



## A COMPARATIVE ANALYSIS OF THE INDONESIAN AND PHILIPPINE JUDICIAL SYSTEMS: IDENTIFYING THE ROLE OF CUSTOMARY COURTS

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### Abstract

Customary dispute resolution institutions in Indonesia and the Philippines serve to provide indigenous peoples with access to justice beyond state courts. This research, employing a normative juridical approach with a descriptive-analytical specification, highlights key differences between the two systems. In Indonesia, customary courts derive recognition from the 1945 Constitution, while in the Philippines, they are explicitly regulated under the Indigenous Peoples' Rights Act (IPRA) of 1997, leading to greater integration with the national legal system. Indonesian customary courts handle a broader range of disputes, whereas Philippine customary courts primarily focus on land rights and natural resource management. Additionally, Indonesian customary court decisions often face dualism in the application of customary and national law when reviewed by state courts, while Philippine customary court decisions are more systematically recognized and enforced within the formal legal framework.

**Keywords:** Customary, Indonesian, Philippines

### A. Introduction

Colonial administrations primarily sought to impose their legal systems on their colonies through legal unification and the establishment of judicial institutions, often at the expense of indigenous justice systems.<sup>1</sup> The suppression of community-based dispute resolution mechanisms typically followed this legal integration. However, traditional dispute resolution institutions have persisted due to their effectiveness in delivering restorative justice rooted in customary values such as balance, harmony, and communal peace.<sup>2</sup>

Despite the presence of state courts, traditional mechanisms remain relevant in several countries<sup>3</sup>, as formal judicial decisions often hinder reconciliation and fail to uphold the

<sup>1</sup> Jamaluddin, *Penyelesaian Sengketa Melalui Peradilan Adat: Suatu Instrumen Mencapai Perdamaian Dan Keadilan Bagi Masyarakat*, Lhokseumawe, Unimal Press, (2019), p.34.

<sup>2</sup> Hazar Kusmayanti Et All, "Legal Politics Of The Existence Of Customary Courts In Civil Procedure Law", *Legitimasi: Jurnal Hukum Pidana Dan Politik* 13, No. 1, (2024), 68-84, DOI: 10.22373/Legitimasi.V13i1.23079.

<sup>3</sup> Noer S, "Recusal and The Constitutional Right Of Justice Seeker" *Journal Of Legal Studies And Research* 4, No. 212. (2018)

principles of simplicity, speed, and cost-effectiveness. Consequently, some litigants express dissatisfaction with judicial rulings.<sup>4</sup>

Indonesia and the Philippines share significant cultural, customary, and linguistic similarities but diverged in their legal development due to colonial influences—Indonesia under Dutch rule and the Philippines under Spanish rule. While both nations maintained indigenous legal traditions, their legal frameworks reflect their colonial legacies. Indonesia adheres to the codified Continental European legal system, whereas the Philippines combines elements of Continental European law from Spain with Anglo-Saxon law from the United States.<sup>5</sup>

Comparative research on customary courts in Indonesia and the Philippines presents a novel contribution, as no prior studies have systematically analyzed the legal recognition and judicial framework of customary courts in both countries. This research aims to compare the jurisdiction of disputes resolved in Indonesian and Philippine customary courts, thereby providing insights into the dynamics of their respective legal systems.<sup>6</sup> Existing research on customary courts has predominantly focused on Indonesia. For instance, Teuku Yudi Afrizal and T. Saifullah examined the legal certainty of decisions in the *gampong* customary court in Muara Batu District, North Aceh. Similarly, Andika Prawira Buana and Hardianto Djanggih<sup>7</sup> explored the role of customary law and its institutions as Indonesia's primary dispute resolution mechanisms, with a focus on South Sulawesi's traditional judiciary. Additionally, Rikardo Simarmata analyzed legislative politics and the status of customary justice within Indonesia's legal framework.<sup>8</sup>

This research employs a normative juridical approach<sup>9</sup>, analyzing legal principles, systematics, synchronization, and comparative law.<sup>10</sup> This method seeks to establish legal reasoning through the examination of primary, secondary, and tertiary legal sources, including civil procedure laws, literature on customary law, and journal articles.<sup>11</sup> Case studies of traditional dispute resolution institutions in both countries provide empirical insights into their functioning. The research follows a descriptive-analytical framework to compare the customary justice systems in Indonesia and the Philippines, highlighting their legal recognition and operational structures.

