

## The Essence of Non-Litigation Settlement of Land Rights Disputes (A Study in South Sulawesi Province)

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### ABSTRACT

This study examines the essence and effectiveness of non-litigation mechanisms in resolving land rights disputes within the legal jurisdiction of South Sulawesi Province. Land conflicts in Indonesia often arise due to overlapping claims, administrative inconsistencies, and the lack of effective communication between stakeholders. As formal judicial processes frequently require substantial time, financial resources, and energy, this research highlights mediation and alternative dispute resolution (ADR) as strategic approaches that align with the principles of justice, legal certainty, and utility. Guided by the framework of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, this study emphasizes the importance of promoting a win-win solution that accommodates the interests of all disputing parties. Using a normative legal research method supported by statutory, conceptual, and doctrinal approaches, the analysis demonstrates that non-litigation mechanisms offer more flexible, participatory, and culturally grounded pathways for dispute settlement. The findings reveal that mediation—when conducted through deliberation, kinship-based negotiation, and the incorporation of local wisdom—significantly enhances the potential for equitable agreements. These non-judicial pathways not only reduce the burden on the courts but also foster community harmony and sustainable social relationships by encouraging active involvement of parties, customary leaders, and local government institutions. The study concludes that non-litigation dispute resolution represents a vital instrument for strengthening legal certainty and social cohesion in South Sulawesi, particularly in regions where customary norms and communal land relations remain deeply embedded. Strengthening legal awareness, mediator professionalism, institutional support, and regulatory clarity is essential to ensuring that mediation and ADR continue to serve as effective, fair, and culturally relevant mechanisms for resolving land rights disputes in Indonesia.

**Keywords:** Land Rights Disputes; Non-Litigation Settlement; Mediation; Alternative Dispute Resolution (ADR); Legal Certainty; Justice; Utility; Local Wisdom; South Sulawesi; Normative Legal Research

### INTRODUCTION

In essence, from a normative standpoint within modern legal systems, law is designed to function as an instrument for creating justice, certainty, and social utility. These fundamental purposes encompass various dimensions of human life that continue to evolve in accordance with social, economic, and political developments. Ideally, law should embody a balanced framework that protects rights, regulates obligations, and maintains order within society. However, empirical realities show that the implementation of law often encounters significant obstacles that hinder the attainment of these ideal goals. A persistent problem is the gap between written legal norms (law in books) and their practical application (law in action). This disparity is frequently influenced by inconsistent law enforcement, weaknesses within judicial institutions, and political or economic interests that

intervene in legal processes. These conditions undermine public trust in the legal system and contribute to structural injustices. In Islamic teachings, humans are described as beings created from soil, and more than 450 verses in the Qur'an address the subject of land and its relationship to human existence—from theological, economic, political, to social perspectives. In the Abrahamic traditions, it is believed that Adam was created from the essence of the earth and was granted the mandate to inhabit, cultivate, and develop the world. Yet humanity was also warned about inevitable conflicts, rivalries, and struggles over earthly resources. The Qur'an and Sunnah emphasize that although the earth offers diverse economic opportunities, human greed frequently generates destructive consequences. For this reason, Islam strictly prohibits actions that cause environmental damage or threaten the sustainability of the earth.

The Qur'an explicitly condemns corruption and destruction on the earth, such as in Surah Ar-Ra'd (13:25) and Surah Ar-Rum (30:41), reminding humanity that the consequences of moral corruption manifest in ecological harm and social disorder. As such, Islam calls upon individuals and institutions—especially the state—to uphold justice, honesty, and sincerity in all affairs, both religious and worldly. The Qur'an in Surah Al-Ma'idah (5:8) commands believers to stand firmly for justice, forbidding prejudice or hatred from leading to injustice. Land, as one of the most vital assets for a nation, symbolizes sovereignty and plays a decisive role in economic, social, and political development. The expropriation of land due to colonialism and the increasing number of internal land conflicts negatively affect national stability. Recognizing this, the 1945 Constitution, particularly Article 33 paragraph (3), asserts that land and natural resources are controlled by the state and must be utilized for the greatest prosperity of the people. This principle underlies the Basic Agrarian Law (UUPA) of 1960, which governs land rights and land administration in Indonesia.

