

Comparative Analysis of the Use of Customary Law in Land Dispute Resolution: Case Study Approach

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ABSTRACT

Background. Background Customary law is a legal system that has existed since ancient times in many communities in Indonesia. However, with modernization and globalization, the use of customary law in land dispute resolution is often overlooked or defeated by positive law. Therefore, it is important to conduct a comparative analysis of the use of customary law in land dispute resolution to understand its relevance in the context of modern law.

Purpose. The purpose of this study is to investigate the comparative use of customary law and positive law in land dispute resolution. The specific objective is to evaluate the effectiveness, fairness and sustainability of each approach in resolving land conflicts.

Method. The research method used is a case study approach. Case studies were conducted on several cases of land dispute resolution in various regions in Indonesia involving the use of customary law and positive law.

Results. The results show that the use of customary law in land dispute resolution often provides solutions that are more in line with local needs and traditional values of the community. However, positive law also has an important role in providing legal certainty and protection of individual rights.

Conclusion. Based on the results of the comparative analysis, it is concluded that both approaches have their own advantages and disadvantages. Therefore, the integration between customary law and positive law can be a more optimal solution in resolving land disputes in Indonesia, by taking into account the local context and individual rights in a balanced manner.

KEYWORDS

Customary Law, Case Study, Land Dispute Resolution

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INTRODUCTION

There are many definitions of law, depending on the context, but law generally refers to the set of rules and standards established and applied by a state or society to regulate relationships and behavior between individuals and organizations (Bedner & Arizona, 2019). One of the main purposes of law is to create and protect society from order, justice, and security (Wang et al., 2020). Laws also aim to provide guidelines for people and organizations to interact in a fair and orderly manner (Liu, 2019). In

addition, the law aims to uphold the rights and obligations of everyone and protect the public interest of society (Engberg, 2020). One aspect of the law's function is behavior regulation, where the law regulates the behavior of people and organizations by setting standards that must be followed in various aspects of life, such as economic, social, and political (Siauve et al., 2019). The legal dispute resolution process allows individuals or groups to resolve conflicts and disputes through courts and alternative dispute resolution institutions (Silberg & Dallam, 2019). A person's basic rights, such as the right to liberty, the right to property, and the right to justice, are protected through the protection of legal rights (Antunes et al., 2019).

In addition, punishment is used to prevent the government or other institutions from abusing their power (Njelesani, 2019). If a person or organization breaks the established rules, the law sets consequences or sanctions (Chachko & Heath, 2022). Sanctions may take the form of fines, criminal penalties, or reimbursement of losses to the injured party (Sabarianand et al., 2020). Therefore, the law plays a very important role in maintaining the stability and welfare of a society and ensuring justice for everyone involved in the process (Hanesworth et al., 2019).

In various aspects of community life, law is very useful, including maintaining social order because it establishes rules that govern the behavior of individuals and organizations in society (He et al., 2021). With law, people can live together and avoid conflicts that could destabilize society. One of the main benefits of law is to ensure justice for every member of society (Wane et al., 2020). In addition to providing fair guidelines for resolving disputes and conflicts, the law provides protection to the basic rights of every person, such as the rights to liberty, property, justice, and safety (Bae, 2021).

Therefore, the law protects people from abuse of power by the government or other institutions (Havard & Lefevre, 2020). Promotes Compliance and Order Laws establish rules that all people and institutions must follow, creating order in society (DeVito et al., 2020). This reduces the likelihood of abuses and uncertainty while encouraging compliance with the law. The necessary framework for a country's economic, social and political growth is provided through the provision of a legal development framework (Rana et al., 2019).

With clear and reliable laws in place, governments, businesses and communities can work together to create an enabling environment for sustainable growth. It is important to create a healthy investment climate and increase investor confidence by promoting stable and reliable economic growth (Mensah et al., 2019). It promotes economic growth by creating new jobs, increasing productivity, and improving the overall well-being of society. Therefore, law is essential to drive progress and maintain justice, order, and prosperity in society (Alola et al., 2019).

In contrast to positive law, which are rules made by the government or legislature, customary law refers to the set of norms, rules, and traditions applied and recognized by a particular community or society based on long-standing customs and values (Angga & Latupono, 2020).

