

Settlement Disputes in Banceuy Traditional Village: Perspective of Customary Law and Islamic Law

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Abstract

In the realm of marriage, the indigenous community residing in the Banceuy Traditional Village still conducts Sundanese traditional ceremonies despite marriages being conducted under Islamic law. There are times when the married life of these indigenous people experiences prolonged disputes. This research examines the settlement of marital disputes in the Banceuy traditional village from the perspective of customary law and Islamic law. The approach method used in this research is normative juridical research. The research specifications used are descriptive-analytical, namely by providing data or a description as accurately as possible regarding the object of the problem. Based on the research, it is concluded that the dispute resolution that is often adopted in the community order of Banceuy Traditional Village is known as babadan tenan. Dispute resolution by babadan tenan, in which the parties to the dispute will appoint traditional elders and/or hamlet heads to mediate disputes in a marriage relationship in the customary jurisdiction of Banceuy Traditional Village. Of course, this peaceful dispute resolution is known in Islamic law because it teaches the use of peacemakers, similar to the practice of mediation in the Indonesian legal system.

Keywords: Banceuy, Dispute, Islam

Abstrak

Di bidang pernikahan, masyarakat adat yang tinggal di Kampung adat Banceuy masih melaksanakan upacara adat Sunda, meskipun pernikahan dilakukan berdasarkan hukum Islam. Ada kalanya kehidupan pernikahan masyarakat pribumi ini mengalami sengketa yang berkepanjangan. Penelitian ini bertujuan untuk menguji penyelesaian sengketa perkawinan di desa adat Banceuy dari sudut pandang hukum adat dan hukum Islam. Metode pendekatan yang digunakan dalam penelitian ini adalah penelitian yuridis normatif. Spesifikasi penelitian yang digunakan adalah analisis deskriptif, yaitu dengan memberikan data atau deskripsi seakurat mungkin mengenai objek permasalahan. Berdasarkan penelitian, disimpulkan bahwa penyelesaian sengketa yang sering diterapkan dalam tata tertib masyarakat Desa Adat Banceuy dikenal sebagai babadan tenan. Penyelesaian sengketa melalui babadan tenan, di mana pihak yang bersengketa akan menunjuk sesepuh adat dan/atau kepala dusun untuk menjadi mediator sengketa dalam hubungan pernikahan di yurisdiksi adat Desa Adat Banceuy. Tentu saja, penyelesaian sengketa secara damai ini dikenal dalam hukum Islam karena hukum Islam mengajarkan penggunaan penengah yang serupa dengan praktik mediasi dalam sistem hukum Indonesia.

Kata kunci: Banceuy, Sengketa, Islam

INTRODUCTION

Diversity of all kinds abounds in Indonesia, a pluralistic nation. The variety of people who have come together in an institutionalized indigenous community is included in this context. A 1945 article of the Republic of Indonesia Constitution recognizes the existence of an indigenous tribunal and has regulated the country's legal system ever since. The autonomous authority to administer justice and preserve the rule of law is known as judicial power. Secondly, The Supreme Court, along with the judiciaries of the general court, religious court, military court, state administrative court, and constitutional court, are the ultimate arbiters of judicial power. (4). Laws govern other organizations whose duties are connected to the authority of the judiciary. Customary Law, referred to as Adat Law in Indonesia, possesses.¹

Other courts, whose activities are related to judicial authority, in addition to the Supreme Court and its subordinate organizations, have chances based on the provisions of article 24, paragraph (3) of the Republic of Indonesia's 1945 Constitution. The Republic of Indonesia's 1945 Constitution lists these as well as General Courts, Religious Courts, Courts of the Military, State Administrative Courts, and a Constitutional Court (see article 24 paragraph (2)). This demonstrates that the state genuinely recognizes indigenous peoples, and as such, the state has a duty to ensure and defend their continued existence. Regarding legal issues, like customary law, recognition also entails recognition. As per John Griffiths, there is legal pluralism when there is multiple.² Legal pluralism is not only about the various kinds of positive laws that exist, both between nations and within a particular country, for example in the United States, each "state" has its own legal system, judicial system, and positive law, and in Indonesia every region has its respective customary law, but also legal pluralism concerns the legal behaviour of each individual or group, exists in every nation and society in this world. And of course, it cannot be realistic, when sharing a very plural or varied legal system and legal system

