with the formulation of an agreement strengthened by traditional symbols.<sup>21</sup> What is interesting from a legal philosophy perspective is the fact that customary mediation creates an authentic deliberative space where the parties do not simply negotiate about material interests, but rather engage in a collective narrative process about who they are, where they come from, and where their community is headed. Within the framework of Habermas's communicative theory, customary deliberation can be seen as a public sphere that allows for the achievement of rational, argument-based consensus free from the domination of power.<sup>22</sup>

Institutionally, customary mediators do not function like neutral and passive formal mediators. They are figures with moral authority, knowledge of customary law, and social legitimacy recognized by the community. This authority creates strong social pressure to comply with the agreement a compliance mechanism that is often more effective than state legal sanctions.<sup>23</sup> Thus, the power of customary mediation lies not only in its procedural or symbolic dimensions, but also in its ability to build social legitimacy deeply rooted in the collective consciousness of the community. The authentic deliberative space and moral authority of customary mediators demonstrate that this mechanism operates not merely as an instrument for dispute resolution, but as a living social practice that functions concretely in maintaining community order. It is at this point that it is relevant to shift analysis from the philosophical and institutional levels to an empirical evaluation of the extent to which customary mediation is truly effective in practice.

The effectiveness of law, from the perspective of Eugen Ehrlich's sociology of law, cannot only be measured by how far legal norms are implemented (law in books), but must be seen from how far the law is truly alive and functioning in society (living law).<sup>24</sup> Using this evaluative framework, the effectiveness of customary mediation in resolving family disputes can be analyzed through four dimensions: the acceptability dimension, the compliance dimension, the durability dimension, and the substantive justice dimension.

In terms of acceptability, customary mediation demonstrates a very high level of acceptance in communities that still maintain strong customary ties. Research conducted in the Minangkabau community of West Sumatra, for example, shows that the majority of family disputes, particularly disputes over high-priced inheritances, are resolved through customary mechanisms at the village level before being taken to court.<sup>25</sup> This is not simply due to geographical accessibility or cost, but rather because indigenous communities have a deep belief that resolution through the ninik mamak is more capable of producing just and dignified solutions.

From a compliance perspective, agreements reached through customary mediation generally have a higher level of compliance than court decisions in family disputes. This is not a paradox, but rather a

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<sup>20</sup> B Haar, *Adat Law in Indonesia. Diterjemahkan Oleh A.W.S* (Jakarta: Bharata, 1962).

<sup>21</sup> Diras, Muhammad Hatta, and Faisal, "Mekanisme Penyelesaian Perkara Pidana Melalui Pengadilan Adat Di Kota Lhokseumawe," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 2, no. 3 (July 9, 2024): 688–701, <https://doi.org/10.70193/cendekia.v2i3.100>.

<sup>22</sup> J Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1996).

<sup>23</sup> Abdusyahid Naufal Fathullah Fathullah, "TIGA MEKANISME KEPATUHAN HUKUM DALAM KONTEKS REGULASI FIFA: KAJIAN SOSIOLOGI HUKUM," *Realism: Law Review* 2, no. 2 (August 28, 2024): 119–41, <https://doi.org/10.71250/rlr.v2i2.39>.

<sup>24</sup> Rahardjo, Ilmu Hukum; Nurfadilah Nurfadilah et al., "Aliran Hukum Sociological Jurisprudence Dalam Perspektif Filsafat Hukum," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 18, no. 6 (November 23, 2024): 4280, <https://doi.org/10.35931/aq.v18i6.4164>.

<sup>25</sup> Hendri, "Efektivitas Lembaga Mediasi Adat Dalam Penyelesaian Sengketa Keluarga Di Minangkabau."

logical consequence of the fundamental difference in legitimacy: court decisions rely on externally coercive state authority, while customary agreements rely on internally derived communal moral authority. Individuals who violate customary agreements face not only legal sanctions but also social ostracism, loss of honor (customary shame), and the severance of the communal solidarity network so vital in indigenous communities.

From a durability perspective, the effectiveness of customary mediation is evident in its ability to produce solutions that not only resolve existing disputes but also prevent future escalation. In inheritance disputes, for example, customary mediation often results in distributions that may not be fully proportional under positive law, but are accepted as fair by all parties because they are based on mutually understood local principles of justice.<sup>26</sup> From the substantive justice perspective, customary mediation faces the most complex challenges. On the one hand, customary mediation offers participatory and context-based justice. On the other hand, the social structures that underpin customary mediation often contain power asymmetries based on gender, class, and age that can disadvantage vulnerable parties, especially women and children, in family disputes.<sup>27</sup> The reconciliation between the values of communal justice and the protection of individual rights is one of the most complex problems of legal philosophy in the context of customary mediation.