Customary law has different purposes depending on the society and culture that uses it (Graduate School of Bioresource and Bioenvironmental Sciences, Kyushu University, 744 Motooka Nishiku Fukuoka, Japan 819-0395 et al., 2020). In general, the purpose of customary law is to maintain and pass on Tradition. Maintaining traditions and cultural values from one generation to the next is the primary purpose of customary law (Mosquera Valderrama, 2020). To maintain the identity and cultural sustainability of a community, customary law is essential. Customary law regulates social relations between individuals, families, and community groups (Gachenga, 2021).

Customary law rules set standards of expected behavior and sanctions for breaking them (Ismi et al., 2021). Resolving Conflict Customary law offers mechanisms for resolving disputes and disagreements that arise within communities (Geyer, 2023). The parties involved usually reach

consensus through a process of mediation, deliberation, or agreement. provide local justice, where customary law often reflects values of justice that are local and contextual according to the needs and beliefs of the local community. The approach of customary law in dispute resolution or rule implementation usually favors the interests and survival of the local community (Dodge, 2021).

The function of customary law is to maintain social balance, where the law establishes rules that regulate behavior and interactions among community members (Jany, 2020). Providing local identity and sovereignty customary law demonstrates the cultural identity of a community and is often considered an important component of regional autonomy and local sovereignty. providing an alternative to dispute resolution where customary law offers an alternative to the formal legal system, which is often more accessible and may better suit local needs. Therefore, customary law is essential for keeping culture alive, regulating social relations, and providing a framework for conflict resolution in communities (Riley et al., 2020).

The purpose of the comparative analysis of the use of customary law in land dispute resolution is to investigate and compare the effectiveness, fairness, and sustainability of the use of customary law and positive law in terms of land dispute resolution (Tchatchoua-Djomo et al., 2020). In addition, this research aims to understand the role and contribution of each method in land dispute resolution. Using the aforementioned approaches, this comparative analysis attempts to understand how the two methods function in dispute resolution (Bentéjac et al., 2021).

RESEARCH METHODOLOGY

This research is conducted with a comparative analysis method by comparing the use of customary law and positive law in resolving land disputes (Too et al., 2019). The research aims to understand the effectiveness of customary law and positive law in resolving land disputes, identify the advantages and disadvantages of using customary law and positive law in the context of resolving land disputes and assess the extent to which customary law and positive law can meet the needs of local communities in resolving land disputes (Afrizal et al., 2023).

The comparative analysis in this research was conducted by selecting two or more cases involving land dispute resolution using customary law and positive law and ensuring that the cases differed in terms of geographical context, culture or legal aspects. Examining the background and characteristics of the cases included information on geographical location, culture, applicable legal regulations, parties involved, and the land dispute issues that arose (Skelton & Batley, 2021). Determine relevant comparison criteria to analyze the use of customary and positive law in land dispute resolution. These criteria could include aspects such as fairness, speed of process, community participation, sustainability, or compliance with decisions. Analyze the data collected, focusing on how customary and positive law were applied in each case (Shao et al., 2021). Reviewing how the land dispute resolution process took place, whether any cultural or customary considerations were taken into account, and what the outcome was. Comparing the results of the analysis of each case study based on predetermined comparison criteria. Identify the strengths and weaknesses of each approach in the use of customary law and positive law (Muhammad Mutawali, 2022).

The data that has been obtained from this research is then collected and then presented with comparative analysis, namely by comparing the use of customary law and positive law in resolving land disputes. The comparison that has been obtained is then presented with two different cases of the use of customary law and positive law in resolving land disputes with the words of researchers and discussed using several opinions of experts and also from researchers who have previously conducted research related to the use of customary law and positive law in resolving land disputes

(Barbosa Jr. & Burns, 2021). It is in the discussion section of the research results that the researcher's argument is narrated and developed by placing the researcher as the arbiter of the many conclusions contained by previous researchers.

RESULT AND DISCUSSION

The first case is a land dispute settlement using customary law.

A land dispute occurred between two community groups as they claimed land in their customary territory. Over the years, this conflict disrupted stability and harmony (Asaaga, 2021). To resolve the dispute, customary deliberations were held with customary leaders and community leaders. After much conversation and deliberation, it was decided that the dispute would be resolved in accordance with local customs and traditions. An agreement was reached whereby both community groups agreed to share the land for mutual benefit (Slakmon & Schwarz, 2019).