¹ Sonny Dewi Judiasih, Efa Laela Fakhriah, (2018), Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia, *Padjadjaran Journal Of Law*, Vol. 5 No. 2, pp. 315-330
DOI: <https://doi.org/10.22304/Pjih.V5n2.A6>

² Hazar Kusmayanti,(2023) Patterns of Religious Magic Customary Law in Traditional Sundanese Wiwitan Marriage in West Java, *SASI*, Vol 29 No.3,pp. 579 – 588, doi: 10.47268/sasaki. vi3.1467.

that is positive, reviewed only by using only one type of legal approach, or a moral approach.³

The establishment of diverse ideals and regulations in society is a logical outcome of this fact. To put it another way, a nation's customary law will reflect the diversity of its indigenous population. Only pluralistic nations like Indonesia can claim this. The goal of the sectoral Acts (Law Number 5 of 1960 concerning Agrarian Principles; Law Number 4 2009 concerning Mining, Minerals and Coal; Law Number 7 of 2004 concerning Water Resources; and other related laws) and article 18 B paragraph (2) and 23 I (3) to recognize and respect the Unity of Customary Law Communities. To establish a system of affluent government, the national government must work toward

There is no universally accepted definition of customary law. Nevertheless, it may be regarded as: ‘...an established system of immemorial rules, which had evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to a special case, which were retained in the memories of the chief and his counsellors, their sons and their sons, until they became part of the immemorial rules...’ Many customary laws of today are not ancient, nor are all customary laws administered by chiefs. Nevertheless, the definition provides a basic idea of what is generally understood by customary law, especially from the perspective of non-indigenous legal scholars. ⁴ In Most Asian countries, unless formal legislative or judicial recognition is already established, the existence of customary law needs to be proved by the person that applies it. The nature and extent of the burden and standard of proof may vary from the situation. Customary law is administered by indigenous people’s institutions, and the validity of such laws and their contents, including the related procedures, is generally known, at least by the older members of the community. The formal status of customary law in most Asian countries is usually subordinate to written laws. Customary law usually must give way if it comes into conflict with written legislation, especially constitutional legal provisions.

For the State of Indonesia, the development of national law is realized to update the law (law reform) based on political, sociological, and practical philosophical reasons. The political reason is that colonial law is clearly not in line with the philosophy of the Indonesian nation, namely Pancasila. Political reason is based on the idea that an

³ Belinda Pudjilianto, Emy Handayani, (2022), Penerapan Pluralisme Hukum Dalam Masyarakat, *Diponegoro Law Journal* Vol. 11, No. 2 , pp. 1-8, <https://doi.org/10.14710/Dlj.2022.34957>

⁴ Raja Devasish Roy, (2005), *Traditional Customary Law, And Indigenous People in Asia*, p. 6

independent state must have its own laws of a national nature in accordance with its national purposes as expressly and implicitly contained in the Constitution of the Republic of Indonesia of 1945. For sociological reasons, society's life requires laws that reflect the cultural values of the nation concerned. This research is very important because the settlement of customary disputes that still exist in Indonesia can reduce the accumulation of cases in the courts.⁵

Therefore, the researchers wanted to study the ceremonial stages and how the process of settling marriage disputes in Banceuy Aboriginal Village. Banceuy is a village called Negla village, where there are seven families: Eyang Ito, Aki Leutik, Eyang Malim, Aki Alman, eyang Ono, Aki Uti, and Aki Arsiam. Around the year 1800 in the village of Negla there was a storm blowing wind that destroyed farms and farms. So, the seven people of the village of Negla engaged in negotiations and the agreement was reached that the village was once called Negla to become the customary village of Banceuy. The purpose of replacing the name of the village is for the villagers to be protected and blessed in the hope that they can lead a good life and no more incidents that threaten the order of the indigenous village of Banceuy.⁶

The research discussing this theme has not been previously explored. However, there are several studies examining the Banceuy Indigenous Village, such as those conducted by Theresia Martina Marwanti and Enung Huripah, who studied the social capital possessed by the Banceuy indigenous community, which still firmly adheres to values, norms, customs, and beliefs believed to balance their lives.,⁷ Another study conducted by Haryanti Amelia, which examines the usefulness of the traditional ceremony and ritual of "ngaruwat bumi", indicates that the indigenous community of Banceuy can sustain and preserve its environment,⁸ Then there is a study conducted by Asep Rudi Casmana, which examines the construction of the "Gapura Bhinneka Tunggal

⁵ Yoserwan, Y. (2023), Eksistensi Hukum Pidana Adat Dalam Hukum Pidana Nasional Setelah Pengesahan Kuhp Baru, *UNES Law Review*, Vol.5 No.3, pp. 1999-2013. <https://doi.org/10.31933/Unesrev.V5i4.577>.

