

**LEGAL PLURALISM IN BUSINESS
DISPUTE RESOLUTION:
*A Socio-Legal Analysis of Customary Commercial
Practices in Jambi, Indonesia***

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Abstract

Business dispute settlement in Indonesia remains dominated by formal institutions that are often costly, complex, and socially unresponsive. In highly plural regions like Jambi, commercial resolutions integrate state law and customary law mechanisms within local economic relations. This socio-legal study examines the role of customary law in business dispute resolution and its standing within Indonesia's legal pluralism framework, combining normative business law with empirical data on local commercial practices. The findings reveal that customary dispute mechanisms are vital for maintaining social harmony, achieving substantive justice, and sustaining commercial trust. This efficacy stems from communal values, customary authorities, and shared social norms, often outperforming formal systems. Crucially, this study contributes to reconstructing legal pluralism theory by positioning customary law as a functional alternative dispute resolution (ADR) mechanism in modern commerce. Beyond its local scope, these insights offer a novel paradigm for global legal pluralism,

demonstrating how non-State, indigenous normative orders can effectively govern modern business relations while challenging the Western-centric hegemony of formalistic arbitration. Ultimately, this research provides a scalable framework and blueprint for Global South countries to design sustainable, socially responsive, and culturally anchored commercial dispute resolution systems.

Penyelesaian sengketa bisnis di Indonesia masih didominasi oleh lembaga formal yang seringkali berbiaya tinggi, rumit, dan kurang responsif secara sosial. Di wilayah plural seperti Jambi, penyelesaian komersial mengintegrasikan hukum negara dan mekanisme hukum adat dalam relasi ekonomi lokal. Studi sosio-legal ini menguji peran hukum adat dalam sengketa bisnis dan kedudukannya dalam kerangka pluralisme hukum Indonesia, memadukan analisis normatif hukum bisnis dengan data empiris praktik komersial lokal. Temuan menunjukkan bahwa mekanisme adat vital untuk menjaga harmoni sosial, mencapai keadilan substantif, dan mempertahankan kepercayaan bisnis karena efektivitas nilai komunal dan otoritas adatnya. Secara krusial, studi ini berkontribusi merekonstruksi teori pluralisme hukum dengan memosisikan hukum adat sebagai penyelesaian sengketa alternatif (ADR) yang fungsional dalam perdagangan modern. Di luar konteks lokal, temuan ini menawarkan paradigma baru bagi pluralisme hukum global, membuktikan bahwa tatanan normatif adat non-negara dapat mengatur hubungan bisnis modern secara efektif sekaligus menantang hegemoni Barat dalam arbitrase formalistik. Pada akhirnya, penelitian ini menyediakan kerangka kerja dan cetak biru bagi negara-negara Global South untuk merancang sistem penyelesaian sengketa komersial yang berkelanjutan, responsif secara sosial, dan berakar pada budaya lokal.

Keywords: *Legal Pluralism, Business Dispute Resolution, Customary Law, Socio Legal Study, Alternative Dispute Resolution*

Introduction

In Indonesia, business dispute resolution has been court-centred primarily relying on the formal justice system to settle commercial conflicts. Such litigation is not uncommon in modern business law, as it is generally believed to guarantee legal certainty and confer executorial power over the decisions made. However, relying on courts to settle issues is ineffective in

addressing fast, complex business dynamics, as the litigation process is often time-consuming, costly, and adversarial, thereby potentially damaging business relations between the two disputing parties in the long term. A prior study argues that court-based dispute settlement is not always efficient or context-specific, particularly in contemporary global business practices.¹

In line with that, the concepts of alternative dispute resolution (hereinafter, ADR), including arbitration, mediation, and negotiation, have been introduced as non-litigation mechanisms that are faster, more cost-efficient, and more flexible than formal justice systems. The ADR serves as a solution, alleviating the court's burden and procedural rigidity while also considering each party's interest in maintaining their business. However, the weakness of modern ADR is obvious in a society with a plurality of rules and cultures. This is because the ADR model, developed under state law, is less responsive to diverse social norms, values, and structures. Critiques of ADR also indicate that this process may lose its flexibility when it becomes more judicialised and tied to formal litigation norms. The potential of ADR as an independent mechanism is therefore hampered by the dominant judicial logic.²

In Indonesia, the reality of legal pluralism is obvious in day-to-day business practices, particularly in regions with stronger customary law such as Jambi Province. In addition to state law, customary legal norms and community-based dispute settlement practices remain utilised to resolve issues in small and medium enterprises, either directly or indirectly through non-state institutions. This legal pluralism indicates that the community complies not only with the regime of written state law but also with non-state legal systems, which have the highest social legitimacy at the local level. A study on legal pluralism highlights overlapping legal systems a normative and factual phenomenon that affects how disputes are settled through social interactions.³

¹ Zhiqiong June Wang and Jianfu Chen, "From Alternative Dispute Resolution to Pluralist Dispute Resolution: Towards an Integrated Dispute-Resolution Mechanism in China," *International Journal of Law in Context* 16, no. 2 (2020): 165–80, <https://doi.org/10.1017/S1744552320000129>.

² Mehnaz Begum, "A History of Alternative Dispute Resolution: Analyzing Its Role and Significance," *Global Legal Studies Review* 7, no. 3 (2022): 1–5, [https://doi.org/10.31703/glsr.2022\(VII-III\).01](https://doi.org/10.31703/glsr.2022(VII-III).01).