Given the cultural, linguistic, and customary similarities between Indonesia and the Philippines, a comparative legal analysis is essential to understanding universal principles and practices in customary dispute resolution. Both nations share a unitary government structure, constitutional frameworks based on the *Trias Politica* doctrine, and a presidential system that ensures the separation of powers. Strengthening customary dispute resolution institutions requires an understanding of their role within national legal systems and their interaction with formal judicial mechanisms.<sup>12</sup>

<sup>4</sup> Teuku Muttaqin Mansur, Et All, "Allenges In Documenting And Formalizing Customary Court System In Aceh Indonesia", *Petita* 9, No. 1, 2024, 98-115, DOI: <https://doi.org/10.22373/Petita.V9i1.230>

<sup>5</sup> Andre Panjaitan, *Comparative Research Hukum Adat Indonesia Dan Hukum Adat Filipina Terkait Indigeneous People Rights*, Makalah, Yogyakarta: Fakultas Hukum Universitas Gajah Mada, 2013, p. 5.

<sup>6</sup> Teuku Yudi Afrizal, T. Saifullah, "Legal Certainty In Customary Jurisdictions (Case Research In Muara Batu District, North Aceh)", *SASI* 29, No. 1, (2023) : 75-84, [10.47268/Sasi.V29i1.1247](https://doi.org/10.47268/Sasi.V29i1.1247).

<sup>7</sup> Andika Prawira Buana, And Hardianto Djanggih, "Customary Court As Alternative To Settlement Of Dispute In South Sulawesi", *Diponegoro Law Review* 3, No. 2, (2018) : 154-164, <https://doi.org/10.14710/Dilrev.3.2.2018.154-164>

<sup>8</sup> Rikardo Simarmata, "Kedudukan Dan Peran Peradilan Adat Pasca-Unifikasi Sistem Peradilan Formal", *Undang: Jurnal Hukum* 4, No.21, (2021): 281-308, <https://doi.org/10.22437/Ujh.4.2.281-308>.

<sup>9</sup> Ronny Hanityo Soemitro, *Metodologi Penulisan Hukum Dan Jurimetri*, Jakarta: Ghalia Indonesia, 1980, p.1

<sup>10</sup> Johnny Ibrahim, *Teori Dan Metodologi Penulisan Hukum Normatif*, Malang: Bayumedia, 2013, p. 57

<sup>11</sup> E. Saefullah Wiradipradja, *Penuntun Praktis Metode Penulisan Dan Penulisan Karya Ilmiah Hukum*, Bandung: Keni Media, 2015, p. 31-32. .

<sup>12</sup> Totok Minto Leksono, Talitha Andriyanti, "Perbandingan Sistem Administrasi Negara Indonesia Dengan Filipina" *Irpia : Jurnal Ilmiah Riset Dan Pengembangan* 8, No. 7,(2023), 43-53

## B. Discussion

### 1. Customary Courts in Indonesian Justice System

Legal pluralism explains how multiple legal systems coexist in regulating societal issues. Communities often recognize and uphold legal norms beyond state law, which remain integral to daily life. Non-state laws, derived from customary practices, religion, and social norms, significantly influence dispute resolution.<sup>13</sup> Consequently, non-litigation dispute resolution institutions operate within frameworks grounded in these legal traditions, demonstrating that state courts are not the sole mechanisms for dispute settlement.<sup>14</sup>

The 1945 Constitution of Indonesia provides a legal and philosophical foundation for recognizing indigenous conflict resolution mechanisms.<sup>15</sup> The Preamble, particularly its fourth paragraph, affirms the state's duty to protect its citizens and territory. This commitment is operationalized in Article 18B(2), which mandates the recognition and respect of indigenous legal communities, provided they align with national unity and legal frameworks.