The tension between the values of communal justice and the protection of individual rights is one of the most complex philosophical issues in the context of customary mediation. Adherents of traditional natural law theory would emphasize that time-tested customary values contain moral truths that cannot be ignored. Conversely, adherents of legal liberalism would assert that every individual, regardless of their social status within the customary community, has the right to protection of their basic rights as guaranteed by the constitution and international human rights instruments.<sup>28</sup> Reconciliation between these two poles requires a more nuanced approach than simply affirming or rejecting one or the other outright. The conceptual tension between communal justice and the protection of individual rights cannot ultimately be resolved solely in the theoretical realm but demands articulation within a concrete positive legal framework. The debate between adherents of natural law and legal liberalism demonstrates the need to establish normative common ground that can accommodate local values without neglecting universal human rights standards. In other words, this philosophical issue transforms into a legal one concerning the extent to which the state recognizes, limits, and integrates customary mediation practices.

The Indonesian legal system has constitutionally provided space for the existence of customary law, including customary-based dispute resolution mechanisms. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes and respects customary law communities and their traditional rights. Article 28I paragraph (3) further states that the cultural identity and rights of traditional communities are respected in accordance with developments in the times and civilization.<sup>29</sup> At the legislative level, Law Number 6 of 2014 concerning Villages provides more concrete legitimacy for village customary institutions in carrying out dispute resolution functions at the community level. Article 95 of the law emphasizes that village customary institutions function, among other things, to assist in the resolution of customary disputes based on customary law applicable in the village, as long as it does not conflict with human rights. This limiting clause "as long as it does not conflict with human rights" is philosophically important because it reflects the state's efforts to establish a dialogue between customary communal values and universal human rights values. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution opens up broader space for dispute

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<sup>26</sup> Isnu Cut Ali, "Telaah Penyelesaian Sengketa Kewarisan Menurut Hukum Islam Dan Hukum Positif Di Indonesia," *Journal of Islamic Education and Law* 2, no. 1 (January 24, 2026): 15–30, <https://doi.org/10.66155/01c9am93>.

<sup>27</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Heri Sulaiman et al., "John Rawls' Theory of Justice and Its Relevance in the Formulation of Community Property Division Policy in the Contemporary Era," *Al Hairy | Journal of Islamic Law* 1, no. 1 (April 17, 2025): 25–36, <https://doi.org/10.64344/hry.v1i1.13>.

<sup>28</sup> Devi Mustika et al., "Peran Hukum Kodrat Dalam Menjawab Krisis Moral Di Era Disrupsi," *Hukum Dan Masyarakat Madani* 15, no. 2 (November 24, 2025): 341–53, <https://doi.org/10.26623/humani.v15i2.13095>.

<sup>29</sup> Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (1945).

resolution outside of litigation. Although this law is more oriented towards commercial disputes, its basic principles, particularly regarding the agreement of the parties as the basis for the legitimacy of alternative dispute resolution, can be adapted to provide a legal framework for customary mediation in family disputes. Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court also makes a positive contribution by integrating mediation as a mandatory stage in the civil litigation process.

From a legal analytical perspective known as jurisprudence, we need to ask further: is the existing legal basis coherent enough to provide legal certainty for parties who choose customary mediation as a dispute resolution mechanism? An analysis of Supreme Court jurisprudence reveals inconsistencies in the treatment of customary decisions or agreements.<sup>30</sup> In some cases, the Supreme Court recognizes customary rulings as valid and even binding evidence; in other cases, customary rulings are ignored and deemed to have no legal force. This inconsistency reflects the absence of a clear legal doctrine on how state law and customary law should interact in the context of dispute resolution—a doctrinal vacuum that needs to be filled through the development of a more systematic legal theory.<sup>31</sup>

### Challenges and Integration of Traditional Mediation in Family Dispute Resolution

Despite its numerous advantages, the implementation of customary mediation as a family dispute resolution mechanism within the national legal system faces a number of structural and cultural obstacles. A thorough understanding of these obstacles is a prerequisite for formulating effective and sustainable solutions. The first structural obstacle is the absence of a comprehensive and cohesive regulatory framework. Although various laws and regulations mention or acknowledge the existence of customary law, none specifically regulate the procedures, legal requirements, or enforcement mechanisms for agreements reached through customary mediation in family disputes.<sup>32</sup> This regulatory gap creates legal uncertainty that can be exploited by malicious parties to renege on agreements reached. In this context, legal protection for vulnerable parties, particularly women and children, becomes particularly vulnerable.

