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Criticism of the Overlap of Positive Law, Islam, and Customary Laws on Muslim Minority Land Disputes in North Sulawesi

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Abstract

This study critically examines the overlap of positive law, customary law, and Islamic law in land dispute resolution in minority Muslim communities in North Sulawesi. This study uses a normative-comparative approach by integrating doctrinal analysis of agrarian regulations and court decisions as well as empirical findings from case studies and interviews to assess norm inconsistencies and their socio-legal impacts. This research is qualitative argumentative with a legal pluralism perspective to criticize the dominance of legal positivism and its implications for substantive justice. The results of the study show that the certainty of administrative law through certification and formal litigation has reduced land as a mere legal object and marginalized the socio-historical legitimacy of customary law and the value of Islamic law. The tension between Article 18B of the 1945 Constitution, the 1960 Law, and the practice of Islamic law reflects the state's failure to operationalize inclusive legal pluralism. Formal litigation often results in high costs, procedural complexity, and judgments that are detached from the social realities of minorities. On the other hand, alternative dispute resolution mechanisms based on local wisdom have greater potential in reducing conflicts even though they still face institutional limitations. This study confirms that legal pluralism without harmonization actually reproduces structural marginalization. Therefore, the principles of maqāṣid al-sharīʿah, in particular 'adl and maṣlaḥah, are offered as a corrective normative framework for inclusive and sustainable agrarian justice.

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Keywords: Overlapping Legal System, Land, North Sulawesi.

INTRODUCTION

Land is a fundamental resource for people's lives not only as a place to live and livelihood but also as a symbol of identity and social legitimacy. In Indonesia, land is an important instrument in economic development, urbanization and regional expansion, so its management requires a clear and fair legal framework. However, the complexity of land ownership in Indonesia often causes conflicts involving various parties ranging from individuals, indigenous communities, to the state due to differences in perspectives on land rights. A legal approach that is sensitive to a plurality of local norms and wisdom becomes very relevant to understand and resolve agrarian conflicts.

In North Sulawesi, the need for land continues to increase along with population growth and development expansion, so agrarian conflicts become a complex structural issue in many regions. This problem arises due to the incompatibility between formal national law and people's sociocultural rights to land that are often not accommodated in the country's legal system. Legal pluralism states that the conflict between state law and customary law and local norms has shaped a systemic pattern of agrarian disputes (Satria et al., 2025). The Indonesian land law system regulated in Law Number 5 of 1960 concerning the Basis of Agrarian Principles emphasizes formal legality through certificates as proof of ownership. However, this does not always accommodate the cultural and social contexts of communities particularly within indigenous communities and minority religious communities. As a result, social and customary norms are often outside the legal recognition of the state despite the fact that they serve as social legitimacy for the community (Bilkis & Mudiparwanto, 2025).

Land is not just an economic object, but it has a strong moral, social, and spiritual dimension. Islamic law views land as a trust that must be managed fairly and balanced and promotes distributive justice that supports the welfare of the ummah. This is in contrast to the positive legal perspective that places land as an economic tool through formal ownership. This rule shows that principles such *as salih, adl* and *mizan* are relevant in providing a basis for the ethical and moral settlement of land disputes (Ridwan, 2013).

In North Sulawesi, local wisdom has a strong influence on the social life of the community, including in regulating land use and rights. These local values are inherited from generation to generation through the traditions of indigenous communities that prioritize deliberation and consensus in resolving conflicts. Some cases in the settlement of customary mechanisms provide

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social legitimacy that is much more accepted by the community than formal litigation processes. One study said this kind of approach is able to reduce agrarian conflicts because it integrates socio-cultural values with legal decisions (Sunarno, 2019). Third, positive legal systems, Islamic law, and local wisdom often overlap in practice, especially regarding land ownership and dispute resolution, thus creating norm conflicts that have an impact on legal uncertainty. For example, national law may recognize certificates as primary evidence of land rights, while customary law or Islamic law provides legitimacy based on the history of common use and the principle of social justice. This disharmony causes people to feel that formal law does not provide substantive justice (Satria et al., 2025).

The inconsistency of these legal norms has direct implications for substantive justice because positive law is formalistic and does not always consider the sociocultural context in a pluralistic society. Substantive justice cannot be measured only by the suitability of legal documents but also by the extent to which legal results bring a sense of social justice to the individuals and groups in dispute. The approach to legal pluralism suggests that the dominance of formal law often places customary and religious law in a subordinate position (Satria et al., 2025). The issue of land dispute resolution mechanisms suggests that non-litigation approaches such as mediation, negotiation or community deliberation are often more effective in the context of indigenous or minority communities. This notes that dispute resolution through non-litigation channels based on local wisdom tends to be more socially acceptable, especially when involving traditional or religious leaders as mediators so as to strengthen the legitimacy of conflict resolution (Yudhistira, 2022).

In North Sulawesi, the settlement of land disputes consistently prioritizes non-litigation mechanisms such as mediation, customary deliberation and the role of customary institutions as the first step before the court is taken because this approach is more responsive to the social and cultural context of the community, allowing for sustainable resolution and is faster and more efficient than formal litigation processes that are often considered lengthy, procedural and less value-sensitive local. Mediation facilitated by the National Land Agency or customary/religious leaders through the appointment of a third party as a mediator not only accelerates dispute resolution but also maintains social harmony in the community, accommodates the interests of all parties and affirms the social effectiveness of settlement based on local wisdom even though formal recognition of customary decisions in the national legal system is still limited (Ambrito & Kuntag, 2025).

Controversy arises when a non-litigation decision does not have formal legal force and

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therefore requires state legal support in order to be legally executive. Without formal recognition, agreements reached through customary mediation or Islamic legal principles are likely to be rejected or ignored by formal courts, creating uncertainty and further conflicts. This shows the importance of harmonizing the rule of law. The inconsistency of legal norms also leads to inequalities in access to legal protection. Muslim minority communities tend to lack the resources to access formal litigation while more affordable nonlitigation mechanisms are sometimes not recognized by the country's legal system. The consequence is a gap in obtaining substantive justice between majority and minority groups (Wulandari & Handayani, 2025).

Some cases of agrarian conflicts in Indonesia, such as disputes over customary land or waqf land, a formalistic approach to national law can ignore the social and moral principles held by indigenous communities or Islamic communities. Waqf land disputes show that the non-litigation settlement model is better able to reduce conflicts because it places socio-cultural values as part of the legitimacy of dispute resolution (Yudhistira, 2022). Agrarian conflicts that occurred in a number of regions showed that when the rights of indigenous peoples are formally recognized, conflicts can subside, but when national rules marginalize the existence of customary law, conflicts actually increase. This emphasizes that recognition of the plurality of legal norms is an important condition for the achievement of substantive justice (Wulandari & Handayani, 2025).

This legal inconsistency is also rooted in the dominance of a positivistic legal paradigm that prioritizes procedural certainty over social, cultural, and religious contexts. Legal pluralism in substantive justice can only be achieved when formal legal norms synergize with local values and religious norms that are alive and recognized in the community (Anggraeni, 2023). Therefore, Islamic law offers an alternative norm that still respects the social structure of the community because Islamic law views dispute resolution as a moral and social process rather than just an administrative process. The concepts of justice and *maslahah* in Islamic law have strong relevance in the practice of resolving land disputes in a communal and restorative manner (Ridwan, 2013).