³ Naureen Akhtar et al., "Alternative Dispute Resolution: Concept, Criticism and Future of Arbitration and Mediation," *Global Legal Studies Review* VIII (June 2023): 36–42, [https://doi.org/10.31703/glsr.2023\(VIII-II\).05](https://doi.org/10.31703/glsr.2023(VIII-II).05).

Therefore, an in-depth investigation is necessary to understand how the mechanisms of customary law operate and interact within formal systems of business dispute resolution and modern ADR. A socio-legal qualitative method used in this study helps explore the reality of legal pluralism in the field, including the functions, legitimacy, and effectiveness of dispute settlement under customary law within the local socio-cultural context. The findings of this research have implications for the legal pluralism theory and diverse business legal policies, thereby making dispute resolution more inclusive and responsive to the needs of a plural society.⁴

In business dispute resolution, both classical and contemporary literature highlight the dominance of litigation and arbitration as dispute resolution mechanisms within the legal framework of modern businesses. Litigation is seen as a formal, primary mechanism that guarantees legal certainty and procedural steps, while arbitration is a formal alternative that offers flexibility, neutrality, and a final decision outside a court. Recent books on business law highlight these two domains as the main pillars of international commercial law. For instance, Born comprehensively elaborates on the theory and on international arbitration practices that supersede litigation in transnational business dispute resolution.⁵

However, the literature on formal ADR, which encompasses arbitration, mediation, and negotiation, is always prone to critique. It has been criticised that formal ADR is often shaped by litigation logic, adopting procedures similar to those of formal courts, thereby reducing the flexibility that should be ADR's strong point.

First, *The Oxford Handbook of Dispute Resolution*,⁶ among other recent books, argues that although ADR is faster and more cost-efficient than litigation, in practice, formal ADR is too bureaucratic and less sensitive to socio-cultural context for parties in dispute. A critique emerged regarding the limited capacity of ADR to accommodate societal pluralism, particularly in societies with more heterogeneous social structures and a strong tradition of non-state law. In several local contexts, the modern ADR mechanism is often seen as a legal product of the state that is not fully internalised within the

⁴ I. Gede Agus Kurniawan et al., "Legal Reform in Business Dispute Resolution: A Study of Legal Pluralism in Indonesia, Vietnam, and Thailand," *Journal of Law and Legal Reform* 6, no. 2 (2025): 569–616, <https://doi.org/10.15294/jllr.v6i2.21128>.

⁵ Gary Born, *International Commercial Arbitration* (Kluwer Law International, 2009).

⁶ Michael L. Moffitt and Robert C. Bordone, *The Handbook of Dispute Resolution* (John Wiley & Sons, 2005).

norms of indigenous communities, prompting some to question its social effectiveness and legitimacy in the context of legal pluralism.

Second, legal pluralism studies have long been referred to as interdisciplinary studies on legal sociology, legal anthropology, and comparative legal studies. The classical theory of legal pluralism was developed by Griffiths, who introduced the concept of law as a social field, while Merry holds that legal pluralism encompasses the interaction between state law and non-state law.

Third, another recent book, *Legal Pluralism in Theory and Practice*,⁷ broadens this discourse by highlighting how the normative systems of the state, customary traditions, and religion interact in society. Although the legal theory is conceptually enriched by empirical studies, it remains dominated by certain legal domains, such as agrarian law, customary criminal law, and family law. There are a number of previous studies exploring how legal pluralism applies to those domains, but systematic studies investigating the interaction between legal pluralism and dispute resolution remain limited.⁸

Third, in the context of customary law in Indonesia, the legal impacts on social practices have frequently been described within cultural, historical, and legal-anthropological contexts. These studies elaborate on customary mechanisms in agrarian conflicts, family disputes, inheritance, and customary crimes, as documented in Smith's work on customary law in Indonesia. However, research that specifically positions customary law as an instrument for resolving commercial and business disputes is limited.⁹

In existing studies on mores in Indonesia, dominant perspectives tend to be descriptive-cultural, rarely including normative and empirical analyses of how customary law functions as a business dispute-resolution mechanism amid legal pluralism. Although customary norm-based commercial practices exist across the archipelago, they are not clearly mapped in the network of legal pluralism or ADR studies. This shows that there have been no systematic studies that integrate the perspective of legal pluralism with ADR in the context of business disputes, particularly through an empirical review of customary legal practices as a mechanism for resolving commercial disputes. This absence allows new research to fill this gap and broaden knowledge of

⁷ Vanessa Mak, *Legal Pluralism in European Contract Law* (Oxford University Press, 2020).

⁸ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012).

⁹ Surjanti Surjanti et al., "Customary Law In Indonesia: A Legacy for a Sustainable Future," *Journal Evidence Of Law* 4 (April 2025): 310–15, <https://doi.org/10.59066/jel.v4i1.1173>.

legal pluralism and ADR practices in the context of contemporary business law.¹⁰

Existing legal studies remain limited, particularly those that explore customary law as a mechanism for resolving business disputes in societies with actual legal pluralism. Studies on customary dispute resolution have mostly focused on land, inheritance, and public-social issues, without explicitly exploring the role of customary law in settling commercial or business disputes in private contexts or among business actors within a community. Most empirical-legal studies are descriptive-cultural, such as those examining the mechanisms of deliberation in an indigenous community over land or social disputes. However, no single study systematically maps how customary law functions, negotiates its normative legitimacy, and interacts with formal ADR in the context of business, as, for example, in land dispute resolution in an indigenous community, which dominates the literature on customary law in Indonesia.¹¹

Commercial law and formal ADR mechanisms, including arbitration and mediation, have frequently been discussed in studies of business law in Indonesia. However, most of their focus remains on positive law and its institutions, including a discussion of the role of commercial law and formal ADR institutions, without positioning customary law as a normative alternative that is functional in this plural, local market. Another study shows that the mechanism of customary law, as part of non-state ADR in Southeast Asia, coexists with formal law. However, there is no explicit integration of legal pluralism, customary law, and business dispute resolution within a single comprehensive analysis, as described in a study on pluralism and ADR in land disputes.¹²

In other words, this research gap indicates that the existing legal literature is not adequate to study customary law as a functional and normative mechanism to settle business disputes within a community with legal pluralism, particularly from the socio-legal perspective that positions legal practices in the socio-cultural contexts of local communities, their normative legitimacy, and their relation to formal ADR and positive law. Therefore,

¹⁰ Surjanti et al., "Customary Law In Indonesia."