The second structural barrier is the erosion of customary institutional capacity as a result of the modernization and urbanization processes that have taken place over the past few decades. In many communities, the moral authority of customary leaders has weakened significantly as societal values shift from communal to more individualistic. Younger generations exposed to modern value systems tend to question the authority of customary institutions, thus diminishing the effectiveness of social pressure as a compliance mechanism in customary mediation.<sup>33</sup> The most crucial cultural barrier is the gender bias inherent in many customary systems. In many Indonesian customary communities that adhere to patrilineal or semi-patrilineal systems, women often find themselves in an unequal position in customary mediation processes: their voices are not heard with equal weight, their decisions can be overridden by male family members perceived as having greater authority, and their interests in inheritance or child custody disputes are often subordinated.<sup>34</sup> This gender inequality is not only a matter of intrinsic justice, but also a serious obstacle to the international recognition and constitutional legitimacy of customary mediation.

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<sup>30</sup> Yuliati, "Integrasi Mediasi Adat Dalam Sistem Peradilan Indonesia: Tantangan Dan Peluang," *Jurnal Hukum Dan Peradilan* 12, no. 1 (2023): 1–24; Himlich Hasibuan, "Kepastian Hukum Dalam Putusan Hakim: Studi Terhadap Inkonsistensi Yurisprudensi Mahkamah Agung," *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 2, no. 3 (September 28, 2024): 76–84, <https://doi.org/10.59966/yudhistira.v2i3.1670>.

<sup>31</sup> Griffiths, "What Is Legal Pluralism?"

<sup>32</sup> Poesoko, "Mediasi Berbasis Kearifan Lokal Dan Relevansinya Dengan Hukum Nasional"; Arisma Damayanti et al., "ALTERNATIF PENYELESAIAN SENGKETA (APS)," *Jurnal Ekshis* 3, no. 1 (April 27, 2025): 95–111, <https://doi.org/10.59548/je.v3i1.361>.

<sup>33</sup> Muhamad Adin Kamil, "Integrasi Tradisi Adat Dan Strategi Kepolisian Modern Dalam Penyelesaian Konflik Sosial," *JURNAL MULTIDISIPLIN ILMU AKADEMIK* 2, no. 6 (November 15, 2025): 402–9, <https://doi.org/10.61722/jmia.v2i6.7042>.

<sup>34</sup> Faisal Marasabessy, "Legal Pluralism in Indonesian Family Law: Between State Law and Adat Law," *Asian Journal of Law and Society* 7, no. 2 (2020): 415–32; Made Erna Wintari and Gede Agus Suparta, "SISTEM KEWARISAN: HAK WANITA DALAM HUKUM ADAT BALL," *Pariksa: Jurnal Hukum Agama Hindu* 6, no. 1 (June 22, 2022): 67, <https://doi.org/10.55115/pariksa.v6i1.2241>.

The second cultural barrier is the conflict between the values of religious pluralism and local customary values. In many regions, the strengthening of religious identity has created tensions with customary practices perceived as contradictory to religious teachings. In Muslim family disputes, for example, there is debate about whether resolving inheritance through customary mediation, which results in a distribution different from the law of faraidh, is religiously justifiable.<sup>35</sup> This tension creates additional complications in efforts to integrate customary mediation into the pluralistic national legal system. A third obstacle that requires serious attention is the issue of documentation and formalization of agreements. In customary traditions, agreements are often oral and witnessed communally, with no written document that can be used as evidence in court in the event of a future dispute.<sup>36</sup> In increasingly formal and litigious societies, the absence of adequate documentation makes customary agreements vulnerable to violation. Excessive formalism, on the other hand, can erode the organic and communal character of customary mediation, which is precisely its strength.<sup>37</sup>

The limitations in the aspects of documentation and formalization show that the problem of customary mediation does not only stop at the internal dimension of the community, but is also closely related to the demands of the modern legal system which requires certainty, proof, and accountability.<sup>38</sup> The tension between the need for formalization and efforts to maintain the organic character of customary mediation indicates an unresolved institutional design problem. In this context, it is important to examine how legal systems in other countries with similar legal pluralism respond to and manage similar issues. A comparative approach is relevant as an analytical tool for identifying best practices and understanding potential risks that need to be anticipated. Thus, learning from international experience can provide a reflective foundation for formulating a more adaptive and contextual model of customary mediation integration.

