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**A DISPUTE SETTLEMENT PROCEDURE OUTSIDE COURT IN NAGORI SILAU,  
PARIBUAN, SIMALUNGUN DISTRICT**

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**ABSTRACT**

*In the context of resolving disputes between communities within villages, the involvement of third parties is crucial. Dispute resolutions facilitated by third parties offer several advantages as they do not rely on court proceedings but instead involve individuals such as village heads or other relevant parties. The outcomes of such dispute resolutions often result in a win-win solution and an agreed-upon settlement. This research aims to explore the procedure of resolving disputes outside of court in Nagori Silau Paribuan, Simalungun Regency. The study utilizes both a normative juridical approach and an empirical juridical approach, including field research. The normative juridical approach involves examining literature and secondary data related to the research theme, such as applicable laws and regulations. The goal is to gain insights into the problem and relevant sources. In Silau Paribuan, Simalungun Regency, the resolution of civil and criminal disputes between communities predominantly takes place outside of court. The procedure for resolving these disputes aligns with the customary practices established by the Pangulu over generations. Although not explicitly documented in written rules, the settlement process adheres to customs that have been passed down through the community. Additionally, dispute resolution evolves alongside the progress and development of community knowledge, ensuring a better direction for the community.*

**Keywords:** *Out-of-court, Settlement, Procedure, Dispute.*

**INTRODUCTION**

In contemporary society, disputes often arise due to conflicting interests among individuals or groups. When disputes occur, various methods of dispute resolution are employed to reach an agreement or restore peace. In many regions of Indonesia, customary or community-based dispute resolution procedures are utilized. These procedures are perceived as more efficient, faster, and provide a greater sense of justice in terms of cosmic balance within the community. The indigenous people of Tenganan Bali, who have well-functioning government structures, customary laws, and institutions that coexist with the national legal system, strictly adhere to customary law. Customary sanctions often have a more deterrent effect than those imposed by the state.



On a national scale, disputes that are resolved outside of court proceedings also exist. For instance, during the construction of the Larona hydropower plant by PT Inco in Ujung Pandang, 95 families living near Lake Matano requested land compensation from the company. This matter was later settled out of court, with PT Inco agreeing to provide compensation and relocate or construct a mosque at a higher location. Generally, disputes resolved outside of court involve the participation of community leaders, village heads, tribal heads, or their equivalents, who act as intermediaries in resolving disputes between communities in different regions or villages. These leaders play the role of mediators in minor civil and criminal disputes. Religious leaders, such as imams, khatibs, priests, or other religious figures, also contribute to dispute resolution, particularly in family and morality-related disputes.

In Indonesian society, the influence of these leaders in resolving disputes outside of court is significant. Moreover, the parties involved in the dispute often comply with decisions made by dispute resolution actors, such as kings, traditional elders, religious leaders, village heads, or local community leaders. This compliance can be attributed to the fact that the sanctions imposed during dispute resolution are tailored to the capacity of the parties involved, taking into account their ability to pay fines or other forms of penalties.

In several countries, the role of village heads in dispute resolution has been reinforced through recognition and state statutory instruments. For instance, the government of Papua New Guinea established the Community Justice Liaison Unit (CJLU) as an official part of the Law and Justice Sector, aiming to enhance compatibility and consistency between formal and informal systems and strengthen the capacity of justice actors outside the state. Similarly, in Bangladesh, the village heads in the Shalish institution effectively resolve disputes within the community. Various parties, including the Madaripur Legal Aid Association (MLAA), have made efforts to reform this institution.

Furthermore, in Simalungun Regency, specifically in Nagori Silao Paribuan, Silao Kahean District, dispute resolution is facilitated by the village head or Pangulu. Disputes between communities are settled through the intervention of the Pangulu, who issues conciliation letters or statements to promote peace. For example, a dispute between two parties, identified as "M" and "AP," regarding a land boundary issue was resolved by the Pangulu. The parties agreed and documented their peace agreement in a Joint Statement Letter. The agreement entailed the removal of oil palm plants that had encroached upon the land border by the second party, while the rice plants owned by the second party would remain until the harvest without any compensation claimed from the first party. However, as part of the resolution, the first party agreed to provide pako-pako money to the second party.