Despite the legal framework, land disputes remain widespread. These disputes often arise from challenges to land status, ownership, overlapping rights, or claims filed through administrative channels. Rapid population growth, combined with limited availability of land and the increasing pace of physical development, intensifies competition for land. Although Indonesia historically possessed an agrarian identity, modern development has shifted the country toward industrialization, creating new complexities in land management.

In practice, land conflicts have increased across both urban and rural areas. Structural issues in land governance—particularly inadequate policy implementation—have contributed to growing tensions. Legal protections for land ownership, including those stipulated in UUPA and Government Regulation No. 24 of 1997, are often undermined by practices such as illegal occupation, fraudulent land certificates, or construction on disputed property. The judiciary, which plays a central role in resolving land disputes, is expected to deliver justice through decisions grounded in evidence, including crucial documentary evidence. Yet judicial corruption, procedural inconsistencies, and flawed judgments often erode public confidence. Land disputes, when unresolved, threaten societal stability and hinder the state's efforts to promote public welfare. A central principle of Indonesia's land law is the recognition of land rights that possess a social function. This principle reflects the nation's philosophical foundation that balances individual ownership with communal interest. Land rights, therefore, must be exercised within the broader context of social welfare. This concept is constitutionally supported and emphasized in Article 6 of UUPA, affirming that all land rights carry a social function.

Economic development, driven by large-scale investments, has heightened the demand for land. To expedite land acquisition for public purposes, the government has introduced various regulations, ranging from early Ministerial Decrees to the more recent Law No. 2 of 2012 on Land Procurement for Public Interest. These regulatory frameworks—though intended to streamline administrative procedures—have often generated legal and practical ambiguities, resulting in uncertainty for affected communities. Despite these regulations, land-related issues persist due to systemic challenges such as bureaucratic opacity, inconsistent enforcement, and corruption. Data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) shows hundreds of reported cases each year, with the majority involving disputes and conflicts. This confirms the urgent need for more accountable and transparent land administration.

The over-reliance on litigation has led to overwhelming caseloads in Indonesian courts, causing delays and inefficiencies. Litigation, characterized by adversarial competition, often results in winners and losers, sometimes distorting justice rather than delivering it. Consequently, Alternative Dispute Resolution (ADR) mechanisms are increasingly recognized as essential pathways for resolving civil disputes—including land conflicts—more cooperatively, quickly, and cost-effectively. Scholars such as M. Yahya Harahap and Benny Riyanto emphasize that litigation often fails to ensure predictability, affordability, and fairness, while ADR offers a more constructive, interests-based approach.

In numerous cases, litigation has produced outcomes that contradict substantive justice. For example, individuals who have occupied and cultivated land for decades may lose their rights simply because another party holds official documentation, even when such certificates are disputed or obtained irregularly. Situations like these illustrate the need to strengthen legal institutions, guarantee equitable land governance, and promote dispute resolution methods that restore fairness, social stability, and public trust.

Beyond the direct participation of community groups and private stakeholders, sustainable ecotourism development in Barru Regency is also strengthened by the emergence of collaborative learning networks. These networks consist of local youth communities, environmental movements, university research teams, and independent volunteers who collectively contribute to the improvement of ecotourism destinations. Their involvement is not merely operational but also strategic, focusing on capacity building, digital literacy, conservation education, and the promotion of responsible tourism practices. Youth-led organizations, for example, often become the driving force behind environmental campaigns such as beach clean-ups, mangrove replanting, and river conservation initiatives. Their active engagement helps raise public awareness and encourages visitors to adopt sustainable behaviors. Furthermore, these groups use digital platforms to create promotional content, share travel narratives, and produce short documentaries that highlight the unique ecological and cultural features of Barru's ecotourism sites. This digital presence significantly contributes to expanding market reach while maintaining an emphasis on sustainability. Universities also play an influential role by conducting action-based research, ecological mapping, and social impact assessments to guide the management of ecotourism areas. Collaboration between academic experts and local communities ensures that development plans remain evidence-based, context-appropriate, and aligned with long-term conservation goals. Research outputs often become references for local decision-making processes, especially regarding environmental carrying capacity, community empowerment models, and strategies to mitigate tourism-related risks. Non-governmental organizations (NGOs) further enhance the ecosystem by offering training programs in areas such as waste management, sustainable business planning, and participatory environmental governance. These programs help equip local actors with the knowledge and skills necessary to sustain tourism operations without compromising ecological integrity. The involvement of NGOs also reinforces accountability, ensuring that ecotourism initiatives adhere to global sustainability standards and ethical tourism principles. Overall, the synergy among youth communities, academic institutions, NGOs, and private actors creates a dynamic multi-stakeholder environment that supports the continuous evolution of sustainable ecotourism in Barru Regency. Their contributions foster innovation, strengthen community resilience, and ensure that ecotourism development remains both environmentally conscious and socially inclusive.