The experiences of various countries with a similar legacy of legal pluralism provide valuable lessons for Indonesia in designing a model for integrating customary mediation into the national legal system.<sup>39</sup> A comparative analysis of the experiences of New Zealand, Papua New Guinea, and several African countries provides an overview of the various approaches taken, along with their respective strengths and weaknesses. New Zealand offers the most advanced example of integrating Maori customary law into the modern legal system. The Waitangi Tribunal, established by the Treaty of Waitangi Act 1975, provides an institutional space for dispute resolution based on Maori values.<sup>40</sup> The Family Group Conferencing (FGC) system, adopted from the Maori (hui whanau) tradition of dispute resolution, has been integrated into New Zealand's criminal justice and juvenile justice systems through the Children, Young Persons, and Their Families Act 1989.<sup>41</sup> The success of the FGC in New Zealand demonstrates that integrating customary mechanisms into modern legal systems is possible when supported by strong political commitment, a clear regulatory framework, and genuine respect for indigenous cultural values. In Africa, the experiences of countries like Tanzania and Uganda in

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<sup>35</sup> Tarmizi Tarmizi, "Upaya Penyelesaian Konflik Pembagian Harta Warisan Masyarakat Di Indonesia," *Al-Adl: Jurnal Hukum* 16, no. 1 (January 27, 2024): 41, <https://doi.org/10.31602/al-adl.v16i1.9701>.

<sup>36</sup> Misnar Syam et al., "PEMBUKTIAN DALAM PENYELESAIAN SENGKETA PADA PERADILAN ADAT," *UNES Journal of Swara Justisia* 6, no. 4 (January 17, 2023): 565, <https://doi.org/10.31933/ujsj.v6i4.303>.

<sup>37</sup> Ahmad Nurdin, "Penyelesaian Sengketa Waris Melalui Mediasi Adat Di Komunitas Minangkabau: Antara Tradisi Dan Modernitas," *UNES Law Review* 5, no. 3 (2022): 765–82.

<sup>38</sup> M Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2008).

<sup>39</sup> Sahin Husain, Nasir Purkon Ayoub, and Mukhammadolim Hassmann, "Legal Pluralism in Contemporary Societies: Dynamics of Interaction between Islamic Law and Secular Civil Law," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (April 30, 2024): 1–17, <https://doi.org/10.35335/cfb3wk76>.

<sup>40</sup> Hari Triasmono and Ahmad Sholikhin Ruslie, "Comparison between Customary Legal Systems and Modern Legal Systems in the Context of Globalization," *International Journal of Law and Society (IJLS)* 3, no. 1 (May 1, 2024): 24–33, <https://doi.org/10.59683/ijls.v3i1.76>.

<sup>41</sup> Naohiro Hohashi and Qingqiuzi Yi, "The Effectiveness of Family Group Conferencing and the Challenges to Its Implementation: A Scoping Review," *Nursing Reports* 15, no. 4 (April 1, 2025): 122, <https://doi.org/10.3390/nursrep15040122>.

recognizing Local Council Courts that apply customary law offer an interesting perspective.<sup>42</sup> This system, despite facing various challenges in its implementation, particularly related to gender bias and corruption, demonstrates that formalizing some of the customary processes through documentation requirements and the right to appeal to formal courts can improve the accessibility of justice for communities living far from state justice centers.

Papua New Guinea, with a level of cultural diversity that even exceeds Indonesia's, adopts a different approach through the Village Court System.<sup>43</sup> Village courts in Papua New Guinea are given limited jurisdiction to apply customary law in minor disputes, including family disputes, with judges selected from the local customary community.<sup>44</sup> This system recognizes the reality of legal pluralism without sacrificing legal certainty, although it still faces challenges in terms of procedural standards and the protection of women's rights. From this comparative analysis, it can be concluded that there is no single universal model that can be adopted outright. Each integration model must take into account the specific historical, demographic, and cultural context of each community. The general lessons to be learned are: first, the integration of customary law requires formal recognition enshrined in a statutory legal instrument; second, oversight mechanisms that protect the rights of vulnerable parties must be established as an integral component of the system, not as an after-the-fact add-on; and third, the capacity of customary institutions needs to be systematically strengthened to function effectively in an increasingly complex legal environment.<sup>45</sup>