From a philosophical perspective, the acknowledgment of indigenous legal communities and their customary rights—albeit conditional—reflects broader recognition of social institutions, including customary courts. Consequently, Indonesia's legal framework must integrate legal diversity at the meso level (tribe, clan, or community) while maintaining national legal cohesion.<sup>16</sup> However, legal conceptions outside state law must conform to the definition of a legal state as articulated in Article 1(3) of the 1945 Constitution and legal scholarship. Under Griffiths' centralist legal doctrine, customary law is recognized only to the extent that it does not conflict with state law, reinforcing a restricted recognition approach wherein state law remains the sole authoritative legal framework, uniformly applied and administered by official institutions.<sup>17</sup>

Customary law disputes in Indonesia can be resolved through traditional court proceedings (litigation) or alternative out-of-court mechanisms (non-litigation).<sup>18</sup> *The Rechts Buitengewesten (RBg) and Het Herziene Indonesische Reglement (HIR)*, which apply to Java and Madura, establish procedures for civil dispute resolution within the judicial system.<sup>19</sup> Procedural law, which governs judicial processes, binds law enforcement officials and litigants, ensuring compliance with established legal frameworks. The role of customary justice in fostering peace aligns with Article 130 of the HIR in Indonesia's civil justice system.<sup>20</sup> Efa Laela Fakhriah highlights that Article 135a(1) of the HIR implicitly recognizes the existence, function, and role of village judges in resolving disputes among village residents, thereby acknowledging traditional dispute resolution structures.<sup>21</sup>

<sup>13</sup> Sulistyowati Irianto, *Sejarah Dan Perkembangan Pemikiran Pluralisme Hukum Dan Konsekuensi Metodologisnya*. Kumpulan Karya Ilmiah Dalam: *Pluralisme Hukum, Sebuah Pendekatan Interdisiplin*, Jakarta: Huma, 2005, p.59.

<sup>14</sup> Hazar Kusmayanti, Dede Kania, Galuh Puspaningrum, "Praktik Beracara Penyelesaian Sengketa Adat Sumatera Barat Berdasarkan Asas Bajanjang Naiak Batanggo Turun, Asas Bajanjang Naiak Batanggo Turun", *Refleksi Hukum: Jurnal Ilmu Hukum*, 6, No.2, (2022), 185–202. <https://doi.org/10.24246/jrh.2022.v6.i2.p185-202>.

<sup>15</sup> Mohammad Jamin, *Peradilan Adat (Pergeseran Politik Hukum, Perspektif Undang-Undang Otonomi Khusus Papua)*, Yogyakarta: Graha Ilmu, 2014, p.213

<sup>16</sup> Pandu Runtoko, "Konsekuensi Yuridis Kemajemukan Bangsa Indonesia Terhadap Pembangunan Hukum Nasional", *Lex Renaissance*, 6, No.1, 2019, 206–220. <https://doi.org/10.20885/JLR.vol6.iss1.art15>.

<sup>17</sup> Muhammad Jamin, *Op. Cit.*, p. 50

<sup>18</sup> Hazar Kusmayanti, Et All, "Strengthening Aceh's Customary Courts for Enforcement Of Civil Procedure Law In Indonesia", *Journal Of Positive School Psychology* 6, No. 6, 2022, 3405-3411.

<sup>19</sup> Efa Laela Fakhriah, "Eksistensi Hakim Perdamaian Desa Dalam Penyelesaian Sengketa Di Pengadilan Negeri", *Jurnal Sosiohumaniora* 18 No.2 (2016): 91-96, DOI: <https://doi.org/10.24198/sosiohumaniora.v18i2.9942>.

<sup>20</sup> Hazar Kusmayanti et. All, *Acte Van Dading* In the settlement of industrial relations disputes in Indonesia, " *Cogent Social Sciences* 9, No.2 (2023): 5-13, <https://doi.org/10.1080/23311886.2023.2274148>.