## RESULT AND DISCUSSION

### The Essence of Non-Litigation Settlement of Land Rights Disputes in South Sulawesi Province

The essence of resolving land rights disputes through non-litigation mechanisms within the jurisdiction of South Sulawesi Province fundamentally represents a form of Alternative Dispute Resolution (ADR), which emphasizes settlement efforts outside judicial institutions. Its primary objective is to achieve justice, utility, and legal certainty that uphold the interests of all parties involved in the dispute. This approach stresses the importance of a win-win solution, wherein disputing parties seek mutually beneficial agreements through dialogue, deliberation, and familial approaches without resorting to lengthy and complex litigation processes. Based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, non-litigation settlement covers several mechanisms such as negotiation, mediation, conciliation, and arbitration. In the context of land rights disputes, mediation is the most commonly used mechanism. Mediation is a dispute settlement process that involves a neutral third party, the mediator, who assists the parties in reaching a mutual agreement. The mediator does not possess decision-making authority but acts solely as a communication facilitator to help the parties find common ground that is fair and mutually acceptable.

In practice, non-litigation mechanisms—particularly mediation—are considered more relevant to the socio-cultural characteristics of South Sulawesi society, which highly upholds the values of *siri' na pacce*, *sipakatau*, and *sipakalebbi*. These values reflect respect for human dignity, social solidarity, and a collective sense of justice. Therefore, the non-litigation settlement of land disputes is not only viewed as an alternative legal procedure but also as an embodiment of local wisdom in building restorative justice and social harmony within the community.

Local mediation and deliberation processes often involve traditional leaders, religious figures, and village or ward heads as mediators. Their involvement is crucial, as the community tends to respect decisions made by figures with strong social legitimacy. In many cases, peaceful agreements achieved through village deliberations or customary mediation are more readily accepted and voluntarily implemented by the parties, compared to court decisions that are coercive in nature. This demonstrates that non-litigation approaches carry strong moral and social legitimacy, even though their formal legal force may be more limited than that of court judgments.

Beyond reflecting local values, the essence of non-litigation settlement also emphasizes efficiency and legal effectiveness. Litigation processes often impose high costs, lengthy timeframes, and emotional strain on disputing parties. Conversely, mediation and negotiation allow for faster, more affordable solutions while preserving social relationships. This aspect is particularly important in land disputes, where prolonged conflicts may damage

relationships among families, neighbors, and communities. Furthermore, the essence of non-litigation settlement is oriented toward substantive justice, rather than merely procedural justice. In land disputes, formal elements such as certificates, administrative boundaries, and juridical data do not always reflect the social reality on the ground. Through deliberation and mediation, parties may present social, historical, and emotional facts that are not accommodated in formal litigation. Thus, non-litigation settlement enables more humanistic and contextual justice.

However, findings also indicate that the implementation of non-litigation settlement of land disputes in South Sulawesi still faces several challenges, including low public awareness of ADR mechanisms, a limited number of certified mediators, and inadequate institutional support from government agencies such as the National Land Agency (BPN) and local governments. In some cases, mediation outcomes also lack binding legal force because they are not documented in written agreements or legalized by notaries, making them vulnerable to noncompliance. Despite these challenges, the potential for applying non-litigation settlement in South Sulawesi remains significant, provided it is supported by strengthened land mediation institutions, improved legal literacy, and the integration of local wisdom values into formal dispute resolution mechanisms. Therefore, the essence of non-litigation settlement of land rights disputes lies not only in the final agreement but also in the social and legal process that prioritizes justice, brotherhood, and peace, consistent with the family-oriented character of South Sulawesi society.