Land law reform in Indonesia needs to consider normative recognition of legal pluralism by creating a legal umbrella that accommodates conflicts between formal law, Islamic law, and local wisdom. This is important so that land dispute settlement decisions are not only legal formal, but also have strong social legitimacy in the community (Satria et al., 2025). Therefore, this study aims to critically analyze the relationship between positive law, Islamic law and customary law in the settlement of Muslim minority land disputes in North Sulawesi and evaluate its normative implications for substantive justice. Thus, it is expected to provide legal policy recommendations that are more inclusive and responsive to the plurality of norms in society.

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METHODOLOGY

This study uses a comparative normative approach Efendi & Ibrahim (2018:33) which combines juridical and empirical analysis. Juridical analysis is carried out by examining laws and regulations related to land, Islamic law, and local wisdom, including Law Number 5 of 1960 concerning the Basis of Agrarian Principles, Article 18B of the 1945 Constitution concerning the recognition and respect of customary law and the Supreme Court Regulation on the competence of the Religious and Civil Courts (Anggraeni, 2023). Empirical analysis was conducted through case studies of minority Muslim communities in North Sulawesi through interviews with traditional leaders, religious leaders, and parties who have had land disputes. This approach allows research to identify inconsistencies in legal norms, dispute resolution mechanisms and their impact on substantive justice (Efrizon et al., 2025). This research is also qualitative argumentative which emphasizes interpretation and criticism of the implementation of the law and the interaction between legal systems. This analysis highlights the social, cultural, and religious contexts within minority Muslim communities, thus allowing research to critically interpret empirical data and legal documents. Emphasizing legal pluralism, this research maps the tension between formal law, Islamic law, and local wisdom, as well as their impact on land dispute settlement practices, including litigation and nonlitigation mechanisms.

This research refers to the principle of *maqāṣid alsharī'ah* to assess substantive justice and the principle of legal pluralism to understand the tension of formal and customary legal norms. The legal regulations analyzed include Article 18B of the 1945 Constitution, Law Number 5 of 1960 concerning the Basic Principles of Agararia as well as Supreme Court rulings related to land disputes involving Islamic law and local wisdom to provide a critical understanding of how legal inconsistencies affect the rights and justice of Muslim minorities (Toruan & Djaja, 2025).

RESULTS

Overlap of Positive Law, Islam and Customary in Land Dispute Resolution of Muslim Minority in North Sulawesi

Legal pluralism is defined as the existence of more than one living and co-existing legal system in a society in which each legal system has its own source of legitimacy and authority. According to John Griffiths, legal pluralism can be distinguished into weak legal pluralism in which state law dominates but local law remains limited in existence, and strong legal pluralism in which state law and local law coexist and compete for social legitimacy (Djunaidy et al., 2024). Meanwhile, Hooker emphasized the character of customary law in Southeast Asia as communal,

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collective, and genealogical-based law, making it difficult to be fully integrated into an individualistic national legal system (Harahap et al., 2025).

In Indonesia, legal pluralism is reflected in the interaction between positive law, customary law, and Islamic law. Satjipto Rahardjo emphasized that law must be seen not only as a formal instrument, but also as a reflection of the social values that live in society so that compliance with formal law must be in line with the social legitimacy of customary law and the principles of Islamic law (Septiningsih, 2024). Meanwhile, Mochtar Kusumaatmadja highlighted the importance of the recognition of customary law in the development of national law, because customary law brings cultural uniqueness and local identity that cannot be ignored. In North Sulawesi, particularly in minority Muslim communities, this legal pluralism is very real, where residents refer to the 1960 UUPA while maintaining customary values and Islamic law in land management and dispute resolution reflecting the need to harmonize formal legal certainty with substantive justice (Febrianty et al., 2024).

The intersection between formal law and customary law is often a source of land ownership conflicts. Although Law No. 5 of 1960 on the Basis of Agrarian Principles seeks to provide legal certainty through land certification, the reality on the ground shows that there is a gap between formal legality and social legitimacy (Hamida, 2022). Certificates issued by the National Land Agency often clash with patterns of land tenure that have been recognized for generations by indigenous peoples, including customary rights and waqf lands of minority Muslim communities. This inconsistency is exacerbated by inaccurate spatial data and weak land administration. Some cases in North Sulawesi show that title certificates are issued based on incorrect data or without thorough verification of land history which gives rise to overlapping ownership. This indicates that the principle of legal certainty in national law often clashes with the principle of substantive justice (*'adl*) upheld by local communities.

In fact, the 1945 Constitution in Article 18B affirms the recognition and respect for customary law. Normatively, this should be the basis for the integration of customary law into the national legal system, including the settlement of land disputes. However, its implementation is still limited because formal judicial procedures prioritize certificates as proof of legal rights, so the social and customary values attached to land are often ignored. Meanwhile, the minority Muslim community using Islamic law as a normative guideline in resolving land conflicts, especially related to inheritance (*faraid*) and waqf. The principles of *ṣulḥ* and consensus emphasize peaceful settlements that preserve social cohesion. However, because Islamic law is not formally recognized in national land courts, the outcome of Islamic-based non-litigation settlements often

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lacks executory force that creates legal uncertainty for the parties involved (Suherman & Adnan, 2024).

The conflicts that arise are not only administrative or technical but also reflect the disparity in norms between state law, customary law and Islamic law. For example, in the practice of measuring and mapping the land using natural stakes or river boundaries in the past it often did not correspond to the coordinates recorded in the certificate (Sondakh et al., 2023). This gives rise to overlapping land rights where two or more certificates are issued for the same piece of land. The principle of *maqāṣid alsharī'ah*, the settlement of land disputes must pay attention to the main goals of sharia, namely justice, social welfare, and the benefit of the ummah. This principle demands an integration between formal legal certainty and socially recognized substantive justice so that dispute resolution does not only rely on certificate documents alone but also takes into account the historical and social rights of indigenous peoples.

In Minahasa and Bolaang Mongondow, land conflicts did not only arise due to legal weaknesses but originated from land mafia practices, manipulation of physical and juridical data and the intervention of local elites that create double claims to land (Manado News, 2025). This overlap of ownership suggests that land disputes are a power arena in which formal law, customary law and local political interests collide without an effective balancing mechanism. According to Peluso & Lund (2011) asserts that land ownership is not only a matter of legality but also socio-political control over resources where local communities are often marginalized, while the double claims and manipulation of elites reinforce the dominance of the ruling class, making land conflicts a reflection of systemic structural injustices.

Land reform in North Sulawesi must emphasize the integration of legal pluralism, namely the harmonization of formal legal certainty through land certification and recognition of customary law and Islamic norms. The dispute resolution mechanism must not only ensure the legitimacy of the certificate, but also respect local wisdom including recognition of Minahasa customary land (Pasini), waqf land, and the inheritance rights of minority Muslim communities as part of the social legitimacy that plays a role in community stability (Sondakh et al., 2023). Non-litigation dispute resolution through mediation, deliberation and arbitration based on customs and Islamic law has proven to be more acceptable to the community. The practice in Minahasa of customary deliberation and land mediation approaches has been seen as more effective in maintaining community social relations and preventing prolonged conflicts than formal litigation because mediation allows the integration of customary law values with applicable positive legal norms. This is also in accordance with the principle of agrarian dispute resolution which places

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consensus deliberation as a top priority before the court route (Ambrito & Kuntag, 2025). This mechanism is in line with the principles of restorative justice and ṣulḥ which provide space for the participation of all parties to maintain social relations and minimize the impact of conflict on community stability (Suhermi, 2024).