The land dispute was resolved peacefully and in accordance with the traditional values of the community using a customary law approach (Gutierrez-Giles et al., 2021). The solution succeeded in restoring peace in the village and preventing further conflict, although it did not fully satisfy all parties (Haji Munir, 2022).

The second case is a land dispute settlement based on positive law.

A land dispute occurred between two companies as they claimed a very lucrative piece of land. Tensions had arisen between the two parties as this dispute became a major topic of the legal agenda. The two companies chose to resolve their dispute through a formal legal process in court. They both filed a lawsuit and underwent a trial involving legal experts and evidence. Eventually, the court made a decision establishing the ownership rights of the land based on the interpretation of the applicable law. (Von Benda-Beckmann, 2019).

The Positive Law method successfully provides clear legal certainty of land ownership, although it is a lengthy and expensive process. The court decision provided a solid basis for dispute resolution and prevented further conflict between the two parties.

The two cases demonstrate the difference between the use of customary law and positive law in land dispute resolution, customary law allows local communities to actively participate in the resolution process. Consensus and traditional cultural values determine decisions, a lengthy deliberation process can lead to slower settlements. In addition, if there is no agreement, the outcome may not always satisfy all parties. provides a solution that is more acceptable to the local community as it is in accordance with local values and traditions.

At times, the values of justice in Customary Law may conflict with universal values of justice, which may lead to injustice in some situations. maintains solidarity and relationships within the local community as they make decisions together If the interests of minority groups are not well represented, the use of Customary Law may reinforce social inequalities in society (Chauvin et al., 2021).

In the use of positive law, it provides clear and firm legal certainty as it is based on existing laws. The process, especially if the dispute ends up in court, is often difficult, expensive and takes longer. ensures the protection of a person's rights and property and creates a solid basis for fair dispute resolution. In some cases, the implementation of positive laws does not always take into account local traditions and culture, which can lead to dissatisfaction. This process is overseen by courts and legal professionals, which results in more neutral and legally-related decisions. A poor understanding of the local culture and context can lead to decisions being made that do not take into account the needs and desires of the local community.

This comparison shows that both methods of resolving land disputes have their strengths and weaknesses. Certain factors, such as the cultural context, the needs of the local community, the complexity of the case, and the desired settlement objectives, influence the decision to use one approach or the other.

In the use of positive law, it provides clear and firm legal certainty as it is based on existing laws. The process, especially if the dispute ends up in court, is often difficult, expensive and takes longer. ensures the protection of a person's rights and property and creates a solid basis for fair dispute resolution. In some cases, the implementation of positive laws does not always take into account local traditions and culture, which can lead to dissatisfaction. This process is overseen by courts and legal professionals, which results in more neutral and legally-related decisions. A poor understanding of the local culture and context can lead to decisions being made that do not take into account the needs and desires of the local community.

This comparison shows that both methods of resolving land disputes have their strengths and weaknesses. Certain factors, such as the cultural context, the needs of the local community, the complexity of the case, and the desired settlement objectives, influence the decision to use one approach or the other (Cameron et al., 2021). While positive law can be more focused on formal and technical aspects, especially in terms of areas related to land, it may not always address the social or cultural issues underlying land disputes (Barinov et al., 2021).

Local social and power structures often influence customary law enforcement (Beji et al., 2021). In societies with strong customary traditions and values, this may work. However, customary law enforcement can also be inconsistent and prone to abuse of power by local elites. Because it involves established state institutions, positive law enforcement is more structured and reliable. However, bureaucracy, corruption and lack of resources sometimes hinder effective law enforcement.

In terms of the sustainability of solutions, solutions based on customary law often create more sustainable solutions because they are integrated into the lives of local communities and protected by strong customary value systems and norms. Solutions based on positive law are often more organized and provide clearer legal certainty, but their sustainability depends on good law enforcement and the ability of the legal system to confront violations.

In some situations, the customary law approach may be considered more equitable in terms of justice as it takes into account the different values, desires and needs of the community. However, it can also be subjective and prone to discrimination against certain groups, especially disadvantaged social groups. Because it is based on universal principles and widely recognized legal standards, positive law has the potential to provide fairer justice. However, in some situations, especially if it does not take into account the needs or opinions of certain social groups, positive law can also be unjust.