¹¹ Muhammad Syahrani et al., "Juridical Analysis of Customary Land Disputes and Their Resolution through Mediation in North Lombok Regency," *Justicia Insight* 1, no. 2 (2025): 33–38, <https://doi.org/10.70716/justin.v1i2.157>.

¹² Didik Sukriono et al., "Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 261–85, <https://doi.org/10.22219/ljih.v33i1.39958>.

research that amalgamates the legal pluralism approach, ADR, and the practice of customary law in business disputes in Indonesia is necessary to fill the gap and provide new insights into business legal policies that are responsive to plurality.¹³

This research explicitly offers a theoretical contribution to the development of pluralism and ADR studies by proposing these three arguments. First, this research conceptualises customary law not as a cultural-normative system, but as a functional, operational, and efficient mechanism that governs commercial disputes in local economic practices. Second, this research broadens the theoretical framework of ADR by indicating that dispute settlement should not be constrained to the formal and institutionalised ADR model; it should also encompass non-state, community-based mechanisms with their social legitimacy and significant practical effectiveness. Third, this research also demonstrates that dispute resolution in the context of the informal economy is more rational and restorative, with its primary objective not limited solely to the legal-formal enforcement of rights; it also takes into account the restoration of trust, social relational balance, and the sustainability of economic interaction. In other words, this research fills the empirical gap in the existing literature while offering a conceptual reconstruction by positioning customary law as an integral part of the regime of business dispute resolution within a legal-pluralism framework that is both dynamic and interactive.

This research is intended to investigate the three main problems. First, it investigates how customary law resolves business disputes in Jambi, particularly in the commercial practices of a local community that remains strongly affected by traditional norms and social relations. This investigation focuses on mapping dispute resolution mechanisms, the actors involved, and the stages required to settle business disputes under customary law in an empirical context. Second, this research examines the normative and procedural principles that underlie commercial dispute resolution under customary law, the value of substantive justice, deliberation, balance in social relations, customary legitimacy, and procedural flexibility, which distinguish this resolution mechanism from the state's formal dispute settlement.¹⁴

¹³ I. Gede Agus Kurniawan et al., "Legal Reform in Business Dispute Resolution: A Study of Legal Pluralism in Indonesia, Vietnam, and Thailand," *Journal of Law and Legal Reform* 6, no. 2 (2025): 569–616, <https://doi.org/10.15294/jllr.v6i2.21128>.

¹⁴ Didik Sukriono et al., "Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 261–85, <https://doi.org/10.22219/ljih.v33i1.39958>.

Third, this research also explores the contributions of customary law-based dispute resolution to the development of the legal pluralism theory and ADR. Its focus is to analyse how the customary mechanism functions beyond a mere residual legal system and how it should serve as non-state ADR that lives and operates within a plural community. Departing from this idea, this research aims to show that legal pluralism is not merely about normative consistency between legal systems; it concerns the functional interactions that shape the steps by which disputes are settled in social practices.¹⁵

From an empirical perspective, this research aims to develop a deep understanding of the actual practice of business dispute resolution under customary law in Jambi, including its effectiveness, social legitimacy, and the degree of acceptance among the parties involved in the conflict. This empirical finding should help fill the gap in the literature on customary commercial practices, which have not been adequately addressed in studies of business law and dispute resolution in Indonesia. The theoretical contribution of this research lies in the reinforcement and reconstruction of the legal pluralism theory and ADR, in which customary law is included as a functional and normative mechanism of business dispute resolution. Meanwhile, this contribution is expected to serve as the basis for formulating a more inclusive and contextual business law policy by recognising and integrating the mechanism of customary law-based dispute settlement within the national legal framework, particularly in a community with plural characteristics and a community-based economy.¹⁶

Research Methods

This research employed a qualitative design, supported by a socio-legal approach, combining normative analysis of business law with an empirical study of customary law-based dispute resolution in communities. This approach enables researchers to understand law as a social practice often termed *law in action* operating within the context of social, cultural, and economic relations in local communities.

Informants were selected using a combination of purposive and snowball sampling. Purposive sampling helps identify key informants with

¹⁵ Meirina Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia," *Jurnal Kepastian Hukum Dan Keadilan* 3, no. 1 (2022): 27–32, <https://doi.org/10.32502/khk.v3i1.4519>.

¹⁶ "Arbitrase Sebagai Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis | Jurnal Sahabat ISNU SU," retrieved 25 December 2025, <https://journal.isnu-sumut.org/index.php/jisnu/article/view/53>.

knowledge and direct experience regarding customary law-based business dispute resolution. Informants consisted of customary figures, business actors in the local community, and other parties who had once been involved in commercial disputes. On the other hand, snowball sampling broadens the network of informants by following the recommendations of initial informants, thereby enabling researchers to obtain more in-depth and contextual data.