However, challenges arise when non-litigation decisions have no formal legal force. This is where the state must formulate a legal mechanism that is able to recognize and give executory power to customary-based and Islamic settlements, without compromising the principle of legal certainty. This is also in accordance with the state's obligation in Article 18B of the 1945 Constitution to respect customary law (Lubis et al., 2025). The principle of legal certainty put forward by Gustav Radbruch affirms that positive laws must be clear, enforceable, and not easily changeable. Overlapping certificates, formal legal certainty are indispensable but without substantive justice for indigenous communities and Muslim minorities, formal legality alone is not enough to guarantee social stability and protection of rights (Pangaribuan et al., 2023).

Legal protection of land rights must include administrative, juridical and substantial aspects. Property rights certificates provide formal certainty but without recognition of historical and customary rights, the function of legal protection becomes partial. This shows the importance of synergy between positive law, customary law, and Islamic law to achieve substantive justice. According to Nonet & Selznick in responsive legal theory, it emphasizes that law must be sensitive to social and participatory values. This demands the integration of local values, including Islamic and customary law, in the design of national land regulations so that land reform is not just an administrative formality but also emphasizes social justice. Land reform in North Sulawesi can be carried out through regulatory synchronization, more selective supervision, strict sanctions against land mafia figures, and increasing the role of the National Land Agency and local governments. All of this must be accompanied by mechanisms that provide space for dispute resolution based on local wisdom and Islamic law to minimize inequality of ownership (Sukmana et al., 2023).

Effective legal pluralism efforts in land reform must act as a bridge builder between national law and socio-religious norms that provide recognition of customary law and the principles of *maqāṣid alsharīʿah*, especially *'adl* (justice) and *maslahah* (public interest), as the basis for protecting the rights of marginalized communities such as indigenous peoples and minority Muslim communities. Land reform that only pursues legal certainty through formal certification without including mechanisms for protection of collective rights and religious norms will reinforce the structural injustices experienced by minority groups because the national legal

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system has tended to ignore adequate recognition of indigenous peoples' rights to their customary lands, which has an impact on the risk of losing their land amid the expansion of development policies and Investment (Pratama et al., 2025). Meanwhile, a dispute resolution mechanism that integrates customary law, Islamic law, and national law as a manifestation of legal pluralism will not only strengthen legal certainty but also realize substantive justice (justice) and public interest (*maslahah*), so that minority Muslim communities and indigenous peoples can participate meaningfully in the land law process and reduce the discriminatory forces of the structure formal law that has placed them in a weak position in land conflicts (Lubis et al., 2025).

Land disputes due to overlapping certificates can be resolved through state administrative courts or through non-litigation mechanisms. However, the success of the settlement is highly dependent on the integration of formal, customary, and Islamic legal principles so that the outcome has strong legal and social legitimacy (Sari & Hanim, 2017). A pluralistic approach also reduces the potential for long-term social conflict. Recognition of the historical rights of indigenous peoples, as well as the application of the principles of ṣulḥ and deliberation in Islamic law, can minimize social resistance to formal legal decisions, resulting in stability and security of land ownership (Wijaya, 2024).

Pluralism in land management in North Sulawesi has a strategic role in reducing the potential for long-term social conflicts. Recognition of the historical rights of the indigenous peoples of North Sulawesi as reflected in customary norms such as common ownership, land use restrictions and customary deliberation mechanisms is the foundation of strong social legitimacy. When these rights are integrated with the principles of *ṣulḥ* and deliberation in Islamic law, formal legal decisions issued by the state tend to be accepted by society because they not only emphasize the certainty of administrative law but also respect the local values and religious norms that minority Muslim communities believe. Thus, land dispute resolution is not only procedural but also touches on the cultural and spiritual dimensions of the community that create social stability and strengthen the security of land ownership in real terms.

The principle of *maqāṣid alsharī'ah*, land is not solely seen as a material asset, but as a means of fulfilling community welfare and social justice. This principle requires the state to design land regulations that are responsive to the plurality of local laws, namely positive law, customary law, and Islamic law so that any land policy can balance formal legal certainty with the protection of indigenous peoples' rights and the principle of substantive justice for minority Muslim communities (Surono & Wenceslaus, 2025). The integration of sharia principles in land regulations also encourages the creation of fair, transparent, and participatory decisions in accordance with

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the social values that live in society, while reducing the risk of social resistance to government policies.

Thus, the phenomenon of overlap between positive law, North Sulawesi customary law and Islamic law in land disputes emphasizes the urgency of land reform based on legal pluralism. An effective settlement model must be able to combine formal legal certainty, customary social legitimacy and the principles of substantive justice of Islamic law, so as to strike a balance between legal certainty, protection of rights, and social justice in minority Muslim societies. This approach not only resolves land tenure conflicts legally but also strengthens social cohesion, respects local wisdom and ensures that land regulations can be an instrument of fair and sustainable development.

Figure 1. Overlap of Positive Law, Islam and Customary for Muslim Minority



Non-Litigation and Litigation Dispute Resolution Mechanism in North Sulawesi

The mechanism for resolving land disputes in Indonesia is generally divided into two main channels: litigation (court channels) and nonlitigation (alternatives outside the courts such as mediation, negotiation, and consensus). These two pathways have been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which provides a formal legal basis for out-of-court settlement through a cooperative approach and alternative dispute resolution. In practical terms, alternative dispute resolution has proven to be faster and cheaper

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than formal litigation resolution and minimizes social costs (Handika et al., 2025).

Land disputes are structural problems that occur in various regions of Indonesia because their impact is not only administrative disputes, but also has socioeconomic implications for the community. Agrarian conflicts such as overlapping disputes or overlapping certificates often trigger conflicts that have an impact on social relations, loss of land rights and even lead to criminal actions due to tensions between conflicting parties. Some disputes it shows that the overlap of certificates occurs due to the issuance of more than one certificate on the same plot of land, thus triggering a dispute between parties who feel that they have rights to the land (Siregar & Andraini, 2025).

The settlement of land litigation in Manado land disputes often involves the District Court and the State Administrative Court depending on the object of the dispute as seen in the Manado District Court Decision No. 406/Pdt.G/2021/PN.Mnd related to a land area of 7,833 m² in the Air Terang area (Kumaat, 2022). This case highlights the complexity of land ownership in North Sulawesi where although the Ratu-Kuron Family had a valid Certificate of Title and was renewed by the National Land Agency, the plaintiff was able to file a basis for ownership through a Letter C of 1932 and won a court that caused controversy and alleged land mafia intervention. The case reflects the tension between formal legal legitimacy (certificates) and traditionally recognized historical documents, so legal certainty for rightful owners could be threatened. Mediation introduced as a first step to voluntarily reconcile the parties before substantive hearings It demonstrates institutional efforts to balance conflict resolution with the principles of justice and social cohesion, although challenges such as document manipulation or intervention by authorities continue to make it difficult to achieve substantive justice (Mulyanto & Suparno, 2025).