<sup>21</sup> Hazar Kusmayanti, Bambang Daru Nugroho, "The Settlement Of Disputes Regarding Division Of Joint Property After A Divorce In The Central Aceh Regency", *Jurnal Ilmiah ISLAM FUTURA* 21. No. 2, (2021), 170-182, <https://dx.doi.org/10.22373/jiif.v21i2.6599> h.

However, Indonesia's post-independence judicial unification efforts led to the gradual dissolution of customary courts. Emergency Law No. 1 of 1951, Article 1(2), mandated the phased elimination of self-governing and royal courts (*Zelfbestuursrechtspraak*), as well as indigenous courts (*Inheemse rechtspraak in rechtstreeksbestuurd gebied*).<sup>22</sup> Despite this, customary conflict resolution institutions persist as peacekeeping mechanisms within indigenous communities, facilitating mediation without resorting to litigation.<sup>23</sup> Notably, Law No. 48 of 2009 on Judicial Power does not explicitly regulate "customary dispute resolution institutions," despite their historical presence predating Dutch colonial rule and formal legal recognition until 1951.

Indonesian indigenous legal communities employ diverse terminologies for traditional conflict resolution<sup>24</sup>, including "customary mediation," "customary discussions," *dalihan natolu*, *kerta desa*, and *kerapatan adat nagari*, reflecting local linguistic and cultural variations. The enduring role of these institutions has contributed to the gradual legal recognition of customary justice within Indonesia's judicial framework.<sup>25</sup>

Law No. 14 of 1970 on the Basic Provisions of Judicial Power continued the Old Order's agenda of dismantling traditional courts. The law's Closing Section<sup>26</sup> mandates the abolition of customary and self-government courts (*Swapraja*), reinforcing the principle that Indonesian positive law does not formally recognize customary judicial institutions. However, this does not negate the existence of customary law as applied by community leaders or judges. While the regulation establishes formal courts as the sole legal adjudicatory bodies, customary dispute resolution remains prevalent in certain regions where traditional legal practices remain deeply rooted.

For instance, Aceh, a special autonomous province, continues to employ customary dispute resolution mechanisms such as *gampong adat* (village customary institutions) and *mukim adat* (customary community institutions) in accordance with regional governance regulations.<sup>27</sup> Similarly, in West Sumatra, Kerapatan Adat Nagari (KAN) is authorized under Regional Regulation No. 6 of 2008 on Ulayat Land and Its Utilization to resolve ulayat land disputes. Article 12 of the regulation stipulates that KAN must adhere to customary legal principles, emphasizing reconciliation through deliberation and consensus. The principle of *bajanjang naiak, batanggo turun* (a structured, step-by-step approach ensuring order and proper execution) underscores the continued relevance of customary conflict resolution within Indonesia's legal landscape.<sup>28</sup>

The *kerta desa* functions as a local customary court in Bali, governing traditional village affairs based on *awig-awig* (customary regulations). Each traditional hamlet enforces its own *awig-awig*, which dictate community norms and governance. The *kerta desa adat* adjudicates violations of these norms within the village jurisdiction, ensuring compliance

<sup>22</sup> Herlambang P. Wiratraman, "Perkembangan Politik Hukum Peradilan Adat", *MIMBAR HUKUM* 30, No.3, (2018): 490-505, [10.22146/jmh.38241](https://doi.org/10.22146/jmh.38241).

<sup>23</sup> Fatur Rahman, *Eksistensi Peradilan Adat Dalam Peraturan Perundang-Undangan Di Indonesia*, *Jurnal Hukum Samudra Keadilan* Vol. 13 No.2 (2018): 321-226, DOI: <https://doi.org/10.33059/jhsk.v13i2.1066>.

<sup>24</sup> Mohammad Jamin, Dkk, *Eksistensi Peradilan (Desa) Adat Berdasarkan Undang-Undang Desa*, Surakarta: UNS Press, 2002, p. 9.

<sup>25</sup> Tody Sasmitha Jiwa Utama Dan Sandra Dini Febri Aristya, *Kajian Tentang Relevansi Peradilan Adat Terhadap Sistem Peradilan Perdata Indonesia*, Makalah : Bagian Hukum Adat Dan Bagian Hukum Acara Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 2015.