⁶ Nurhabibah, Widiati Isana, (2023), Kehidupan Sosial Budaya Kampung Adat Banceuy Dalam Perspektif Agama Tahun 2000-2021, *Priangan* Vol. 2 No.1, pp. 41-51

⁷ Theresia Marwanti, Enung Huripah, (2015), Modal Sosial Komunitas Adat Banceuy Di Desa Sanca Kecamatan Ciater Kabupaten Subang. *Pekerjaan Sosial*, Vol.11 No.1, <https://doi.org/10.31595/peksos.v11i1.6>.

⁸ Haryanti Amelia, (2018) Upacara Adat Ngaruwat Bumi sebagai Kajian Nilai Budaya Masyarakat Adat Banceuy dalam Melestarikan Lingkungan, *Jurnal Pendidikan Kewarganegaraan*, Vol.5 No.2, 151, DOI:[10.32493/jpkn.v5i2.v2018.p151-166](https://doi.org/10.32493/jpkn.v5i2.v2018.p151-166).

Ika," which is one way to preserve and uphold the values of local wisdom in the Banceuy indigenous village. "Gapura Bhinneka Tunggal Ika",⁹

Research Methodology

The methodological approach used in this research is normative juridical research through legal principles, legal systematics, legal synchronization, and legal comparison.¹⁰ This study, from a legal/juridical perspective, focuses on the normative aspects related to the legal norms of resolving customary marriage disputes through legal principles. It involves research into customary legal norms, Islamic law, and the Marriage Law, which serve as guidelines for appropriate behavior.¹¹ The use of other methods alongside normative research methods is useful for adding more weight to this study.¹² The research specification used is descriptive-analytical, which involves providing data or descriptions as meticulously as possible regarding the object of the issue, namely the resolution of marital disputes in the customary village of Banceuy outside the court through the stages of customary dispute resolution proceedings. The research is conducted in two stages, namely literature research to obtain secondary data and field research in the form of interviews to obtain primary data.

DISCUSSION

Every dispute that arises within society can disrupt the balance of social order and needs to be resolved so that the social order can be restored and remain balanced.¹³ The method of dispute resolution is as old as the existence of humanity itself. Every societal order has various traditions regarding how a dispute is settled. Disputes can be resolved through various means, either through formal forums provided by the state or through other informal forums not provided by the state.¹⁴ One of the informal dispute resolution forums is customary dispute resolution.

⁹ Tjipto Sumadi, Asep Rudi Casmanaa, (2021), Pembuatan Gapura Bhinneka Tunggal Ika Di Kampung Adat Banceuy, Subang, Jawa Barat, *Satwika Jurnal Pengabdian Kepada Masyarakat* Vol.1 No.2, 48-55, DOI:[10.21009/Satwika.010202](https://doi.org/10.21009/Satwika.010202).

¹⁰ Ronny Hanityo Soemitro,(2002) *Metodologi Penelitian Hukum Dan Jurimetri*, Ghalia Indonesia, Jakarta, p. 1.

¹¹ Soerjono Soekanto, Sri Mamudji, (2003), *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT. Radja Grafindo Persada, Jakarta: p. 19.

¹² Johnny Ibrahim, (2013), *Teori Dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia, p. 57.

¹³ Amriani Nurnaningsih, (2011), *Mediasi Alternatif Penyelesaian Sengketa Perdata Di Pengadilan*, Jakarta: Rajawali Pers, p. 12.

¹⁴ Eman Suparman, (2004), *Pilihan Forum Arbitrase Dalam Sengketa Komersial Untuk Penegakan Keadilan*, Jakarta: Tata Nusa, p. 89.