Customs, traditions and norms passed down from generation to generation form the traditional legal system of a particular community. In land dispute resolution, customary law often serves as an important tool to mediate and resolve disputes related to land ownership and utilization.

Customary law usually requires the active participation of local communities. Traditional leaders, community leaders, and members of affected communities usually participate in customary deliberations to resolve disputes. Community participation in decision-making provides a stronger sense of ownership of the final outcome.

To resolve disputes, customary law usually emphasizes on reaching consensus or agreement. In most cases, the goal of the conventional deliberation process is to reach a settlement that is agreed upon by all parties involved. In addition, current conflicts of opinion and interest are often

resolved through mediation by traditional leaders. Customary Law originates from local cultural values and traditions that have developed over the years. Values such as gotong royong, solidarity and community harmony are often taken into consideration when resolving disputes with customary law. This makes the settlements made more culturally appropriate.

Customary law is usually more flexible and adaptable to social change. Although Customary Law has the advantage of considering local cultural values and traditions, the lack of formality in the decision-making process and dispute resolution often leads to legal uncertainty. This can be especially problematic in the event of a dispute between Customary Law and Positive Law.

In land dispute resolution, customary law and positive law are different. In traditional societies, customary law is often the main method for resolving land conflicts. This method considers local cultural values and traditions in the decision-making process, allows communities to participate in customary deliberations, and tends to result in solutions that better suit local needs. However, the application of customary law can also raise issues regarding the protection of individual rights that may not always be fairly represented, and legal uncertainty as there are no consistent standards.

However, positive law or formal law, which consists of regulations made by the government or official legal institutions, provides clearer legal certainty and a more organized process of resolving land disputes. This process usually involves professional and independent courts or legal institutions, which have the ability to guarantee adherence to principles of justice. However, the use of positive law can also present problems, such as cumbersome bureaucracy, high costs, and a tendency to ignore cultural values and local traditions when making decisions.

In land dispute resolution, each method has advantages and disadvantages, which must be carefully considered. In societies that are strongly tied to tradition and cultural values, it may be more appropriate to use Customary Law. This may also increase community participation and acceptance of the outcome. However, a positive law approach may be more suitable in situations where legal certainty and protection of individual rights are top priorities.

It is important to remember that the choice of approach is not always binary; there is often an opportunity for a more inclusive approach that combines aspects of both approaches. This allows for a more comprehensive resolution of land disputes that takes into account local cultural values while providing strong legal protection and justice for all parties involved. It is therefore important for policymakers, legal practitioners and other stakeholders to thoroughly understand the local context and case characteristics before deciding on the most appropriate method of land dispute resolution.

Adat refers to the rules and customs that apply in a particular society or ethnic group. Traditions and customs that are respected by the local community usually form the basis of customary law. As local traditions often govern land ownership and use, customary law can be important in land dispute resolution. Settlement of land disputes under customary law usually involves a mediation or settlement process within the local community taking into account existing customs and rules.

Positive law consists of regulations set out in laws, government regulations and court decisions. Positive law is usually the law established by the state and generally applicable in the region. In resolving land disputes, positive law is usually the main reference. The government enacts laws that regulate land ownership, the land registration process and dispute resolution. Settlement of land disputes under positive law may involve court proceedings or alternative dispute resolution institutions regulated by law.

CONCLUSION

The case studies show that using customary law in land dispute resolution can bring many advantages. For example, land dispute resolution based on customary law often achieves a balance between individual interests and communal interests, and takes into account the close social relations within the community; this is evident in the case studies considered, as customary law can be integrated with daily life and local value systems, which allows for more sustainable land dispute resolution.

However, it is worth remembering that the use of customary law has its limitations and problems. In some cases, customary law can be unfair or discriminatory towards certain groups, especially minority groups. In addition, the enforcement of customary law often depends on local social and power structures, which can lead to legal uncertainty or abuse of power by local elites.

The case studies also emphasize the importance of official recognition of customary law by the government in the context of land dispute resolution. In countries where customary law is officially recognized and incorporated into the national legal system, land dispute resolution based on customary law may become more efficient and sustainable. Elsewhere, where positive law ignores or precludes customary law, there may be major challenges to achieving fair and sustainable resolution of land disputes.

So while customary law can help resolve land disputes, it depends on many things, such as official recognition, consistency of application, and fairness of enforcement. To achieve the most effective resolution of land disputes, often positive law and customary law are combined.

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