<sup>26</sup> Herlambang P. Wiratraman, Op.cit, p. 495

<sup>27</sup> Apri Rotin Djusfi, "Keberadaan Tuha Peut Gampong Dalam Penyelesaian Perselisihan Hukum Adat Aceh." *Jurnal Public Policy* 4, . No 1, (2018): 1- 58, DOI:[10.35308/jpp.v2i1.666](https://doi.org/10.35308/jpp.v2i1.666)

<sup>28</sup> Hazar Kusmayanti, *Ibid*

with its rulings to restore social harmony. Its effectiveness lies in its deep understanding of Balinese traditional and religious values.<sup>29</sup>

Despite the formal abolition of customary courts, various customary dispute resolution institutions continue to operate. The Judicial Power Law and Law No. 49 of 2009 (amending Law No. 2 of 1986 on General Courts) affirm that customary courts are not part of Indonesia's judicial hierarchy and have no structural connection to formal courts. Nevertheless, Article 5(1) of the Judicial Power Law mandates judges to consider societal values, including locally evolving legal norms, in their rulings. This provision allows for two interpretations: first, judges may incorporate customary law into their decisions; second, customary dispute resolution institutions remain outside the recognized legal framework.<sup>30</sup> Consequently, while state court judges may take customary court decisions into account, there is no legal obligation to adhere to them, leading to ongoing dualism between customary and national legal systems.<sup>31</sup>

## 2. Customary Courts in The Justice System in the Philippines

The Philippines is recognized as a progressive nation in its governance and legal recognition of indigenous communities, aligning with international standards. On October 29, 1997<sup>32</sup>, the country enacted the Indigenous Peoples' Rights Act (IPRA)<sup>33</sup>, which provides a comprehensive legal framework for the protection of indigenous peoples' rights. Similar to Indonesia, the Philippines—an archipelagic nation—has approximately 150 ethnic groups, as documented by the National Commission on Indigenous Peoples (NCIP). The NCIP, established under IPRA, oversees matters related to indigenous communities, ensuring legal protections over land ownership and other aspects of their livelihoods.

Land ownership in the Philippines, like in Indonesia and Malaysia, is subject to registration, reflecting colonial influences in these countries' national land laws.<sup>34</sup> The recognition of indigenous communities in the Philippines is further reinforced by Article XII, Section 5 of the Philippine Constitution, which states: "The State shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being, subject to the provisions of this Constitution and national development policies and programs."

Indigenous Peoples are defined as follows by the Indigenous Peoples' Rights Act of 1997: "...A collection of individuals or homogeneous societies distinguished by their own self-ascription and that of others, who have lived continuously as an organized community on communally bounded and defined territory, and who have, under claims of ownership since the beginning of time, occupied, possessed, and utilized such territories, sharing common bonds of language, customs, traditions, and other distinctive cultural traits; or who have historically distinguished themselves from the majority of Filipinos through resistance to the political, social, and cultural inroads of colonization, non-indigenous religions and cultures. Moreover, peoples recognized as indigenous due to their ancestry

<sup>29</sup> Putu Eva Ditayani Antari, I Kadek Budiadinata Satriatama Adnyana, "Kewenangan Dan Kekuatan Hukum Putusan Yang Dikeluarkan Oleh Kerta Desa Adat Di Bali", *Refleksi Hukum* 7, No. 2 (2023), 187-210. Doi: <https://doi.org/10.24246/jrh.2022.V7.I2.P187-210>.

<sup>30</sup> Hazar Kusmayanti, et All, "Judges' Acceptance Of Sharia-Inspired Laws In Indonesia", *Al-Manahij: Jurnal Kajian Hukum Islam*, 17, No. 2, (2023): 199–214. <https://doi.org/10.24090/Mnh.V17i2.7716>

<sup>31</sup> Tody Sasmitha Jiwa Utama dan Sandra Dini Febri Aristya, *Kajian tentang Relevansi Peradilan Adat terhadap Sistem Peradilan Perdata Indonesia*. *Jurnal Mimbar Hukum*, Vol. 27, No. 1, (2015), 57-67, <https://doi.org/10.22146/jmh.15910>.