Article 18B paragraph (2) and article 281 paragraph (3) of the 1945 Constitution of the Republic of Indonesia state that the state recognizes and respects the unity of customary law communities and their traditional rights throughout their existence and in accordance with the development of society and its principles. Customary law plays a role in Indonesia's national legal development dynamics, evolving and living alongside society.¹⁵ Customary law is unwritten law, customary law with distinctive characteristics that serve as guidelines for the people in organizing justice and the welfare of society, and it is familial in nature.¹⁶ Customary law is generally unwritten or not fully codified, originating from a complex of norms sourced from the sense of justice within society, which continually evolves through the everyday behavior of individuals, always adhered to and respected due to its legal consequences or sanctions.¹⁷

The recognition of customary law in Indonesia is grounded in the diverse cultural and traditional orders embraced by communities across Indonesia. Especially concerning marriage, each region often has its own customary laws and regulations applicable within its respective area.¹⁸ The values inherent in customary communities regarding the purpose of marriage involve the honor of the families and relatives of the parties involved in a marital relationship. The implementation of marriage must be conducted in accordance with customary regulations to avoid deviations and embarrassing violations that ultimately degrade the dignity, honor of the family, and the concerned relatives.¹⁹ Customary marriage law refers to the customary rules governing the forms of marriage, proposal methods, wedding ceremonies, and dissolution of marriages in Indonesia.²⁰ One of the customary marriage laws commonly practiced in the customary legal order in Indonesia is the customary law applicable in the Banceuy Customary Village with Sundanese customs.²¹ Although conducted with Sundanese customs, the marriage practices carried out by indigenous communities are conducted

¹⁵ Karwiyah, Bambang Daru Nugroho, Hazar Kusmayanti, (2024) *Dinamika Hukum Perkawinan Adat Pada Sistem Kekebabatan Parental/Bilateral Terhadap Masyarakat Sunda*, *Recital Review*, Vol. 6 No. 1, pp.52-73.

¹⁶ Dewi C. Wulansari, (2010), *Hukum Adat Indonesia: Suatu Pengantar*, Bandung: PT Refika Aditama, p. 3.

¹⁷ Marco Manarisip, “*Eksistensi Pidana Adat Dalam Hukum Nasional*”, *Jurnal Lex Crimen* Vol. 1 No. 4, 2012, p. 25

¹⁸ Ginarto, (2008), *Selayang Pandang Banten*, Keaken: Intan Perwira, p. 27.

¹⁹ Tolib Setyadi, (2008), *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*, Bandung: Alfabeta, p. 221.

²⁰ Iri Hamzah, (2012), *Skripsi Pelaksanaan Pernikahan Adat Suku Anak Dalam Menurut Hukum Adat Dan UU No. 1 Tahun 1974 (Studi Kasus Di Taman Nasional Bukit 12 Jambi*, Yogyakarta: Perbandingan Madzab UIN Sunan Kalijaga.

²¹ Wijasa Thomas Bratawidjaya, (1990), *Upacara Perkawinan Adat Sunda*, Jakarta: Pustaka Sinar Harapan, p. 9.

according to Islamic Sharia because the majority of the residents of the Banceuy Customary Village are Muslims. In Islamic Law, marriage is regulated as a contract to "legalize" (or validate) the sexual relationship between a man and a woman with the intention of forming a harmonious, loving, and merciful family life in ways approved by Allah SWT. This can be seen by referring to the Quran, Surah An-Nisa, verse 1.²²

Custom is a cultural concept consisting of cultural values, norms, customs, institutions, and customary laws commonly practiced in a region. If these customs are not followed, it can lead to confusion, resulting in unwritten sanctions by the local community against those deemed deviant. According to Jalaluddin Tunsam (an Arab national residing in Aceh in his writings in 1660), "Adat" originates from the Arabic word عادات, the plural form of عادة (*adah*), which means "way" or "custom."²³

So, if there's a problem within the customary law of Banceuy Customary Village, the indigenous community there resolves it through customary deliberation. Dispute resolution commonly practiced in the Banceuy Customary Village is known as "*babadan tenan*." This dispute resolution prioritizes the involvement of customary leaders and village heads as mediators in handling marital disputes that occur in the Banceuy Customary Village. The role of customary figures such as elders or village heads significantly determines the success of dispute resolution because they inherit customary law and have the authority to uphold it within the indigenous community and enforce customary legal norms.²⁴ The customary elders or village heads, as customary figures, function as preventers of the divorce process in a marital conflict within their customary jurisdiction. There are three stages in resolving marital disputes involving customary elders or village heads within the legal framework of the Banceuy Customary Village community, namely:²⁵

1. Light Stage Dispute Resolution

If a dispute arises in a marital relationship, Banceuy customary law mandates resolving the dispute at the light stage by involving the families of the husband and the wife, mediated by customary elders in the Banceuy Customary Village.