However, the resolution of formal litigation often takes a lot of time, cost, and energy, so it is not uncommon for justice seekers to feel dissatisfied both procedurally and substantially after a verdict has been made. This is especially felt in judgments that are considered to produce legal uncertainty or do not fully reflect the value of substantive justice for the losing party (Bere & Lay, 2023). Meanwhile, the settlement of non-litigation mechanisms such as mediation at the National Land Agency office is an important option that is regulated in detail through the Regulation of the Minister of ATR/BPN Number 21 of 2020 concerning the Handling and Settlement of Land Cases. This mediation is designed to provide a fast, cheap, and efficient alternative to land dispute resolution in contrast to the lengthy and procedural, litigation process (Setyawan & Sudiana, 2025).

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Alternative dispute resolution mediation aims to reach a voluntary peace agreement between the parties through negotiations assisted by neutral mediators, so that the resulting solution is a win-win solution and more accommodates the needs of the parties. In practice, mediation often results in mutually agreed agreements without having to go through a lengthy trial process, thus being able to reduce social conflicts due to land disputes. Mediation has often proven effective in cases of land disputes due to duplicate or overlapping certificates such as the one at the Buleleng Regency Land Office, where mediation results in an agreement that saves the parties from a lengthy litigation process. The role of the National Land Agency as a mediator allows the dialogue and negotiation process to run without the formal pressure of the trial so that the settlement is faster and cost-effective (Paramitha et al., 2025).

Although mediation has been positioned as the primary instrument for resolving land disputes out of court, its effectiveness, including mediation facilitated by the National Land Agency, still faces substantial obstacles. These obstacles include the uncooperative of the parties to the dispute, the inequality of bargaining positions, and the low legal awareness of the public regarding the importance of alternative dispute resolution so that many mediation processes end in impasse and return to formal litigation (Fatnia et al., 2025). In addition to mediation, other non-litigation mechanisms such as negotiation, conciliation and arbitration are also available within the framework of alternative dispute resolution but their use in land practice is relatively limited. Arbitration, although rarely used, offers the advantage of a faster process and a final and binding award, especially when the parties agree to appoint a competent neutral arbitrator so that normatively it has the potential to be a strategic alternative in complex but still not optimally institutionalized land disputes in land practice in Indonesia.

Presidential Regulation Number 20 of 2015 concerning the National Land Agency emphasizes the role of the state in land governance which includes the registration, arrangement, and settlement of land disputes, as well as the basis for legitimacy for the use of litigation and non-litigation channels as an instrument for resolving agrarian conflicts throughout Indonesia. This affirmation shows that the settlement of land disputes is not just a juridical technical issue but an integral part of land policy oriented towards justice and social order (Bere & Lay, 2023). In North Sulawesi, especially in Manado and Minahasa, mediation and alternative dispute resolution mechanisms facilitated by the local National Land Agency are seen as strategic alternatives to reduce land conflicts more effectively due to the involvement of local governments and local communities as joint mediators. This role strengthens the position of mediation as an important first step before disputes are brought to formal litigation while reflecting efforts to harmonize the

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legal certainty of the state and the need for conflict resolution that is responsive to the local social context (Paseki et al., 2025).

Judicial pseudo-dualism in land disputes when the same or interrelated cases are submitted to the District Court or the State Administrative Court has long been criticized in the agrarian law literature for creating legal uncertainty and opening up the cradle of conflicting decisions to the detriment of justice seekers. This condition emphasizes the urgency of establishing a special land justice instrument that is able to handle agrarian conflicts comprehensively and contextually, considering that the character of land disputes is not only administrative or civil in nature, but also full of social and historical dimensions (Kesumadiksa et al., 2024). This phenomenon is reflected in the Manado District Court's decision regarding a land dispute in the Air Terang area, Malalayang, which triggered public criticism because it is considered to emphasize more formal-documentary evidence and is less sensitive to the history of land tenure and customary registration that lives in the community. This case shows that the land dispute in Manado cannot be understood narrowly as a conflict of legal documents but as a socio-historical conflict that demands a more responsive, substantive and fair judicial approach (Kumaat, 2022).

In addition, land disputes in Manado also often shift to administrative jurisdiction such as lawsuits against notices or decisions of termination issued by the Manado City Land Office and submitted to the State Administrative Court as reflected in the cases recorded in the SIPP of the Manado State Administrative Court. This phenomenon confirms that land disputes do not stand in a single legal regime, but rather involve a wedge between administrative law and civil law that often run with different logics and jurisdictions, thus demanding a comprehensive and integrated understanding of positive legal instruments. This condition strengthens the argument that the settlement of land disputes is not enough to be left to formal litigation mechanisms alone but requires an integrative approach that combines formal law, alternative dispute resolution and local community wisdom. This integration is a manifestation of legal pluralism that allows the creation of solutions that are not only juridically valid, but also have social and cultural legitimacy, so that they are more effective in reducing conflicts and maintaining the social stability of local communities (Bere & Lay, 2023).

Thus, effective land dispute resolution in Indonesia must be placed within the framework of a balance of three legal pillars: namely legal certainty, substantial justice and social benefit as emphasized in Gustav Radbruch's legal theory. Alternative Dispute Resolution mechanism. has the advantage of accommodating social utility values because it emphasizes collaborative dialogue,

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multi-stakeholder participation, and resolutions that are not solely oriented toward winning or losing, but toward restoring social relations. Therefore, land dispute resolution reform in North Sulawesi needs to be directed at strengthening alternative dispute resolution by increasing the institutional capacity of the National Land Agency, the role of local mediators, and providing formal legal recognition for mediation agreements. This integrative approach not only ensures legal certainty within a positive legal framework but also delivers contextual justice that is sensitive to the socio-cultural values of the community, thus becoming an important foundation for the realization of inclusive and sustainable agrarian justice.

Figure 2. Non-Litigation and Litigation Dispute Resolution Mechanism in North Sulawesi



The Inconsistency of Positive, Islamic and Customary Law in North Sulawesi Regarding Substantive Justice for Muslim Minorities

The dynamics of agrarian dispute resolution take place in a social space characterized by diverse value systems and identities. As a minority, the Muslim community not only faces formal and administrative state legal structures but also brings its own normative framework derived from Islamic law and local wisdom embedded in social practices. For this group, Islamic law serves as an ethical guideline for regulating land rights, inheritance, and *waqf*, while customary

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mechanisms play a role in maintaining social harmony and cohesion. However, when these issues enter the realm of state law, the positive legal orientation, which emphasizes formal certainty, often overlooks the substantive justice dimensions experienced and expected by the minority Muslim community.

This situation reflects the reality of legal pluralism in Indonesia, where positive law, Islamic law, and local wisdom coexist but are not always harmoniously integrated. Universal and formal positive law often fails to accommodate local social and religious norms, particularly in the context of agrarian disputes, due to its focus on legal certainty and state administration. Research on legal pluralism shows that these differing paradigms create tensions in the practice of agrarian law, particularly when customary law and Islamic legal principles intersect with formal state regulations.