Overall, this research involved 22 respondents, including customary figures, small- and medium-sized business actors, and other individuals with direct experience in resolving business disputes based on local custom. Data collection was carried out and ceased at the saturation point the point at which the data obtained show consistent patterns and no longer yield significant new information.

Data were collected through in-depth interviews, limited participant observation, and document studies on customary traditions, including customary rules and notes used to settle disputes. Interviews were conducted using a semi-structured approach to further explore informants' experiences and perceptions, while observations were conducted to understand the dynamics of social interaction in the dispute resolution process.

The analysis was performed by employing an inductive, thematic approach. The analysis process began with open coding to identify units of meaning from field data, followed by categorising the codes into conceptual themes. Furthermore, the axial coding process was conducted to connect categories and identify the emerging relational pattern. The last stage was thematic interpretation, which related empirical findings to the theoretical framework of law and ADR, thereby enabling the development of a data-driven theoretical argument.

To maintain the validity and credibility of the data, this research applied triangulation of sources and methods by comparing the results of interviews, observation, and documentation. Furthermore, research ethics principles included informed consent, the confidentiality of informants' identities, and transparency in the data collection and analysis process.

Discussion

Debates over legal pluralism in the socio-legal literature show significant, non-monopolistic development. Tamanaha criticises the definition of legal pluralism as too broad and emphasises the need for conceptual clarification of the dividing line between law and social norms.

counter-hegemonic legality project, in which several non-state laws leave room for resistance to the dominance of modern state law. This perspective is supported by Benda-Beckmann, who views pluralism as a dynamic interaction among legal orders in the local and transnational context. Therefore, legal pluralism will be understood not only as normative consistency, but also as an arena for contestation, negotiation, and transformation between legal systems.

Studies on legal pluralism often distinguish between strong and weak legal pluralism. Weak legal pluralism regards the existence of non-state norms as a mere social fact, coexisting with state law without any strong normative relation. On the other hand, strong legal pluralism affirms that non-state norms can have actual normative authority that functionally interacts with state law within a plural community. Recent work by Santos,¹⁷ *Law and Globalization from Below*, affirms that strong legal pluralism recognises multiple legal sources that normatively influence one another; they are more than a mere consistency. In this context, understanding how customary, religious, and formal law interact leaves more room for analysis of the dynamics of legal orders governing a plural community.¹⁸

Interaction between legal orders becomes the core focus when all legal orders of the state, mores, and religion intersect at the same social angle. This interaction can be conflict-laden, synergetic, or transformational, depending on the structure of power, social legitimacy, and local legal practice.¹⁹ *Transnational Legal Process and Local Legal Ordering* asserts that non-state norms are not only sources of conflict but also arenas in which shared norms are shaped through social processes. In the context of business law, the interaction between these legal orders is relevant when business actors face a dispute that positive law cannot adequately resolve on its own. In this case, a community's customary norms can be a significant alternative.²⁰

¹⁷ Boaventura de Sousa Santos and César A. Rodríguez-Garavito, eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality*, Cambridge Studies in Law and Society (Cambridge University Press, 2005), <https://doi.org/10.1017/CBO9780511494093>.

¹⁸ Gregory Shaffer, "Transnational Legal Ordering and State Change," in *Transnational Legal Ordering and State Change*, ed. Gregory C. Shaffer, Cambridge Studies in Law and Society (Cambridge University Press, 2012), <https://doi.org/10.1017/CBO9781139206662.001>.

¹⁹ Shaffer, "Transnational Legal Ordering and State Change."

²⁰ Zuhairah Ariff Abd GHadas et al., *Introduction to Commercial Law in Comparative Perspective Indonesia and Malaysia*, in *Airlangga University Press* (Airlangga University Press, 2023), <https://omp.unair.ac.id/aup/catalog/book/706>.

Within the scope of commercial law, formal ADR, such as mediation and arbitration, has evolved into a complementary mechanism or one that can supersede litigation in commercial dispute resolution. Formal ADR is seen as offering flexibility, efficiency, and cost-effectiveness compared to lengthy and costly litigation processes. In *Pervasive Commercial Law*, written by Mistelis & Lew, formal ADR is theoretically intended to accommodate business interests that require quick resolution while maintaining economic relations between the parties in dispute.²¹

However, universalisation of ADR in commercial law has been heavily criticised. The formalistic approach adopted by modern arbitration and mediation often overlooks the local socio-cultural context and universal assumptions about contractual relationships that are not congruous with certain customary practices in a community. As analysed by Leung in *Culture and ADR in Comparative Perspective*, the universality of ADR is weakened when it is applied without considering local social structures, such as a particular community with its own method for resolving disputes. This critique indicates that formal ADR is not always applicable to all situations, particularly in plural communities.²²

In such a context, customary law serves as informal ADR, especially in a community whose norms are not fully codified in state law. Customary law always carries collective value, the principle of deliberation, and dispute resolution oriented toward restorative justice, rather than as a mere formal legal competition. In the work of Griffiths & Tamanaha (2024) *Law and Society in Plural Contexts* customary law is regarded as a mechanism of informal ADR, with its local legitimacy, that effectively resolves commercial disputes in communities that place customary norms as their main pillars. This approach shows that a formal mechanism is not the only option for settling business conflicts; a more contextual, participatory, and responsive model can be recommended, particularly in plural communities.²³

Customary law can be understood as a living normative system operating outside state law, without losing its authority to govern social and economic relations within a local scope. As a normative system, customary

²¹ Beny Saputra, "Strengthening ADR System in Indonesia: Learning from ADR Practices in Hungary," SSRN Scholarly Paper no. 4941510 (Social Science Research Network, May 31, 2024), <https://papers.ssrn.com/abstract=4941510>.