²² Hazar Kusmayanti, et.all, (2019), Legal Status Of Dowries Provision By Third Parties, *Veritas et Justitia*, Vol.5 No. 2, pp. 447- 467, DOI: <https://doi.org/10.25123/vej.v5i2.3343>.

²³ Munir Salim,(2017), Bhinneka Tunggal Ika Sebagai Perwujudan Ikatan Adat-Adat Masyarakat Adat Nusantara, *Al-Daulah*, Vol.6 No.1, pp. 65-74, DOI: <https://doi.org/10.24252/ad.v6i1.4866>.

²⁴ Syahrizal Abbas, (2009), *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat Dan Hukum Nasional*, Jakarta: Kencana Prenada Media Group, p. 247.

²⁵ Interview with Odang Selaku Tokoh Adat Kampung adat banceuy, Senin 4 Oktober 2023, Pukul 14.23 WIB, Subang.

2. Medium Stage Dispute Resolution

The medium stage applies if the parties in the light stage fail to resolve their dispute mediated by customary elders in the Banceuy Customary Village. Dispute resolution at the medium stage will require the families of the husband and the wife to attend again, this time mediated by the Village Head of Banceuy Customary Village.

3. Heavy Stage Dispute Resolution

This stage will be used if the medium stage dispute resolution mediated by the Village Head of Banceuy Customary Village does not reach an agreement. Dispute resolution at the heavy stage is where the parties in a marriage (husband and wife) within the jurisdiction of Banceuy Customary Village will settle their marital disputes in the local court, namely the Subang District Court. The indigenous community believes that disputes, whether criminal or civil, will naturally disrupt the customary values. Therefore, dispute resolution is generally conducted promptly to prevent prolongation and the disruption of customary values within a customary legal community. This background leads to the more frequent use of *babadan tenan* dispute resolution in resolving any disputes, particularly marital disputes within the Banceuy Customary Village, as it is considered more effective, fast, and precise compared to resolution through the court system.²⁶

Babadan tenan, as a dispute resolution system in the customary legal jurisdiction of Banceuy Customary Village, is in line with alternative dispute resolution systems because it has been well institutionalized through coordination between customary elders and/or the village head of Banceuy Customary Village and is conducted outside the court system. The vision of *babadan tenan* aligns with the vision of alternative dispute resolution, which is inexpensive, fast, and efficient, reflecting the principles of consultation and consensus²⁷ The dispute resolution institutions that live and evolve alongside customary legal communities are known by various terms, such as customary courts and justice systems, which terms have been used in various laws in Indonesia, namely Law No. 1 (Emergency) of 1951 concerning Temporary Measures for Reorganizing the Unity of State Power Structure and Civil Court Proceedings, and Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua. With the

²⁶ Interview with Odang Selaku Tokoh Adat Kampung adat banceuy Subang, Senin 4 Oktober 2023, Pukul 14.30 WIB.

²⁷ Mahkamah Agung RI, (2000), *Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) Dan Court Connected Dispute Resolution (Penyelesaian Sengketa Yang Terkait Dengan Pengadilan)*, Jakarta: Proyek Penelitian Dan Pengembangan Mahkamah Agung RI, 2000), p. 10.

passage of time, a new term has emerged for customary legal dispute resolution institutions, namely customary institutions used in Law No. 6 of 2014 concerning Villages, Minister of Home Affairs Regulation No. 5 of 2007 concerning Guidelines for the Arrangement of Community Institutions and Minister of Home Affairs Regulation No. 39 of 2007 concerning Guidelines for Facilitating Community Organizations in the Field of Culture, Palaces, and Customary Institutions in Preserving and Developing Regional Culture.²⁸

The concept of customary marriage and Islamic law share the same value, which is to uphold the family system with the principle of marrying once for a lifetime. Islamic law mentions the terms "*nusyuz*" and "*syiqaq*" in conflicts between husbands and wives.²⁹ "*Nusyuz*" is defined as disobedience or conflict within the family perpetrated by either the husband or the wife, leading to a breakdown in the family relationship. "*Syiqaq*" refers to a serious and prolonged quarrel between husband and wife, which has escalated and is heading towards divorce.³⁰ Resolving disputes between husband and wife, Islamic law as stated in Surah An-Nisa: 34, when there is disobedience by the wife (*Nusyuz*), the husband will give admonition and teach the wife, separate beds, and lightly strike her without causing harm. The resolution for the husband's disobedience is outlined in Surah An-Nisa: 128, which involves making peace (*shulh*) to resolve the issue. The peace referred to is a negotiation that brings mutual benefit to prevent divorce. If all efforts based on disobedience fail to resolve, then the resolution mechanism used is to appoint an arbitrator (*hakam*) as stated in Surah An-Nisa: 35, which reads as follows:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهَا وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا
خَبِيرًا

Meaning:

"And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it to happen between them. Indeed, Allah is ever Knowing and Acquainted."