Findings from practice in Papua New Guinea, as well as the overall comparative reflection, demonstrate that managing legal pluralism requires a careful balance between recognizing the diversity of local norms and the need for legal standards that guarantee certainty and protection of rights. The absence of a universal model emphasizes that any integration design must be contextually constructed, based on the social and cultural characteristics of the communities concerned. The general lessons identified do not stop at the descriptive level but need to be transformed into more operational normative constructs. At this point, the urgency of formulating a systematic conceptual framework becomes increasingly apparent. Such a framework is expected to not only address existing weaknesses but also optimize the potential of customary mediation as a just dispute resolution mechanism.

Based on the overall normative, theoretical, and empirical analysis outlined above, this study proposes a conceptual framework for integrating customary mediation into the national legal system, structured systematically and in layers. This framework rests on three main pillars: recognition, protection, and capacity building, which are conceptually interrelated and inseparable.<sup>46</sup> This formulation is intended to bridge the tension between the need for legal certainty within the state legal system and the demand for recognition of the diversity of legal practices prevalent in society. Thus, the model offered is not only descriptive but also prescriptive, as a direction for national legal reform based on structured legal pluralism.

The pillar of recognition requires the creation of a legal instrument at the level of a law that explicitly recognizes customary mediation as an integral part of the alternative dispute resolution system.<sup>47</sup> These regulations must be formulated comprehensively, including criteria for recognized customary mediation institutions, competency standards for customary mediators, procedures for mediation, and mechanisms for formalizing agreements to ensure they have enforceable legal force.

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<sup>42</sup> Karen Bird et al., "Talk Matters: Local Council Debates over Electoral Reform for Indigenous Representation in Canada and New Zealand," *Commonwealth Journal of Local Governance*, December 31, 2025, 3–23, <https://doi.org/10.5130/gesr9x42>.

<sup>43</sup> Steven Tjahjadi Sanjaya et al., "Village Autonomy and Land Disputes: Land Governance Politics in Traditional Villages in Papua, Indonesia, in the Issue of 'All Eyes on Papua,'" *Jurnal Pemerintahan Dan Kebijakan (JPK)* 7, no. 1 (December 8, 2025): 13–22, <https://doi.org/10.18196/jpk.v7i1.24982>.

<sup>44</sup> E Warassih, *Pranata Hukum: Sebuah Telaah Sosiologis* (Semarang: Badan Penerbit Universitas Diponegoro, 2005).

<sup>45</sup> L L Putnam and J M Wondolleck, "Intractability: Definitions, Dimensions, and Distinctions BT - Making Sense of Intractable Environmental Conflicts: Concepts and Cases," ed. R J Lewicki, B Gray, and M Elliott (Washington DC: Island Press, 2003).

<sup>46</sup> L Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31.

<sup>47</sup> S Wignjosebroto, *Hukum: Paradigma, Metode Dan Dinamika Masalahnya* (Jakarta: HUMA, 2002).

Furthermore, regulations are needed regarding the functional relationship between customary mediation and formal justice, particularly through referral mechanisms and judicial recognition of customary agreements. This recognition is not intended to subordinate customary law to state law, but rather to acknowledge their parallel existence within a coherent and coordinated framework of legal pluralism.<sup>48</sup>

The protection pillar emphasizes the importance of developing normative safeguard mechanisms to ensure that customary mediation practices do not become a means of reproducing structural injustice.<sup>49</sup> In this context, the state is obliged to ensure that the entire mediation process is based on the principles of voluntariness, equality of the parties, and respect for human rights. These safeguards include the parties' right to legal representation, the right to reject agreements that do not reflect substantive justice, and the availability of a limited judicial review mechanism for customary agreements suspected of violating constitutional norms.<sup>50</sup> Thus, protection is not only understood as repressive intervention, but also as a preventive measure to maintain the integrity of the customary mediation process. The capacity-building pillar requires systematic and sustainable policy interventions to strengthen the existence and function of customary institutions. These efforts include improving the competence of customary mediators through training programs that integrate positive legal knowledge with local wisdom, strengthening customary institutional structures to be more adaptive to social dynamics, and increasing the legal literacy of indigenous communities. Capacity-building is not interpreted as a process of homogenization or modernization that eliminates the distinctive character of customary mediation, but rather as an empowerment strategy to enable customary institutions to operate effectively in an increasingly complex legal landscape.