²² Keebet von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and the State," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 255–74, <https://doi.org/10.1080/07329113.2018.1532674>.

²³ Benda-Beckmann and Turner, "Legal Pluralism, Social Theory, and the State."

law is not merely constrained to regulating behaviour; it also represents values, symbols, and mechanisms of sanction that are collectively recognised by the community. The social function of customary law lies in its ability to maintain social cohesion, restore relations disrupted by conflict, and enforce substantive justice congruent with the justice expected by communities. The legitimacy of customary law arises from social recognition, the authority of customary figures, and the voluntary compliance of the parties involved; these elements often render it more effective than formal law. In this context, customary law is highly relevant to ADR, encompassing deliberation, consensus, procedural flexibility, and an orientation toward restoring relationships and sustaining socio-economic connections.

In terms of the informal economy, the role of non-state institutions is increasingly important in regulating social and economic interactions. Ostrom argues that community-based governance can function effectively without state intervention, relying on norms and trust. De Soto highlights how informal economic practices develop outside the formal legal system, according to their own logic and structure. Meanwhile, Bernstein, through his relational contract theory, affirms that economic actors often rely on social norms and reputation rather than formal contracts to organise business relations. This perspective provides a theoretical basis for understanding customary law as part of the informal institutional system that regulates and resolves business disputes in a plural society.

Departing from the above understanding, this research employed an integrated analytical framework that combined the legal pluralism perspective with ADR to further analyse the resolution of business disputes based on customary law. This integrated scheme positions customary law as part of plural legal orders representing the non-state ADR. This analysis was conducted using three main dimensions: the normative authority (the source and legitimacy of the authority of customary law in regulating and resolving disputes); procedural logic (this encompasses stages, actors, and procedural rationality in the process of customary dispute resolution); and enforcement mechanisms (how customary decisions are obeyed and enforced through social, moral, and communitarian sanctions). This framework allows for a more comprehensive understanding of how customary law operates normatively according to its function in the context of business disputes within society with its plural laws.

Table 1. Research Gap and Positioning of the Present Study

Aspect	Most Literature	This Study
Research object	Litigation and formal ADR	Customary-based business dispute resolution
Approach	Normative/doctrinal	Socio-legal integrative
Customary focus	Culture/anthropology	Normative & commercial function
Primary theory	Modern ADR or separate legal pluralism	The integration of legal pluralism and ADR
Contribution	Descriptive or abstract	Case study-based theory-building

Source: Based on Authors Analysis

In the context of dispute resolution, classical literature critiques the dominant formal system as inaccessible and unresponsive to people's needs. Galanter, in his thesis on Repeat Players, shows a structural imbalance in the litigation system that only benefits strong players. Genn asserts that access to civil justice relies not only on the availability of formal institutions but also on people's ability to utilise them effectively. The multi-door courthouse idea, developed by Sander, and Hensler's analysis of the dispute resolution system highlight the essence of mechanism diversification in dispute resolution outside the courts. This literature allows for recognition of the non-formal mechanism as part of the more inclusive dispute resolution system.

The existing literature on business dispute resolution remains dominated by discussions of ADR mechanisms, such as arbitration and mediation operating within the framework of state and modern law that are formal and institutionalised. On the other hand, studies on legal pluralism and customary law tend to focus more on non-commercial domains, including agrarian conflict, customary crime, and family law; they rarely delve into dispute resolution in commercial and business contexts. As a consequence, the gap in socio-legal studies remains, as it systematically integrates the perspectives of legal pluralism and ADR. Conceptualising customary law with this integration is more than a cultural phenomenon; this represents the normative and functional mechanism that lives in business dispute resolution in plural communities. Although the literature has expanded significantly,

studies that systematically connect legal pluralism, ADR, and the practices of customary law-based business dispute resolution remain limited.

Commercial Practices Based on Customary Law in a Socio-Economic Context of the Communities in Jambi

Commercial practices based on customary law in Jambi have grown in the socio-economic context of the communities. These practices are strong, relying on personal relations, beliefs, and communal ties. Local business activities, such as crop trading, small family businesses, and transactions between communities, often run without written contracts, relying on oral agreements legitimised by customary norms. In such a context, customary law serves as a normative framework governing business ethics, honesty, and social responsibilities among business actors. Those involved in business practices under this customary framework in Jambi are not limited to sellers and buyers; business activities also involve customary figures, senior figures, and community stakeholders who hold moral and social authority. All customary actors are responsible for safeguarding norms, mediating conflicts, and ensuring the sustainability of economic relations. Their involvement indicates that business activities, social structure, and culture are inextricably intertwined and integral to the living customary order.²⁴

To resolve business disputes, the customary law-based settlement mechanism in Jambi employs simple, flexible procedures without rigid legal formalities. The resolution process often begins with a traditional leader convening all parties, followed by problem clarification, and ends with deliberation. This approach emphasises efficiency, cost-effectiveness, and direct participation of all parties in seeking a solution. The main principles underlying this mechanism are deliberation and consensus, regarded as the fairest pathway to conflict resolution without disrupting social relationships. Deliberation is not to decide who is right or wrong; it is to find a way out that all parties can accept. This principle aligns with a restorative orientation, where restoring business relations and social harmony is more important than a one-sided victory.²⁵

The role of a customary leader in this core process should not be regarded as that of a judge who unilaterally renders judgment, but rather as a facilitator and social mediator. A customary leader is responsible for maintaining a balanced discussion, ensuring that customary norms are

²⁴ Franz von Benda-Beckmann et al., *The Power of Law in a Transnational World: Anthropological Enquiries* (Berghahn Books, 2012).