The obligation to reconcile conflicting parties is part of the teachings of Islamic law as Allah SWT says:

²⁸ Rachmadi Usman, (2013) *Pilihan Penyelesaian Sengketa Diluar Pengadilan*, Bandung: PT Citra Aditya Bakti, p 195.

²⁹ Muhammad Habibi Miftakhul Marwa, (2021), Model Penyelesaian Perselisihan Perkawinan Hukum Adat Dan Hukum Islam, *Jurnal USM Law Review*, Vol. 4 No. 2 p. 779.

³⁰ *Ibid.*

وَإِنْ أَمْرًا خَافَتْ مِنْ بَعْلِهَا نُشُورًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا ۖ وَالصُّلْحُ خَيْرٌ ۗ
وَأَحْضِرْتِ أَلْنَاَفْسُ الشُّحَّ ۗ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

"Meaning: And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in [human] souls is stinginess. But if you do good and fear Allah - then indeed Allah is ever, with what you do, Acquainted. (Q.S. An-Nisa: 128)."

Islamic law teaches the use of mediators similar to the practice of mediation in the Indonesian legal system. Mediation in Islamic law will result in "at-tahkîm," which is an agreement between the disputing parties (in this case, husband, and wife) to submit the outcome of their deliberations to a third party (arbitrator). The use of mediators to mediate a civil case through the mediation system is regulated in the Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts. The PERMA states that mediation is part of procedural law in civil cases.³¹ The existence of mediation as one form of alternative non-litigation dispute resolution is not unfamiliar because this method is part of the social norms that exist or at least have existed within society.³² The arbitrator has been recognized in Indonesian positive law in Article 76 paragraph (2) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. This refers to a person appointed by the court from the family of the husband or the family of the wife or other parties to seek a resolution for *syiqaq*.

Based on their characteristics and authority, "hakam" in the Islamic legal tradition is equated with an arbitrator. Both can be identified by the way disputes are resolved voluntarily, outside of formal courts, and the appointment of a *hakam*/arbiter by the disputing parties.³³ They are tasked with making efforts to investigate and reconcile the husband and wife. If a deadlock occurs, the arbitrator is given the authority to take further action beyond reconciliation, but not to pronounce divorce (*talaq*) or marital dissolution (*khulu'*) because only the hakam or judge has the authority to issue

³¹ *Ibid*, p. 789.

³² Maria S.W. Sumardjono, Nurhasan Ismail, Isharyanto, (2008), *Mediasi Sengketa Tanah, Potensi Penerapan Alternatif Penyelesaian Sengketa Di Bidang Pertanahan*, Jakarta: Penerbit Buku Kompas, p. 9.

³³ Yahya Harahap, (2019), *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktiaan Dan Putusan Pengadilan*, Jakarta: Sinar Grafika, p. 320.

such decisions. A similar practice is also used by the customary legal community in the Banceuy Customary Village with *babadan tenan*, where the disputing parties will appoint customary elders and/or the village head to mediate disputes in marital relationships within the customary legal jurisdiction of Banceuy Customary Village.

As a mediator, customary elders, or village heads in *babadan tenan* and arbitrators in Islamic law are selected to resolve disputes and must meet the following criteria:³⁴

1. Knowing how to listen to the disputing parties.
2. Having the skill to ask questions about disputed matters.
3. Having the skill to make choices in resolving the dispute that will benefit the disputing parties (win-win solution).
4. Having the skill to negotiate in a balanced manner.
5. Assisting the parties in finding their own solutions to disputed matters.