It is important to make fair and wise efforts in resolving disputes outside of court to prevent further disputes and widespread conflicts between communities. Pangulu plays a crucial role in achieving democratic dispute resolution based on principles of deliberation and consensus,



aiming to harmonize social and national life and promote justice, peace, welfare, and happiness among the people amidst rapid societal changes and development.

## **METHOD**

This research is descriptive in nature, defines and assesses the difficulties that will be raised, and is carried out using a normative juridical approach and an empirical juridical approach, especially by conducting field research. The normative juridical approach is carried out by examining library materials or only using secondary data<sup>1</sup> with the intention of approaching the problem by looking at the applicable laws and regulations as well as reading sources that are relevant to the research theme<sup>2</sup> which includes legal principles, legal systematics, legal history, legal sources,<sup>3</sup> scientific theoretical laws and regulations that can analyze the issues to be discussed and add to other data obtained.

This study uses primary data and secondary data, namely:<sup>4</sup>

- 1) Primary data, namely information obtained directly from the field regarding the issues to be discussed through interviews with Pangulu.
- 2) Secondary data, namely data collected through a literature study on the research materials used, which includes primary, secondary, and tertiary legal materials, including:
  - a. Primary legal material is authoritative, in the sense that it has binding authority and power, and is a basic element in the form of statutory regulations.
  - b. Secondary legal materials are legal documents that explain primary legal elements. for example books on out-of-court dispute resolution, research results, and scientific papers.
  - c. Tertiary legal materials include magazines, the internet, legal dictionaries, and other sources that provide guidance and explanations for primary and secondary legal texts.

Data analysis was carried out qualitatively, namely by collecting data, tabulating, parsing, systematizing, analyzing and relating it to applicable regulations, combining with legal expert opinions and then writing conclusions using the deductive method.

## **RESULTS AND DISCUSSION**

### **3.1. Results**

Simalungun Regency has 32 Districts with an area of 438,660 ha or 6.12% or 4,372.50 km<sup>2</sup> of the total area of North Sumatra Province. The largest subdistrict is Hatonduhan District

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<sup>1</sup>Appears Anshari Siregar, Thesis Writing Legal Research Methodology, Pustaka Bangsa Press, Medan, 2005, p. 23.

<sup>2</sup>Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Overview, PT. Raja Grafindo Persada, Cet. V, Jakarta, 2001, p. 14.

<sup>3</sup>Liza Erwina, Legal Studies, Pustaka Bangsa Press, Medan, 2012, p. 125.

<sup>4</sup>Peter Mahmud Marzuki, Legal Research, Prenada Mulia, Jakarta, p. 141.



with an area of 336.26 km<sup>2</sup>, while the smallest is Jawa Maraja Bah Jambi District with an area of 38.97 km<sup>2</sup>. The entire sub-district consists of 386 villages/Nagori and 27 sub-districts (2021).<sup>5</sup>

The 32 sub-districts are: Bandar, Bandar Hulan, Bandar Masilam, Bosar Maligas, Dolog Masagal, Dolok Batunanggar, Dolok Panribuan, Dolok Pardamean, Dolok Silau, Girsang Sipangan Bolon, Mount Malela, Mount Maligas, Haranggaol Horison, Hatonduhan, Huta Bayu Raja, Java, Maraja Bah Jambi, Jorlang Hataran, Panei, Panombeian Panei, Pematang Bandar, Pematang Sidamanik, Pematang Silima Huta, Ancient, Raya, Raya Kahean, Siantar, Sidamanik, Silau Kahean, Silimakuta, Java Land, Tapian Dolok and Ujung Padang.