Land issues, as regulated in Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law and its derivative regulations, give greater legitimacy to formal certificates as proof of ownership. However, customary law and Islamic principles often view land as a social and spiritual entity bound by community norms and religious values. Therefore, the legitimacy of ownership according to the community can differ from the formal requirements of the state. This difference triggers conflict because higher formal norms can override local values held by the community (Syamhudi, 2019).

This inconsistency leads to substantive legal uncertainty for minority Muslim communities, because although Islamic law can serve as a guideline for values in daily life, its status is only that of material law within a narrow jurisdiction. On how Islamic and customary law should be integrated with positive law often makes formal legal decisions appear culturally and spiritually unjust. Studies on legal pluralism in Indonesia note the conflicting norms in inheritance issues as an example of how Islamic and customary law are often ignored by state law (Febria et al., 2025).

In North Sulawesi, a society comprised of diverse ethnic and religious groups, including minority Muslim communities, local wisdom plays a crucial role in regulating social interactions and land rights. However, the strong existence of customary law is often not reflected in formal judicial decisions, leaving communities feeling deprived of the opportunity to uphold their customary norms. This is reinforced by research showing that customary law holds a higher social legitimacy than formal law in some agrarian communities (Hidayat, 2025).

The inconsistency between positive law and local wisdom is also evident in the differing mechanisms for resolving land disputes between formal and informal means. Positive law emphasizes administrative evidence and rigid formal procedures, while customary norms and

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Islamic law emphasize reconciliation, deliberation, and community agreement. This difference in mechanisms directly impacts the sense of substantive justice felt by the Muslim minority, who prioritize social harmony (Yudhistira, 2022).

Recognition of customary law within the Indonesian national system is enshrined in the constitution, as stipulated in Article 18B of the 1945 Constitution. However, in practice, it is often subordinated to the more dominant positive law. The lack of clarity regarding the legal hierarchy and recognition of customary law has led many communities to feel that formal state law is insensitive to their cultural identity, which is a pillar of substantive justice in social life (Salsabila & Fidiyani, 2025). This is further complicated when Islamic law, which serves as a moral and spiritual norm for minority Muslim communities, is not adequately accommodated within the positive legal system. Although the Supreme Court and Religious Courts have jurisdiction over some aspects of Islamic law in land disputes, the reach of Islamic law is often not fully explored by formal judges, increasing the potential for substantive injustice (Karjoko et al., 2021).

Land ownership in North Sulawesi demonstrates a fundamental tension between the national legal perspective, which reduces land to a legal-administrative object, and the customary law perspective, which defines land as a collective entity imbued with historical, social, and community identity values. Inequality in formal legal decisions often serves as an instrument of state law's dominance over customary law and living Islamic norms, thereby marginalizing the social legitimacy of local communities by the state's administrative legitimacy (Syamhudi, 2019). The impact is not only normative but also structural, affecting access to justice, particularly for minority Muslim communities with limited resources to access formal litigation mechanisms. Their reliance on non-litigation solutions based on Islamic and customary norms becomes problematic when these mechanisms are not formally recognized, as they result in the loss of binding power of state law and ultimately weaken the community's position in obtaining substantive justice (Myaskur & Wahyudiono, 2024).

Substantive justice is not only about fulfilling legal formalities but also about decisions that are perceived as fair by the community. Inconsistencies in norms trigger dissatisfaction because formal decisions tend to ignore the cultural and religious context of the minority Muslim community, which views law as an integration of legal rationality and spiritual values. Studies of legal pluralism in agrarian Indonesia reveal the challenges in integrating norms with social reality (Hidayat, 2025). When positive law fails to effectively accommodate customary law and Islamic law, communities often engage in forum shopping between formal and informal legal systems to seek legitimacy for decisions that best align with their identities. This phenomenon demonstrates

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that national law cannot fully address the needs of a pluralistic society and actually weakens substantive justice because the norms applied are not contextual (Anggraeni, 2023).

The inconsistency between national law, customary law, and Islamic law in regulating land rights increases the potential for agrarian conflict due to the lack of effective normative coordination. When claims based on customary law and Islamic norms clash with national legal provisions, the aggrieved party tends to reject formal state decisions and turn to internal community mechanisms, which are seen as more morally and culturally just (Hidayat, 2025). Several communities have indicated that customary decisions are often considered faster, less expensive, and more capable of achieving social justice than court decisions, particularly in disputes over customary land and *waqf* land, which are closely linked to collective Muslim identity. This situation emphasizes that substantive justice in agrarian conflicts is not solely measured through procedural compliance with formal law but must consider social harmony and the community's moral satisfaction. Without such recognition, state law risks losing legitimacy and deepening the conflict (Adila & Alexandra, 2025).

Although customary law and Islamic norms are often viewed as more contextual in resolving land disputes, their implementation does not always guarantee substantive justice, especially when influenced by internal social forces and patriarchal values rooted in local traditions. In practice, gender-based power relations often shape dispute resolution outcomes, diminishing universal principles such as gender equality and non-discrimination in the name of cultural legitimacy. This situation demonstrates that Indonesia's pluralistic legal system, which combines national law, customary law, and Islamic law, often creates disparities in land and inheritance rights for women due to the interaction of unequal norms. In practice, this inconsistency often disqualifies women from exercising their rights in agrarian disputes, placing them in a structurally weaker position in terms of land access and control (Suharsono et al., 2024). Therefore, the integration of positive law with a human rights perspective and upholding the principle of non-discrimination is crucial, not to negate customary law and Islamic norms, but rather to ensure that dispute resolution mechanisms truly protect vulnerable groups and achieve inclusive substantive justice (Anggraeni, 2023).

Legal pluralism often gives rise to differing interpretations in formal judicial practice, particularly when judges are faced with the choice of applying positive law or recognizing customary law and Islamic norms as the basis for dispute resolution. This demonstrates the tendency of judges oriented toward legal positivism to marginalize informal norms, weakening the recognition of customary law and Islamic law in litigation decisions (Pradhani, 2020). This

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situation demonstrates the limitations of formal law in capturing the complexity of social and cultural values prevalent in society. Meanwhile, in North Sulawesi, the integration of Islamic law and local customary law has the potential to create a more inclusive model of substantive justice if explicitly accommodated in legislation. A responsive approach to legal pluralism not only strengthens the legitimacy of court decisions but also opens up space for values of social, spiritual, and cultural justice that have been marginalized by the dominance of positive law (Yudhistira, 2022).