### **Concept of the Essence of Non-Litigation Settlement of Land Disputes**

Juridically, non-litigation settlement of land rights disputes represents an ADR model as regulated in Law Number 30 of 1999. This includes mediation, negotiation, conciliation, and deliberation aimed at reaching consensus without involving judicial institutions. Its core essence is to realize justice, utility, and legal certainty in a way that is efficient, humane, and peaceful. This process emphasizes not only the final agreement but also ethical and respectful dialogue that does not produce winners or losers. Thus, non-litigation settlement reflects win-win values, prioritizing balanced interests among parties. In the national legal context, non-litigation settlement aligns with the principle of family-based deliberation as stipulated in the 1945 Constitution and the fundamental principles of agrarian law under Law Number 5 of 1960. Hence, this mechanism constitutes a form of progressive law that seeks substantive, rather than merely formal, justice.

### **Implementation of Non-Litigation Settlement in South Sulawesi Province**

Field research conducted in Makassar, Maros, Pangkep, Gowa, and Takalar shows that non-litigation settlement is known and applied to some extent but remains limited and unsystematic. A High Court Judge in Makassar explained that mediation often becomes a mere formality before litigation begins. Many parties attend mediation only to fulfill requirements, not with genuine intent to reconcile. According to an official at BPN Makassar, although BPN has an internal mediation mechanism, it still faces obstacles such as limited mediators, lack of socialization, and low public trust. Many believe BPN's decisions lack binding legal force, causing them to prefer litigation. However, in regions such as Gowa and Pangkep, village-level deliberations and customary mediation involving local leaders are more effective due to cultural values of sipakatau, sipakalebbi, and siri' na pacce, which emphasize respect, honor, and social harmony.

### **Analysis of the Essence of Non-Litigation Settlement Based on Legal Principles**

1. **Justice:** Non-litigation processes emphasize equality, with no domination by economic or legal power. Mediation provides open dialogue, unlike adversarial litigation. In South Sulawesi, cultural deliberation strengthens justice through social harmony.
2. **Utility**  
Non-litigation is more efficient in time and cost. Some disputes are resolved within three months through BPN mediation or village deliberation, while court processes may take up to two years.
3. **Legal Certainty**  
Mediation agreements can have binding legal force if formalized in a written agreement and notarized. Lawyers in Makassar recommend documenting all settlements officially to ensure enforceability.

### **Obstacles to Realizing Effective Non-Litigation Settlement**

#### ***Key issues identified:***

- a. Institutional weaknesses – lack of coordinated mediating institutions.
- b. Human resource limitations – shortage of certified land mediators.
- c. Low legal awareness – public still prefers litigation.
- d. Regulatory gaps – absence of regional regulations governing ADR in land matters.
- e. Public trust issues – mediation results often breached due to weak sanctions.

## Author's Perspective

The author concludes that the essence of non-litigation settlement in South Sulawesi is not yet fully internalized. Ideally, non-litigation should not be a mere alternative but the primary instrument for resolving land disputes based on substantive justice and social values.

- a. Its effectiveness depends on:
- b. Strengthening institutional and human resource capacity.
- c. Improving public legal awareness.
- d. Integrating local wisdom into formal legal frameworks.

If these aspects are reinforced simultaneously, non-litigation settlement can become the main instrument for achieving social justice and land governance order in South Sulawesi.

## CONCLUSION

The essence of resolving land rights disputes through non-litigation mechanisms in the legal jurisdiction of South Sulawesi Province includes, among others, mediation and alternative dispute resolution as regulated under Law Number 30 of 1999. These mechanisms aim to achieve justice, utility, and legal certainty that favor the interests of all parties through a win-win solution. The objective is to reach an agreement that benefits both disputing parties by prioritizing deliberation, familial values, and local wisdom, while avoiding formal judicial processes that often require substantial time, cost, and energy.

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