From the explanation above, it can be concluded that the model of resolving marital disputes in the customary law of Banceuy Customary Village is similar to Islamic law, which values consultation to reach consensus by involving a third party as a mediator, and it is also recognized in Indonesian positive law, namely Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Through the discussion above, the relationship between customary law, Islamic law, and state law has been integrated through Article 1 of the Marriage Law which states: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and everlasting family (household) based on the belief in the One Almighty God", and Article 2 paragraph (1) which states: "Marriage is legal if conducted according to the law of each religion and belief", and Article 2 paragraph (2) which states that "every marriage is recorded according to applicable laws and regulations". These provisions illustrate how Islamic law, customary law, and Indonesian positive law have been well integrated in terms of marriage and are

³⁴ Harijah Damis,(2004), Hakim Mediasi Versi SEMA No. 1 Tahun 2022 Tentang Pemberdayaan Pengadilan Tingkat Pertama Menerapkan Lembaga Damai, *Mimbar Hukum*, No. 63 No.15, p. 28.

in line with the legal culture that is alive amidst the daily dynamics of Indonesian society, making it practicable and easily understood.³⁵

CONCLUSION

Based on the explanation above, it can be concluded that the model of resolving marital disputes in the customary law of Banceuy Customary Village is similar to Islamic law, which values consultation to reach consensus by involving a third party as a mediator, and it is also recognized in Indonesian positive law. In Islamic law, the mediator is tasked with making efforts to investigate and reconcile the husband and wife. If a deadlock occurs, the arbitrator is given the authority to take further action beyond reconciliation, but not to pronounce divorce (*talaq*) or marital dissolution (*khulu'*), because only the arbitrator has the authority to issue such decisions. A similar practice is also used by the customary legal community in the Banceuy Customary Village with "*babadan tenan*," where the disputing parties will appoint customary elders and/or the village head to mediate disputes in marital relationships within the customary legal jurisdiction of Banceuy Customary Village.

REFERENCE

Books :

- Amriani Nurnaningsih, (2011), *Mediasi Alternatif Penyelesaian Sengketa Perdata Di Pengadilan*, Jakarta: Rajawali Pers.
- Dewi C. Wulansari, (2010), *Hukum Adat Indonesia: Suatu Pengantar*, Bandung: PT Refika Aditama
- Eman Suparman, (2004), *Pilihan Forum Arbitrase Dalam Sengketa Komersial Untuk Penegakan Keadilan*, Jakarta: Tata Nusa.
- Ginarto, (2008), *Selayang Pandang Banten*, Keaken: Intan Perwira.
- Johnny Ibrahim, (2013), *Teori Dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia
- Maria S.W. Sumardjono, Nurhasan Ismail, Isharyanto, (2008), *Mediasi Sengketa Tanah, Potensi Penerapan Alternatif Penyelesaian Sengketa Di Bidang Pertanahan*, Jakarta: Penerbit Buku Kompas
- Mahkamah Agung RI, *Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) Dan Court Connected Dispute Resolution (Penyelesaian Sengketa Yang Terkait Dengan Pengadilan)*, Jakarta: Proyek Penelitian Dan Pengembangan Mahkamah Agung RI, 2000).
- Ronny Hanityo Soemitro, (2002) *Metodologi Penelitian Hukum Dan Jurimetri*, Ghalia Indonesia, Jakarta
- Raja Devasish Roy, (2005), *Traditional Customary Law, And Indigenous People in Asia*
- Syahrizal Abbas, (2009), *Mediasi Dalam Perspektif Hukum Syariah, Hukum Adat Dan Hukum Nasional*, Jakarta: Kencana Prenada Media Group.

³⁵ Murdan, (Desember 2016), Harmonisasi Hukum Adat, Agama Dan Negara Dalam Budaya Perkawinan Masyarakat Islam Indonesia Belakangan, *Jurnal Asy-Syir'ah Ilmu Syariah Dan Hukum*, Vol. 50, No. 2, p.512.

- Soerjono Soekanto, Sri Mamudji, (2003), *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT. Radja Grafindo Persada, Jakarta.
- Rachmadi Usman, (2013) *Pilihan Penyelesaian Sengketa Diluar Pengadilan*, Bandung: PT Citra Aditya Bakti Tolib Setyadi, (2008), *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)*, Bandung: Alfabeta Wijasa Thomas Bratawidjaya, (1990), *Upacara Perkawinan Adat Sunda*, Jakarta: Pustaka Sinar Harapan
- Yahya Harahap, (2019), *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktiaan Dan Putusan Pengadilan*, Jakarta: Sinar Grafika.