²⁵ René Kuppe and Richard Potz, *Law and Anthropology* (Martinus Nijhoff Publishers, 2001).

respected, and guiding all parties toward a mutual agreement. Their authority does not come from state law but from social recognition and cultural legitimacy that have historically been built. The legitimacy of the customary dispute resolution mechanism in Jambi is reflected in the degree of compliance by all parties with the deliberation outcomes. This compliance is generally voluntary, as the outcomes of deliberation are regarded as collective decisions that reflect the value of community justice. Rejection of such outcomes will have implications not only for the law but also for individuals' reputations and social standing in the community.²⁶

In addition to such voluntary compliance, social sanctions play an essential role in enforcing non-formal mechanisms. Sanctions in this context can involve warnings, social exclusion, and restrictions on participation in economic and social activities, among others. Despite the absence of coercive power, as in a court decision, social sanctions are often more effective because they directly affect the social and moral dimensions of business actors. Overall, business dispute resolution based on customary law in Jambi shows the effectiveness of non-formal mechanisms in plural communities. This efficacy lies in its capability to integrate norms, procedures, and social legitimacy into a single functional system. This finding strengthens the argument that customary law can be regarded as informal ADR relevant to and operational within local business practices, while challenging the dominance of a formalistic approach in modern business law.²⁷

Customary-Based Business Dispute Resolution in Jambi

In Jambi, business disputes, including loan-based trade conflicts, business partnership disputes, and minor breaches of contract in micro, small, and medium enterprises (MSMEs), are settled through customary deliberation involving customary figures and leaders. The findings indicate that this method is often preferred because it is timesaving, cost-efficient, and capable of maintaining harmony in business relationships. Interviews with customary leaders and local business actors reveal²⁸ that bringing conflict to court is often

²⁶ Professor Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Ashgate Publishing, Ltd., 2013).

²⁷ David Frydinger et al., *Contracting in the New Economy: Using Relational Contracts to Boost Trust and Collaboration in Strategic Business Relationships* (Springer Nature, 2021).

²⁸ "Interview with a customary leader in Jambi on 26 October 2025, at 12:00."

regarded as a last resort, as they believe it could erode trust and disrupt the social network that underpins local economic activities.²⁹

Debt dispute cases common in traditional markets show how customary law functions as living law in business contractual conflict. With customary deliberation that emphasises good faith and the local phrase “*dak elok menegakkan benang basah*”,³⁰ the parties are led to reach a proportional agreement. Interview results also show that restructuring debt payment has been more acceptable than debt settlement through formal law. They see this customary approach not only as helping them with their financial responsibility but also as restoring trust among business actors.³¹ In the dispute over a plantation business partnership, for example, the customary mechanism serves to restore harmony in the business relationship. Customary deliberation involving *ninik mamak* and village figures enables participants to discuss profit-sharing and financial transparency. The principle “*bulat air karena pembuluh, bulat kata karena musfakat*” becomes the basis for legitimising joint decisions. Interview results show that customary agreements, although simpler, are often obeyed more than formal contracts, which *plasma* farmers do not fully comprehend.³²

Land transactions and family business conflicts show a substantive justice dimension within customary law. Through a customary judicial process, clarification by witnesses, and a sharia-based customary approach,³³ dispute resolution is more oriented toward honesty, the balance of rights, and business sustainability. Informants affirmed that legal certainty is not always regarded as written and documented certainty, but it can be social recognition of agreement that is deemed fair by the community.³⁴

The above findings hold that customary law in Jambi serves as a non-litigation approach and also an alternative dispute resolution that is restorative and contextual. The synchronisation of data from cases and interviews shows

²⁹ Uswatun Hasanah et al., “Pluralisme Hukum Dalam Penyelesaian Sengketa Warisan Pada Masyarakat Madura,” *Arena Hukum* 11, no. 1 (2023), <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2018.01001.9>.

³⁰ “Interview with a customary leader in Jambi on 26 October 2025, at 12:00.”

³¹ Sartika Intaning Pradhani, “Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional,” *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124, <https://doi.org/10.22437/ujh.4.1.81-124>.

³² Achmad Hariri and Basuki Babussalam, “Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia,” *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–70, <https://doi.org/10.21580/walrev.2024.6.2.25566>.

³³ “Interview with a customary leader in Jambi on 26 October 2025, at 12:00.”

³⁴ Hariri and Babussalam, “Legal Pluralism.”

consistency: customary law rejects confrontative approaches, such as those settled in courts, and prefers the restoration of economic relations. In other words, not only are customary practices culturally relevant, but they also demonstrate theoretical significance in broadening the understanding of ADR and legal pluralism in the business context in Indonesia.

Empirical findings in this research not only show how customary law serves as a legal instrument to settle business disputes but also reveal why this mechanism endures and remains effective in a local community. The effectiveness of customary law can be explained through the presence of relational trust networks that serve as the primary foundation for economic interactions in the community. In this context, business relations are not built solely based on a formal contract; they are built on trust internalised in long-term social relations. This trust is reinforced by the mechanism of reputation enforcement, in which compliance with customary agreements is stimulated by normative obligation and the need to maintain social position and the sustainability of economic relations within a community. Social sanctions, such as exclusion or reputational degradation, serve as an effective enforcement mechanism without coercive state intervention.