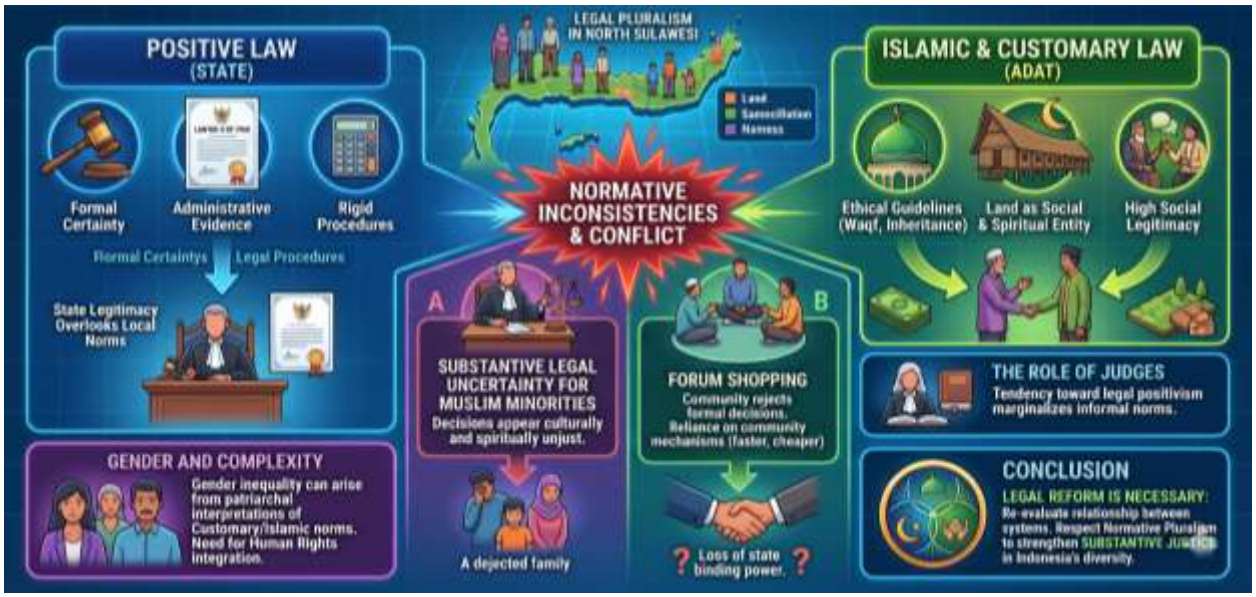
This paradigm difference is also reinforced by the concept of legal pluralism, which shows that conflicts between state law and customary law are experienced not only in Indonesia but also in various countries with pluralistic societies. This disharmony hinders the effectiveness of land dispute resolution because conflicting legal norms are difficult to reconcile without a strong legal harmonization framework. Substantive justice, as the foundation of modern law, cannot be understood solely through a hierarchy of formal norms but must involve social legitimacy and community acceptance of legal decisions. Some land disputes in minority Muslim communities feel that resolution through customary law combined with Islamic principles better reflects their sense of justice, even though it is not formally recognized (Muhammad et al., 2025).

Therefore, legal reform requires re-evaluating the relationship between positive law, Islamic law, and customary law to create a legal framework that respects normative pluralism while ensuring substantive justice. Without this reform, the inconsistency between legal systems will continue to marginalize minority communities in agrarian disputes. The inconsistency between positive law, Islamic law, and local wisdom in North Sulawesi poses significant challenges to achieving substantive justice for minority Muslim communities. This inconsistency in legal norms extends beyond technical legal issues to the recognition of the community's cultural and religious identity within the national legal system. Legal reform that respects normative pluralism is necessary to strengthen substantive justice amidst Indonesia's diversity.

Figure 3. The Inconsistency of Positive, Islamic and Customary Law in North Sulawesi

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CONCLUSION

The overlap between positive law, customary law, and Islamic law in resolving land disputes in the Muslim minority region of North Sulawesi confirms that agrarian issues cannot be adequately resolved through a formal-legal approach that solely emphasizes administrative legal certainty. The dominance of positive law through formal certification and litigation mechanisms has reduced land to a mere legal object, while simultaneously ignoring the socio-historical legitimacy of customary law and the value of substantive justice in Islamic law. The normative tension between Article 18B of the 1945 Constitution, Law Number 5 of 1960 concerning the Basic Principles of Agrarian Law and the practice of Islamic law shows the state's failure to translate legal pluralism into agrarian justice practices that favor minority groups, thus giving rise to structural injustice and weakening public trust in state law.

Land dispute resolution in North Sulawesi cannot be simplified as a choice between litigation and non-litigation, but rather requires an integrative approach that bridges formal legal certainty with substantive justice and social benefit. The dominance of formal litigation often results in expensive, protracted decisions that are insensitive to the social and historical dimensions of disputes, including the phenomenon of overlapping certificates and the pseudo-dualism of authority between the District Court and the State Administrative Court. Conversely, alternative dispute resolution mechanisms, particularly mediation facilitated by the National Land Agency and based on local wisdom, have greater potential to reduce conflict and restore social

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relations, although they still face structural and institutional obstacles that require serious strengthening.

At this point, the main criticism lies not in the existence of legal plurality itself but in the absence of a responsive, inclusive, and human rights-based harmonization framework. The principles of maqāṣid al-sharī'ah, especially 'adl (justice) and maslaḥah (public interest), can serve as a normative framework that corrects rigid legal positivism, as well as an ethical bridge between state law, Islamic law, and customary law. Without land law reform that consciously synergizes these three legal systems in an equal and mutually correct manner, legal pluralism will continue to operate as an instrument of marginalization for minority Muslim communities rather than a foundation for inclusive and sustainable agrarian justice in North Sulawesi.

FUTURE DIRECTIONS

Future research should prioritize the empirical investigation of institutionalizing alternative dispute resolution (ADR) mechanisms that formally integrate local customary norms and the principles of *maqāṣid al-sharīʿah* into the national agrarian legal framework. While this study highlights the normative tensions and the marginalization of minority Muslim communities in North Sulawesi under rigid legal positivism, subsequent studies must expand geographically and methodologically to assess the socio-legal efficacy of harmonized non-litigation pathways across diverse pluralistic contexts in Indonesia. Furthermore, comparative analyses evaluating the long-term social stability and substantive justice outcomes of formalized customary-religious mediation versus conventional litigation are profoundly essential. Such inquiries will provide critical, evidence-based frameworks for policymakers to construct inclusive, responsive agrarian regulations that transcend mere administrative certainty and genuinely accommodate the structural complexities of legal pluralism.

REFERENCES

Adila, A., & Alexandra, S. (2025). Implementation of Customary Law in Land Dispute Resolution in Indigenous Law Communities. *Hakim: Jurnal Ilmu Hukum Dan Sosial*, *3*(1), 993–1012. https://doi.org/10.51903/hakim.v3i1.2296

Ambrito, M. A. V. A. W., & Kuntag, M. (2025). Penyelesaian Sengketa Pertanahan Di Sulawesi Utara Menurut Undang-Undang Pokok Agraria. *Lex Administratum Jurnal Fakultas Hukum UNSRAT*, *13*(3), 1–11. https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/62945

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

Anggraeni, R. D. (2023). Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints. *AHKAM : Jurnal Ilmu Syariah*, *23*(1), 25–48. https://doi.org/10.15408/ajis.v23i1.32549

Beers, P. J., Van Mierlo, B., & Hoes, A. C. (2016). Toward an integrative perspective on social learning in system innovation initiatives. *Ecology and Society*, *21*(1). https://doi.org/10.5751/ES-08148-210133

Bere, M. S. P., & Lay, B. P. (2023). Sengketa Tanah Antara Masyarakat Pubabu-Esipae Dengan Pemerintah Provinsi NTT. *Jurnal Ilmiah Dan Karya Mahasiswa*, *1*(3), 36–53. https://doi.org/10.54066/jikma-itb.v1i3.298

Bilkis, R., & Mudiparwanto, W. A. (2025). Studi Komparatif Sistem Hukum Kebendaan atas Kepemilikan dan Penguasaan Tanah antara Indonesia dan Perancis. *Nomos : Jurnal Penelitian Ilmu Hukum*, *5*(4), 838–848. https://journal.actual-insight.com/index.php/nomos/article/view/3589

Djunaidy, A. M., Damayanti, S., & Firmansyah, R. R. (2024). Perspective of Legal Culture and Legal Pluralism in the Ahmadiyah Group in Indonesia. *Social Impact Journal*, *3*(2), 70–77. https://doi.org/10.61391/sij.v3i2.190

Efendi, J., & Ibrahim, J. (2018). *Metode Penelitian Hukum Normatif Dan Empiris*. Prenada Media Grup.