Journals:

- Belinda Pudjilianto, Emy Handayani, (2022), Penerapan Pluralisme Hukum Dalam Masyarakat, *Diponegoro Law Journal* Vol. 11, No. 2 , pp. 1-8, <https://doi.org/10.14710/Dlj.2022.34957>
- Hazar Kusmayanti, et.all, (2019), Legal Status Of Dowries Provision By Third Parties, *Veritas et Justitia*, Vol.5 No. 2, pp. 447- 467, DOI: <https://doi.org/10.25123/vej.v5i2.3343>.
- Hazar Kusmayanti,(2023) *Patterns of Religious Magic Customary Law in Traditional Sundanese Wiwitan Marriage in West Java*, SASI, Vol 29 No.3,pp. 579 – 588, doi: 10.47268/sasaki.vi3.1467.
- Haryanti Amelia,(2018) Upacara Adat Ngaruwat Bumi sebagai Kajian Nilai Budaya Masyarakat Adat Banceuy dalam Melestarikan Lingkungan, *Jurnal Pendidikan Kewarganegaraan*, Vol.5 No.2, 151, DOI:[10.32493/jpkn.v5i2.y2018.p151-166](https://doi.org/10.32493/jpkn.v5i2.y2018.p151-166).
- Harijah Damis,(2004), Hakim Mediasi Versi SEMA No. 1 Tahun 2022 Tentang Pemberdayaan Pengadilan Tingkat Pertama Menerapkan Lembaga Damai, *Mimbar Hukum*, No. 63 No.15, p. 28.
- Karwiyah, Bambang Daru Nugroho, Hazar Kusmayanti, (2024) Dinamika Hukum Perkawinan Adat Pada Sistem Keekerabatan Parental/Bilateral Terhadap Masyarakat Sunda, *Recital Review*, Vol. 6 No. 1, pp.52-73.
- Marco Manarisip, Eksistensi Pidana Adat Dalam Hukum Nasional, *Jurnal Lex Crimen* Vol. 1 No. 4, 2012.
- Muhammad Habibi Miftakhul Marwa, (2021), *Model Penyelesaian Perselisihan Perkawinan Hukum Adat Dan Hukum Islam*”, *Jurnal USM Law Review*, Vol. 4 No. 2.
- Murdan, (Desember 2016), Harmonisasi Hukum Adat, Agama Dan Negara Dalam Budaya Perkawinan Masyarakat Islam Indonesia Belakangan, *Jurnal Asy-Syir'ah Ilmu Syariah Dan Hukum*, Vol. 50, No. 2, p.512.
- Munir Salim,(2017), Bhinneka Tunggal Ika Sebagai Perwujudan Ikatan Adat-Adat Masyarakat Adat Nusantara, *Al-Daulah*, Vol.6 No.1, pp. 65-74, DOI: <https://doi.org/10.24252/ad.v6i1.4866>.
- Nurhabibah,Widiati Isana,(2023), Kehidupan Sosial Budaya Kampung Adat Banceuy Dalam Perspektif Agama Tahun 2000-2021, *Priangan* Vol. 2 No.1, pp. 41-51
- Sonny Dewi Judiasih, Efa Laela Fakhriah, (2018), Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia, *Padjadjaran Journal Of Law*, Vol. 5 No. 2, pp. 315-330 DOI: <https://doi.org/10.22304/Pjih.V5n2.A6>
- Tjipto Sumadi, Asep Rudi Casmanaa, (2021), Pembuatan Gapura Bhinneka Tunggal Ika Di Kampung Adat Banceuy, Subang, Jawa Barat, *Satwika Jurnal Pengabdian Kepada Masyarakat* Vol.1 No.2, 48-55, DOI:[10.21009/Satwika.010202](https://doi.org/10.21009/Satwika.010202).
- Theresia Marwanti, Enung Huripah, (2015), Modal Sosial Komunitas Adat Banceuy Di Desa Sanca Kecamatan Ciater Kabupaten Subang. *Pekerjaan Sosial*, Vol.11 No.1, <https://doi.org/10.31595/peksos.v11i1.6>.
- Yoserwan, Y. (2023), Eksistensi Hukum Pidana Adat Dalam Hukum Pidana Nasional Setelah Pengesahan Kuhp Baru, *UNES Law Review*, Vol.5 No.3, pp. 1999-2013. <https://doi.org/10.31933/Unesrev.V5i4.577>.