In this research it was conducted in Nagori Silou Paribuan in Silau Kahean District. Silou Kahean District with an area of 228.74 km<sup>2</sup> consisting of 16 Nagori namely: Bandar Maruhur, Bah Sarimah, Buttu Bayu, Bandar Nagori, Dolok Marawa, Damakitang, Mariah Buttu, Dolok Saribu Bangun, Nagori Tani, Nagori Dolog, Pardomuan Tongah, Pardomuan Bandar, Simanabun, World Glare, Paribuan Glare and Sinasih.

The structure/composition of the community in Simalungun has long been in daily life in the aspect of government, namely by traditional leaders who are also government leaders who are called "Kings", having areas with clear boundaries in the field. In terms of this aspect, the composition of the state of society, namely:<sup>6</sup>

- 1) King: Lord / above Rank.
- 2) Level up: recite some Parbapaan.
- 3) Parbapaan: in charge of several Pangulu.
- 4) Pangulu: in charge of the people of the region.
- 5) People.

The King has a Council called "Harajaan" which helps the King on a daily basis. The king led the subordinate officials of the Joint Harajaan in deliberation to formulate a system of government and customs. The results of the deliberations become customs (regulations) which become guidelines for life and life in government and in the family (consensus of the Simalungun community). Because the results of the deliberations are shared opinions that are good and correct, then made into customs (regulations), the implementation is based on "Habonaran dobona". By itself after the proclamation of August 17, 1945 immediately followed the Government Structure of the Republic of Indonesia.

After Indonesia's independence and in the course of the constitutional administration of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia, villages have developed in various forms so that they need to be protected and empowered to become strong, advanced, independent and democratic so as to create a strong foundation in carrying out

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<sup>5</sup>"Simalungun Regency in Figures 2022", [www.simalungunkab.bps.go.id](http://www.simalungunkab.bps.go.id). p. 7. Retrieved October 8, 2022.

<sup>6</sup>Lt Col. retired Md. Purba, Trajectory of Simalungun's Cultural History, 1986, In Tuanke Luckman's book Sinar Basarshah-I and Lt. Col. retired Md. Ancient, Simalungun Traditional and Cultural Trajectories, North Sumatra Inter-Institutional Communication Forum (Forkala), 2009, p. 21.



governance and development towards a just, prosperous and prosperous society in the composition and procedures for administering government and village development have been regulated by laws and regulations related to villages. This law has been regulated based on Law Number 6 of 2014 concerning Villages.

In the Village Law, the definition of a village is a village and traditional village or what is called by another name, hereinafter referred to as Village. The designation of Village or Traditional Village is adjusted to the designation that applies in the local area. In carrying out the state government system in the implementation of government affairs and community interests carried out by the village administration. Village Government is the Village Head or what is referred to by another name assisted by Village apparatus as an element of Village Administration.

Nagori is a legal community unit that has the authority to regulate and manage the interests of the local community which are recognized in the national government system and are in the Regency area (Article 1 letter d of Simalungun Regency Regional Regulation Number 12 of 2000 concerning the Establishment of Maujana Nagori in Simalungun Regency) and in Nagori , in the form of the Government of Nagori and Maujana Nagori.

In this case in Simalungun, the village administrative unit called Nagori is headed by Pangulu, and in the Simalungun community it is also known at the lower level (the circle of the smallest territorial area) which is called "huta", where settlements are called "parhutaan" which is headed by Gamot .

Pangulu or what is called by another name is the head of the Traditional Village/Village Government who leads the implementation of Village Government as stipulated in Law no. 6 of 2014. Pangulu or Village Head or what is called by other names has an important role in his position as an arm of the state who is close to the community and as a community leader.

If there is a dispute between communities, especially in the research location, in resolving disputes between communities it is done through customs as was the custom that had been carried out by the community or Pangulu before. The people who are in dispute first (in this case the aggrieved party) report to Pangulu to be resolved internally at the village hall or Pangulu Office for deliberation.