Efrizon, E., Agisty, F., Galgani, M. G., Kasman S, M., & Utomo, P. (2025). Pembaharuan Hukum Agraria dan Perlindungan Hak-Hak Masyarakat Hukum Adat. *Locus Journal of Academic Literature Review*, *4*(2 SE-Artikel), 52–60. https://doi.org/10.56128/ljoalr.v4i2.428

Fatnia, N., Sastro, M., & Rahman, A. (2025). Efektivitas Peraturan Menteri Agraria/Kepala Badan Pertanahan Nomor 21 Tahun 2020 Dalam Penyelesaian Sengketa Tanah Melalui Mediasi (Studi Penelitian Di Badan Pertanahan Nasional Kota Lhokseumawe). *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, *8*(2), 619–637. https://doi.org/10.29103/jimfh.v8i2.21605

Febria, T., Benni, B., & Kurniawan, D. (2025). Relevansi Asas Keadilan dan Kepastian Hukum dalam Pembagian Warisan menurut Hukum Islam dan Hukum Positif Indonesia. *Jurnal Legalitas*, *3*(2), 80–95. https://doi.org/10.58819/jle.v3i2.174

Febrianty, Y., Ghapa, H., & Ahmad, A. (2024). Integration of Customary Law in The National Legal System Comparative Study of Malaysia and Indonesia. *SASI; Volume 30 Issue 4, December 2024*. https://doi.org/10.47268/sasi.v30i4.2303

Hamida, N. A. (2022). Adat Law and Legal Pluralism in Indonesia: Toward A New Perspective?

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

Indonesian Journal of Law and Society, *3*(1), 1–24. https://doi.org/10.19184/ijls.v3i1.26752

Handika, R., Hartati, H., & Arfa'I, A. (2025). Kewenangan Pemerintah Daerah Dalam Penyelesaian Sengketa Tanah Masyarakat Hukum Adat di Indonesia. *QISTINA: Jurnal Multidisiplin Indonesia*, *4*(1), 822–832. https://doi.org/10.57235/qistina.v4i1.6275

Harahap, A. P., Ramadhona, A., Sari, M., & Hasibuan, N. L. (2025). Legal Pluralism and Customary Justice in Indonesia: Reconstructing Adat Law under State Legal Dominance. *Littera Legis: Journal of Law, Society, and Justice*, *1*(1), 1–16. https://journal.geminilittera.com/littera-legis/article/view/1

Hidayat, A. R. (2025). Konstruksi Sosial terhadap Hukum Adat dalam Penyelesaian Sengketa Tanah: Studi Kualitatif. *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik*, *13*(1), 18–27. https://doi.org/10.55129/.v13i1.3121

Karjoko, L., Jaelani, A. K., Tegnan, H., Glaser, H., & Hayat, M. J. (2021). Islamic Court's Approach to Land Dispute in Inheritance Cases. *AHKAM : Jurnal Ilmu Syariah*, *21*(2), 213–238. https://doi.org/10.15408/ajis.v21i2.21864

Kesumadiksa, K., Walangitan, G. T., & Rezaldy. (2024). Urgensi Pembentukan Pengadilan Maritim Bagi Industri Maritim di Indonesia. *Media Iuris*, *7*(3), 499–526. https://doi.org/10.20473/mi.v7i3.50765

Kumaat, R. (2022). *PN Manado Buat Putusan Kontroversi, Keluarga Pemilik SHM Tanah Kalah dengan Penggugat Bermodal Register*. Komunika Sulut. https://komunikasulut.com/pn-manado-buat-putusan-kontroversi-keluarga-pemilik-shm-tanah-kalah-dengan-penggugat-bermodal-register/?utm_source=chatgpt.com

Lubis, I., Siregar, T., Lubis, D. I. S., Adawiyah, R., & Lubis, A. H. (2025). Integrasi Hukum Adat dalam Sistem Hukum Agraria Nasional: Tantangan dan Solusi dalam Pengakuan Hak Ulayat. *Tunas Agraria*, *8*(2), 143–158. https://doi.org/10.31292/jta.v8i2.401

Manado News. (2025). *Aksi Dua Warga Bongkar Pola Mafia Tanah Sulut: Dari Sertifikat Aneh ke Pembiaran Aparat*. Manado News. https://www.manadonews.co.id/2025/08/13/aksi-dua-warga-bongkar-pola-mafia-tanah-sulut-dari-sertifikat-aneh-ke-pembiaran-aparat/?utm_source=chatgpt.com

Muhammad, N. R. S., Junus, N., & Moha, M. R. (2025). Abandoned Land as a Paradox of Prosperity. *Siyasah Dusturiyah: State Law Review*, *1*(3), 96–110. https://doi.org/10.65101/j06rtm03

Mulyanto, A., & Suparno. (2025). Reforming the Land Boundary Dispute Resolution Mechanism Based on Mediation for Legal Certainty and Social Sustainability. *Jurnal Greenation Sosial*

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Dan Politik, *3*(4), 836–846. https://doi.org/10.38035/jgsp.v3i4.505

Myaskur, M., & Wahyudiono, T. (2024). Aspek Hukum Penyelesaian Sengketa Tanah Adat. *Islamic Law: Jurnal Siyasah*, *9*(2), 97–110. https://doi.org/10.53429/iljs.v9i2.600

Pangaribuan, M., Simanungkalit, D., Sinaga, E., Hutapea, N., Harahap, P., Mikael, G., & Nababan, R. (2023). Kepastian Hukum dalam Tanah adat dan UUPA yang mengatur Mengenai Tanah Adat. *Jaksa : Jurnal Kajian Ilmu Hukum Dan Politik*, *2*(1), 276–286. https://doi.org/10.51903/jaksa.v2i1.1576

Paramitha, P. C. A., Dantes, K. F., & Setianto, M. J. (2025). Penyelesaian Sengketa Secara Non Litigasi Dalam Proses Sertifikasi Tanah Akibat Dari Sertifikat Ganda Di Badan Pertanahan Nasional Kabupaten Buleleng. *Jurnal Komunitas Yustisia*, *6*(1), 111–122. https://doi.org/10.23887/jatayu.v6i1.60287