Philosophically, the proposed integration model is rooted in the paradigm of strong legal pluralism, as developed in contemporary legal theory literature, which recognizes the existence of various normative orders within a single social space without placing them in a single, rigid hierarchy.<sup>51</sup> This approach differs from weak legal pluralism, which tends to place customary law as subordinate to state law.<sup>52</sup> However, recognition of legal pluralism must remain bound by universal fundamental norms, particularly the principles of non-derogable human rights. Thus, the integration that is built is both inclusive and normatively controlled.

In resolving family disputes, this model positions customary mediation and formal justice as two complementary mechanisms. Parties are given the freedom to choose the resolution mechanism that best suits their needs and social context, while remaining open to the possibility of switching between mechanisms if necessary. Therefore, a paradigm shift is needed among judicial officials to be more responsive to the existence and outcomes of customary mediation, including in terms of judicial recognition and consideration. Furthermore, customary institutions are also required to internalize minimum standards for the protection of individual rights as stipulated in national law and international instruments.

Normatively, this study recommends the establishment of specific regulations in the form of laws that comprehensively regulate the recognition and protection of indigenous legal communities, including customary mediation mechanisms. These regulations must be formulated with due regard to the constitutional mandate and relevant developments in international law. Furthermore, the Supreme Court needs to develop judicial guidelines that provide clarity regarding the legal status, recognition, and enforcement mechanisms for agreements reached through customary mediation, particularly in family

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<sup>48</sup> M S W Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi* (Jakarta: Kompas Media Nusantara, 2001).

<sup>49</sup> B Manan, *Hukum Positif Indonesia: Suatu Kajian Teoritik* (Yogyakarta: FH UII Press, 2004).

<sup>50</sup> R Y Zakaria, *Merebut Negara: Beberapa Catatan Reflektif Tentang Upaya-Upaya Pengakuan, Pengembalian, Dan Pemulihan Hak-Hak Masyarakat Adat* (Yogyakarta: KARSA dan LAPPERA, 2004).

<sup>51</sup> Mumpuni Gati Lintang, "Sinkronisasi Hukum Negara Dengan Hukum Islam Dalam Konteks Pluralisme Hukum Di Indonesia," *Journal of Society and Scientific Studies* 1, no. 1 (June 17, 2025): 20–32, <https://doi.org/10.62504/scientiva5>.

<sup>52</sup> Roynald Donna Febrianto and Erry Meta, "Dinamika Penalaran Hukum Dalam Sistem Peradilan Plural," *Law and Humanity* 3, no. 2 (September 13, 2025): 123–38, <https://doi.org/10.37504/lh.v3i2.738>.

cases. These steps are expected to establish a dispute resolution system that not only guarantees legal certainty but also reflects substantive justice and the diversity of values within Indonesian society.

## Conclusion

Customary mediation holds enormous potential as an effective, dignified, and sustainable alternative mechanism for resolving family disputes. Its effectiveness stems from its moral legitimacy rooted in communal values, its ability to create restorative rather than retributive solutions, and its capacity to maintain and restore the network of social relations that underpin communal life. In terms of acceptability, compliance, durability, and, importantly, substantive justice, customary mediation demonstrates a performance that cannot be ignored by a dignified national legal system. However, the effectiveness of customary mediation is not without challenges. Structural barriers such as the absence of a comprehensive regulatory framework, cultural barriers such as gender bias and the erosion of customary authority, and technical barriers such as weak documentation and formalization of agreements are issues that need to be addressed systematically. International experience demonstrates that integrating customary mediation into modern legal systems is a feasible and feasible project, but requires consistent political commitment, careful institutional design, and genuine respect for the integrity of customary values.

The integration model proposed in this study, which rests on the pillars of recognition, protection, and capacity building within a strong legal pluralism framework, offers a middle ground that avoids two equally dangerous extremes: on the one hand, the total assimilation of customary law into state law, which would diminish its identity and distinctive power; on the other hand, the complete isolation of customary law from the national legal system, which would allow it to operate unsupervised and without protection for vulnerable parties. From a legal philosophy perspective, this study contributes to the idea that justice in a pluralistic society cannot and should not be sought in a single value system imposed from above. True justice in the Indonesian context must emerge from an equal dialogue between the various normative traditions that exist within a society of dialogue orchestrated by the state, not as a referee imposing a winner, but as a facilitator creating space for each tradition to make its best contribution to shared prosperity.

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