From a theoretical perspective, this finding can be explained by relational contract theory, which holds that economic relations, in practice, are contingent not only on written contracts but also on beliefs, flexibility, and relational continuity among parties. Furthermore, informal institutional theory offers an analytical framework for understanding customary law as a system of living governance that regulates economic behaviour through internalised social norms. Customary law complements formal law while serving as an alternative governance mechanism capable of effectively regulating, stabilising, and resolving disputes in the informal economy.

Therefore, the efficacy of customary law in business dispute resolution is not a mere anomaly; it is the consequence of complex interactions involving social trust, reputational mechanisms, and informal institutional structures ingrained in the community's economic life. This finding challenges the major assumption in modern business law that regards formal contracts and state law enforcement as the only mechanisms legitimised for regulating commercial relations.

Revisiting Legal Pluralism and ADR

Research findings also show that the mechanism for business dispute resolution grounded in the customary law of Jambi functions as a living, effective normative system within social practices. This finding strengthens

the perspective of legal pluralism that regards law as singular and free from monopolistic state intervention. Law manifests in diverse forms of normative order that interact with one another. In this context, customary law is not merely cultural residue but a living law capable of regulating and settling business conflicts in a plural community.³⁵

When associated with ADR theory, the implementation of customary law in Jambi is substantively relevant to the fundamental principles of ADR, such as deliberation, consensus, procedural flexibility, and a relational restoration orientation. However, unlike formal ADR, which is institutionalised, customary law serves as non-state ADR, also referred to as informal ADR, legitimised through social recognition rather than the procedural legality of the state. This broadens the theoretical understanding that ADR manifests not only as a formal institution but also as arbitration or judicial mediation.³⁶

This empirical finding also criticises the dominant assumption in business law, which still positions court-centred dispute resolution as the primary and valid approach. This resolution model tends to focus more on formal legal certainty and executorial power, while overlooking social context, long-term economic relations, and the need for substantive justice in the community. In local business practices, the litigation mechanism is deemed slow and costly, likely to damage socio-economic relations. Customary law, in this context, offers a practical critique of the court-centred approach by introducing a consensus- and reconciliation-based dispute-resolution model. This model is primarily intended to restore social balance and the sustainability of business relations. In other words, customary law challenges the adversarial paradigm associated with the formal judicial system while offering a more relevant restorative approach.³⁷

From the perspective of strong legal pluralism, these finding asserts that customary law has normative authority that is functionally parallel to state law in a particular context. The compliance of each party with the outcomes of deliberations indicates that the legitimacy of law is not always determined by the coercive power of the state; it is also reliant on value internalisation and social sanctions. This also broadens the discourse on legal pluralism by

³⁵ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2013).

³⁶ A. W. Bedner and J. a. C. Vel, "An Analytical Framework for Empirical Research on Access to Justice," *Law, Social Justice and Global Development Journal* 15, no. 1 (2010), <https://hdl.handle.net/1887/18074>.

³⁷ "Legal Pluralism in Adat Land Conflict Resolution," <https://Crcs.Ugm.Ac.Id>, t.t., retrieved 25 December 2025, <https://crcs.ugm.ac.id/legal-pluralism-in-adat-land-conflict-resolution/>.

positioning customary law as an active actor in the governance of business dispute resolution. Research findings also show the limited capacity of formal ADR, often associated with judicialisation the tendency to imitate litigation logic or procedures. In a plural community, as in Jambi, such a formal approach is less adaptive to the local social structure. On the contrary, customary law demonstrates procedural flexibility that allows for adjustments to solutions within the community's social, economic, and moral contexts, thereby fostering greater acceptance.³⁸

By integrating empirical findings and the theoretical framework, this research contributes to the theoretical reconstruction of ADR and legal pluralism by showing that customary law can be conceptualised as a more functional and normative form of ADR relevant to business conflicts. This conceptualisation challenges the dichotomy of formal and informal law, while allowing for a more plural and inclusive understanding of ADR. Overall, the research findings strengthen the criticism of the dominance of court-based dispute resolution and, therefore, emphasise the essence of a business law approach that is more responsive to the reality of legal pluralism. The recognition of customary law as an alternative to ADR is not only relevant theoretically but also essential in practice and policy, particularly for communities that are heavily reliant on social relations and trust as the foundation of business activities.³⁹

Although this research places customary law as part of alternative dispute resolution, not all forms of law can be automatically classified as ADR. Customary law encompasses a broader spectrum of norms, including social rules, rituals, and community governance that is not solely oriented toward dispute resolution. Therefore, only the practice of customary law can directly and functionally serve as the resolution of conflicts that can be positioned as non-state ADR. In this context, the mechanism of dispute resolution grounded in customary tradition in Jambi can be understood as informal ADR that operates outside the structure of state law, but it has strong social legitimacy and practical effectiveness in resolving business disputes.

Unlike formal mediation, which is generally procedural, neutral, and structured within the framework of state law, customary dispute resolution

³⁸ "(PDF) Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *ResearchGate*, July 3, 2025, https://www.researchgate.net/publication/353740601_Between_adat_law_and_living_law_an_illusion_of_customary_law_incorporation_into_Indonesia_penal_system.

³⁹ "The Legal Certainty of Land Ownership Right in Registration's Context," *International Journal of Law Reconstruction* 6, no. 1 (2022): 13–13, <https://doi.org/10.26532/ijlr.v6i1.16422>.

mechanisms have more relational and normative characteristics. The role of a customary leader is not entirely neutral, like that of a mediator in a formal system, but rather serves as a moral authority that directs the deliberative process according to the community's values and norms. In addition, formal mediation tends to be more oriented toward dispute resolution as an individual phenomenon, whereas the customary mechanism situates disputes within a broader social context. This is primarily to maintain relational balance and community cohesion. This difference demonstrates that customary law is not merely a varied form of mediation; instead, it represents dispute resolution grounded in procedural logic and distinct sources of legitimacy.