Paseki, D. J., Gerungan, C. A., & Taroreh, H. R. (2025). Penanganan dan Penyelesaian Sengketa Tanah Di Kabupaten Minahasa menurut Permen ATR/Kepala BPN Nomor 21 Tahun 2020. *Nuansa Akademik: Jurnal Pembangunan Masyarakat*, *10*(2), 419–432. https://doi.org/10.47200/jnajpm.v10i2.3144

Peluso, N. L., & Lund, C. (2011). New frontiers of land control: Introduction. *Journal of Peasant Studies*, *38*(4), 667–681. https://doi.org/10.1080/03066150.2011.607692

Pradhani, S. I. (2020). Perspektif Pemikiran Hukum Barat dalam Penemuan Hukum Adat oleh Hakim: Studi Kasus Putusan Sengketa Tanah Adat di Pengadilan Negeri Muara Teweh, Padang, Makale, dan Painan. *BHUMI: Jurnal Agraria Dan Pertanahan*, *6*(1), 1–14. https://doi.org/10.31292/jb.v6i1.420

Pratama, D. M., Pratiwi, D., & Lestari, N. O. (2025). Konflik Agraria dan Keadilan Ekologis: Tinjauan Hukum atas Hak Masyarakat Adat terhadap Tanah Ulayat. *Indonesian Journal of Law and Justice*, *3*(2), 1–10. https://doi.org/10.47134/ijlj.v3i2.5185

Ridwan, R. (2013). Hak Milik atas Tanah dalam Perspektif Hukum Islam dan Hukum Pertanahan Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, *7*(2), 257–270. https://doi.org/10.24090/mnh.v7i2.568

Salsabila, Z. R., & Fidiyani, R. (2025). Perolehan Keadilan Hukum Tanah Adat Baduy Atas Dominasi Dari Sentralisme Hukum Negara. *Nomos : Jurnal Penelitian Ilmu Hukum*, *5*(2), 416–425. https://doi.org/10.56393/nomos.v5i2.3239

Sari, L. M., & Hanim, L. (2017). Kepastian Hukum Dalam Penyelesaian Sengketa Timbulnya Tumpang Tindih Sertifikat Hak Milik (SHM) Atas Tanah (Studi Kasus Di Kantor Pertanahan/Agraria Dan Tata Ruang Kota Pontianak). *Jurnal Akta*, *4*(1), 33–36.

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https://doi.org/10.30659/akta.v4i1.1552

Satria, M. Y., Anggoro, P. W., & Setiono, J. (2025). National Law and Minangkabau Customary Law Disparity in Ulayat Land Disputes in the Bidar Alam Area, West Sumatra. *Jurnal Greenation Sosial Dan Politik*, *3*(3), 423–432. https://doi.org/10.38035/jgsp.v3i3.425

Septiningsih, I. (2024). The Relevance of Progressive Law to Legal Reasoning in Indonesia. *LAW & PASS: International Journal of Law, Public Administration and Social Studies*, *SE-Articles*, 162–167. https://doi.org/10.47353/lawpass.v1i2.16

Setyawan, A. A., & Sudiana, A. A. K. (2025). BPN Dalam Menyelesaikan Sengketa Batas Tanah Hak Milik Dengan Non-Litigasi. *Jumaha Fakultas Hukum UNMAS Denpasar*, *5*(2), 393–402. https://e-journal.unmas.ac.id/index.php/jhm/article/view/12988

Siregar, U. Z., & Andraini, F. (2025). Penyelesaian Sengketa Tanah Overlapping Melalui Mediasi di Kantor Pertanahan Kota Semarang (Studi Kasus Kelurahan Kalipancur, Kecamatan Ngaliyan, Kota Semarang). *Jurnal Hukum Lex Generalis*, *6*(4), 1–26. https://ojs.rewangrencang.com/index.php/JHLG/article/view/1229

Sondakh, J., Paransi, E., & Ngantung, C. M. (2023). Pembuktian Kepemilikan Tanah Adat Minahasa Pasini Dalam Praktik Penyelesaian Sengketa Tanah Di Sulawesi Utara. *Nuansa Akademik: Jurnal Pembangunan Masyarakat*, *8*(2), 423–440. https://doi.org/10.47200/jnajpm.v8i2.1776

Suharsono, A., Prasetyoningsih, N., & Usman, S. (2024). Women's Inheritance Rights in Indonesia from the Perspective of the Triangular Concept of Legal Pluralism. *El-Mashlahah*, *14*(2), 259–280. https://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/article/view/7657

Suherman, S., & Adnan, I. (2024). Analisis Penyelesaian Sengketa Waris Perpektif Hukum Islam Dan Hukum Perdata Di Indonesia. *Al-Muqaronah: Jurnal Perbandingan Mazhab Dan Hukum*, *3*(1), 13–30. https://doi.org/10.59259/am.v3i1.161

Suhermi. (2024). Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities. *Journal of Adat Recht*, *1*(2), 1–12. https://doi.org/10.62872/nt54cz73

Sukmana, T., Ashari, Z. S., & Darmawan, Y. (2023). Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo. *Peradaban Journal of Law and Society*, *2*(1), 92–105. https://doi.org/10.59001/pjls.v2i1.82

Sunarno, S. (2019). Development of Land Conflict Settlement Model Based on Indigenous Knowledge of the Local Communities in Indonesia. *Indonesian Comparative Law Review*,

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

1(2), 123–135. https://doi.org/10.18196/iclr.1211

Surono, A., & Wenceslaus, W. (2025). Hak Ulayat sebagai Manifestasi Maqāṣid al-Sharī'ah dalam Pengelolaan Sumber Daya Alam. *Tasyri' : Journal of Islamic Law*, *4*(2), 1351–1378. https://doi.org/10.53038/tsyr.v4i2.422

Syamhudi, H. (2019). Menegosiasikan Hukum IslamTentang Kepemilikan Tanah Ke Dalam Pluralisme Hukum Kepemilikan Di Indonesia. *Keadaban Jurnal Sosial Dan Humaniora*, *1*(1), 49–68. https://ejournal.unuja.ac.id/index.php/keadaban/article/view/914/0#tab-citedby

Toruan, D. N. L., & Djaja, B. (2025). Keadilan Substantif dalam Sengketa Agraria: Analisis Putusan Sleman dari Perspektif Maqāṣid al-Sharī'ah. *Tasyri' : Journal of Islamic Law*, *4*(2 SE-Articles), 661–684. https://doi.org/10.53038/tsyr.v4i2.318

Wijaya, V. R. (2024). The Intersection Of Customary Law And National Land Law In The Settlement Of Land Disputes In Indonesia. *Jurnal Multidisiplin Sahombu*, *4*(2), 401–407. https://ejournal.seaninstitute.or.id/index.php/JMS/article/view/5788

Wulandari, Y. A., & Handayani, S. W. (2025). Kepastian Hukum Hak Ulayat: Dilema Pengakuan Masyarakat Adat dalam Sistem Pertanahan Nasional. *Al-Zayn : Jurnal Ilmu Sosial & Hukum*, *3*(5), 6655–6665. https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/2285

Yudhistira, D. (2022). Pluralisme Hukum Dalam Penyelesaian Sengketa Tanah Wakaf Di Indonesia. *Jurnal Paradigma Hukum Pembangunan*, *7*(1), 87–113. https://doi.org/10.25170/paradigma.v7i1.3019

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