### **3.2. Discussion**

Regarding the settlement of disputes carried out through the role of Pangulu in the decision of the results of the deliberations, it requires the approval of the parties in the dispute resolution process because the results in the settlement process are the parties making a peace letter or agreement which is attended by traditional leaders, family, Gamot, religious leaders and community leaders or those involved in the process of its resolution. In a letter of peace or agreement which is used as the basis for making decisions by Pangulu, the community is



considered as a living rule even though it is not stipulated by the authorities but is obeyed and supported by the community based on the belief that the settlement of the dispute has legal force.

With the dispute resolution process carried out by Pangulu it will be more effective and efficient in making decisions as a result of deliberations and the existence of a judicial body in resolving disputes outside the court in accordance with Law Number 6 of 2014 concerning Villages in Article 103 letters d and e namely authority customary villages to resolve legal issues of their citizens are recognized by the state through Article 103 letters d and e of the Village Law namely "Authority of Traditional Villages based on origin rights as referred to in Article 19 letter a includes:

- a. Arrangement and implementation of government based on the original arrangement;
- b. Arrangement and management of customary or customary territories;
- c. Preservation of socio-cultural values of traditional villages;
- d. Settlement of customary disputes based on customary law in force in customary villages in areas that are in line with human rights principles by prioritizing settlement by deliberation;
- e. Organizing customary village court peace hearings in accordance with statutory provisions;
- f. Maintenance of peace and order in the customary village community based on the customary law applicable in the customary village; And
- g. Development of customary law life in accordance with the socio-cultural conditions of indigenous village communities."

In points (d) and (e) in Article 103, that customary dispute resolution is based on customary law that applies in the village. When it is related to the results of the decision from the dispute settlement by Pangulu, then in order to obtain legal certainty, justice and benefits from the process up to the decision making, in order to realize the development of national law, it is necessary to have a statutory regulation or regional regulation that strengthens from process to decision making in the resolution of the dispute.

What actually needs to be done is that even though Law Number 6 of 2014 has regulated the settlement of disputes by Pangulu or village heads, it is necessary to compile or make a statutory regulation in the form of a regional regulation, especially in Simalungun Regency which regulates the settlement of disputes outside the court by Pangulu. Given the importance of this for the community in order to achieve a legal goal in achieving justice, benefit and legal certainty.

From the research conducted, in general by the people in Nagori if there is a dispute regarding both civil and criminal disputes, the aggrieved parties can follow the dispute resolution procedure as follows:

- 1) If a dispute occurs, a report can be made by the victim or both parties to Gamot and or to Pangulu.



- 2) If Pangulu receives a report from Gamot or from the victim, immediately determine a schedule for resolving the dispute by inviting Gamot, Secretary of Nagori and Maujana Nagori and usually it is done at the Pangulu Office or Village Hall or at the parties' homes according to what has been determined by each party .
- 3) Before carrying out the dispute resolution, usually Pangulu or through Gamot approaches the parties to find out the dispute problems that occur and also the willingness or agreement of the parties to be resolved amicably.
- 4) At the time of dispute resolution, the parties are represented by witnesses or usually from each family.
- 5) Dispute resolution carried out by Pangulu with the involvement of Nagori officials such as Gamot, Maujana Nagori and also traditional leaders, community leaders and religious leaders.
- 6) Settlement is carried out officially and openly except for disputes such as divorce and domestic violence.
- 7) During the dispute resolution process, Pangulu conveyed to the parties the problems that occurred. If there are witnesses who know about the problems that occur, Pangulu will allow these witnesses to convey information about the problems that occur.
- 8) In addition, Pangulu also provides opportunities for parties such as Gamot, Maujana Nagori and also traditional leaders, community leaders and religious leaders to submit solutions or alternatives in resolving these disputes.
- 9) Pangulu along with the parties involved in the dispute settlement held deliberations to determine the outcome of the peace that would be given or decided. Usually orally or in writing, if writing will be made in the form of a Statement, Agreement or Settlement.
- 10) If the parties involved in the dispute resolution have agreed to carry out the results of peace, then Pangulu will convey to the parties to the dispute to make peace and also the losses incurred as a result of the actions of one of the parties to make a Statement, Agreement or Peace.
- 11) If one party or both parties disagree with the results of the Statement, Agreement or Settlement, the parties can submit their dispute to the Police or the Court based on the results of the Statement, Agreement or Settlement that has been implemented.
- 12) The results of the peace and a copy are given to each of the parties and are also kept by Pangulu.
- 13) From the results of the settlement, one of the parties or both parties will be subject to sanctions according to the actions committed and the severity depending on the type of dispute that occurred.
- 14) The sanctions given are usually an apology from the parties, compensation, providing food and also social sanctions such as cleaning houses of worship, schools, roads and others.