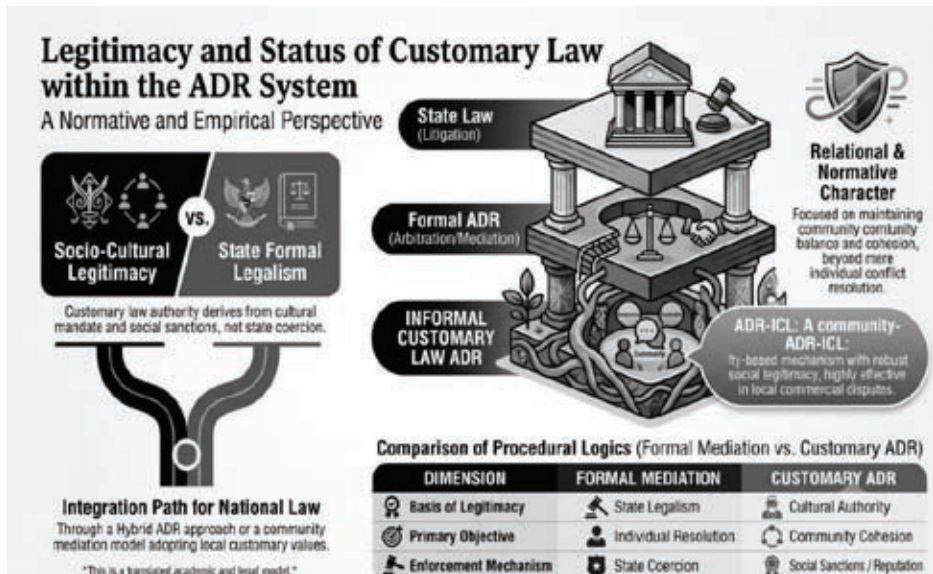
According to empirical and theoretical framework, this research proposes a tripartite model within the system of business dispute resolution in the context of legal pluralism: (1) the state law that operates through the mechanism of formal litigation at courts; (2) the formal ADR that includes arbitration and institutionalised mediation; and (3) the informal ADR that encompasses the mechanism of dispute resolution based on customary law. All three aspects are not hierarchical but operate interactively, in parallel with a plural community. In this model, customary law is positioned as flexible, contextual, and community-based dispute resolution that is complementary, thereby simultaneously serving as an alternative to formal mechanisms in particular conditions.

The legitimacy of customary mechanisms derives from social recognition and cultural authority, whereas the legitimacy of state law is more grounded in formal legality. From the procedural perspective, customary law prioritises flexibility, deliberation, and consensus over standard procedures of litigation or formal mediation. Meanwhile, the mechanism of enforcement is not contingent on coercive state intervention but rather on social sanctions, reputation, and community pressure. The combination of social legitimacy, procedural and adaptive logic, and the mechanism of community-based enforcement renders customary law effective in the context of a relational local economy.

In the context of the system of national law, the integration of dispute-resolution mechanisms based on customary law could be developed through a hybrid approach hybrid ADR in which customary mechanisms are recognised and accommodated within the framework of formal law. Moreover, the community-based mediation model could bridge state law and customary practices by incorporating local values into formal mediation procedures. This integration broadens access to justice, while enabling the national legal system to be more responsive to the reality of legal pluralism.

Therefore, customary law is not only an alternative system but also an integral part of the design of a dispute resolution system that is inclusive and contextual.

Figure 1. Business Dispute Resolution Model within the Framework of Legal Pluralism



Source: Based on Authors Analysis

Conclusion

This study concludes that customary law in Jambi effectively settles business disputes through local principles that emphasise deliberation, consensus, and the restoration of social harmony. This mechanism is not isolated from state law; rather, it operates within the framework of legal pluralism, offering a decent alternative to the court-centred approach, which is often regarded as rigid, costly, and inaccessible. The success of this customary practice results from its robust social legitimacy, its alignment with substantive justice values, and the voluntary compliance of the parties involved in local economic relations. Theoretically, this research reconfigures the concept of legal pluralism by shifting the focus from mere consistency to dynamic interaction, in which customary law exercises its functional authority in business-related matters. This finding broadens the theory of alternative dispute resolution (ADR) by showing that a formal institution is not always a prerequisite for effective ADR; ADR can operate effectively through

community-based mechanisms rooted in trust and social norms. Therefore, this research recommends that the national legal policies regarding business recognise and integrate the customary mechanism as a complementary instrument to the formal ADR. This approach is expected to enhance access to justice while stimulating sustainable business connections.

To expand upon the empirical boundaries of this study, future research should transition from localized, qualitative investigations of the informal sector toward macro-level, comparative socio-legal analyses across diverse jurisprudential landscapes in the Global South. Specifically, future scholarly inquiry should employ mixed-methods frameworks to quantitatively operationalize and measure the efficacy, scalability, and transaction costs of customary dispute mechanisms when confronted with complex, formal corporate structures. Furthermore, there is a critical need to investigate the institutional design of a formalized "Hybrid ADR" model, examining how national legal policies can systematically codify community-based mediation without diluted or compromising the organic socio-cultural legitimacy that makes customary law effective. Such inquiries will be pivotal in transforming localized customary practices into a generalized, resilient framework for contemporary global commercial governance.

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