15) The implementation of sanctions from the peace decision by deliberation is carried out after the announcement of the results of the agreement. The implementation of the decision depends on the type of dispute concerned. Some of the results of the settlement can be carried out immediately and accepted by the parties and some will be carried out in the future.

Apart from that, for disputes that are criminal in nature, basically the procedure for resolving disputes that occur between communities is the same as resolving civil disputes. From the dispute resolution procedure carried out by the parties regarding both civil and criminal disputes, it proceeds according to custom as has been carried out by the previous Pangulu-pangulu. Even though in general this is not regulated in specific rules in written form, the settlement procedure follows the habits that have been passed down from generation to generation by the community. In addition, it also always follows the progress and development of community knowledge in a better direction.

From the foregoing, the focus or result in resolving disputes outside the court that occur between communities is peace which is one of the goals of law. Currently it takes an important role from Pangulu in resolving disputes outside the court. It is hoped that the settlement of disputes will not often clash with formal law, so in reforming national law as a whole, it must be seen that there is relevance between dispute resolution outside the court and the district court, where the meeting point is for simple cases that occur between communities, can be resolved outside the court through the role of Pangulu and not necessarily brought to the police or the District Court.

The reason for the community to bring their disputes to be resolved out of court is through the role of Pangulu as a way to reach consensus or seek decisions that are considered effective and efficient because settlements in litigation or through court are parties that lose and win, causing suffering to the losers. The spirit of community struggle in resolving disputes using a customary law approach based on the principles of decency, harmony and harmony aims to achieve harmonization in social and national life towards a just, peaceful, happy and prosperous life for all Indonesian people, in accordance with the noble values of Pancasila, The 1945 Constitution, the Unitary State of the Republic of Indonesia and Bhinneka Tunggal Ika.

The Unitary State of the Republic of Indonesia will remain intact as an independent and sovereign country if the Indonesian state always maintains and develops the values of togetherness (the third and fourth precepts of the Pancasila). The value of togetherness is implemented by maintaining the spirit of "Diversity and deliberation in resolving disputes between communities to realize Indonesian unity".

## **CONCLUSION**

Basically the procedure for resolving disputes that occur between communities in Nagori Silau Paribuan, Simalungun Regency, is the same as resolving civil and criminal disputes. From





the dispute resolution procedure carried out by the parties regarding both civil and criminal disputes, it proceeds according to custom as has been carried out by the previous Pangulu-pangulu. Even though in general this is not regulated in specific rules in written form, the settlement procedure follows the habits that have been passed down from generation to generation by the community. Besides that, based on the results of the research which became the location of this research, it always follows the progress and development of community knowledge in a better direction.

The emphasis or outcome in resolving disputes outside the court that occur between communities is peace which is one of the goals of law. Currently it takes an important role from Pangulu in resolving disputes outside the court. It is hoped that the settlement of disputes will not often clash with formal law, so in reforming national law as a whole, it must be seen that there is relevance between dispute resolution outside the court and the district court, where the meeting point is simple cases that occur between communities, can be resolved outside the court through the role of Pangulu and not necessarily brought to the police or the District Court.

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