<sup>32</sup> [Official NCIP Website www.ncip.go.ph](https://www.ncip.go.ph), Diakses <19/08/2024>

<sup>33</sup> A. Latief Fariqun, *Pengakuan Hak Masyarakat Hukum Adat Atas Sumber Daya Alam Dalam Politik Hukum Nasional*, Disertasi Program Doktor Ilmu Hukum, Malang: Fakultas Hukum Universitas Brawijaya, 2007, p. 253.

<sup>34</sup> Siti Maryam Malinumbay S. Salasal, *Tenure In Peninsular Malaysia And The Philippines Compared*, *Bulletin Geoinformasi*, Jld. 3, Sept, 1999. Penerbitan Akademik Fakultas Kejuruteraan & Sains Geoinformasi, Hlm. 37-52

from the populations that lived in the nation during times of invasion or colonization, during the introduction of non-indigenous cultures and faiths, or after the foundation of”

The General Provisions of the Indigenous Peoples’ Rights Act of 1997, Section 2, state:

1. The following rights of Indigenous Cultural Communities and/or Indigenous Peoples (ICCs/IPs) are enumerated within the scope of the Constitution and shall be recognized and promoted by the State:
2. The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social, and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
3. The right of ICCs/IPs to maintain and grow their institutions, customs, and cultures must be acknowledged, respected, and safeguarded by the State. It will take these rights into account when creating national laws and policies.
4. The State should ensure that all members of the ICCs/IPs, without distinction or discrimination, shall equally enjoy the entire range of human rights and freedoms.
5. The State will act, in consultation with the relevant ICCs/IPs, to safeguard their rights, ensure that their cultural integrity is respected, and make sure that they have the same access to opportunities and rights as other members of the population under national laws and regulations; and
6. To make these services more responsive to the needs and preferences of these communities, the State acknowledges its obligations to address the strong expression of the ICCs/IPs for cultural integrity by guaranteeing maximum ICC/IP participation in the direction of education, health, and other services of ICCs/IPs. To achieve these goals, the State will adopt and put into place the required mechanisms to uphold and ensure the realization of these rights, considering the people's customs, traditions, values, beliefs, interests, and institutions. It will also take steps to safeguard the people's rights to their ancestral domains.

To accomplish these goals, the government of the Philippines must adopt and put into place the necessary mechanisms to safeguard and enforce the realization of citizens' rights, considering their customs, traditions, values, beliefs, interests, and institutions; additionally, it must adopt and put into place measures to protect citizens' rights to their ancestral domains.

#### 1. Barangay Justice System (BJS):

In Filipino tradition, conflicts are resolved amicably in the presence of elders, who dispense justice based on their experience and social standing.<sup>35</sup> These elders, often from well-respected or influential families, play a crucial role in customary dispute resolution. The integration of this traditional practice into the Philippine legal system began when President Ferdinand E. Marcos directed the Presidential Commission to draft legislation establishing a barangay-level conflict resolution mechanism. This led to the enactment of Presidential Decree (PD) No. 1508, also known as the Katarungang Pambarangay Law, which was signed into law on June 11, 1978.<sup>36</sup>

Under Section 1(A) of PD 1508, each barangay was required to establish a Lupon Tagapamayapa (LT) consisting of 10 to 20 members, who served as mediators in dispute settlements.<sup>37</sup> Additionally, Section 399(3) granted the LT authority to mediate disputes

<sup>35</sup> Bemas, Joaquin. Philippine Daily Inquirer. "[Ancestral Domain Vs Regalian Doctrine \(2\)](#)", Diakses <19/08/2024>

<sup>36</sup> Radzak Abag Sam, Solayha Abubakar-Sam "Promoting Amicable Settlement at the local Level: The Barangay Justice System Methodology", *American Journal of Social Science* 3, No. 3, (2014): 99-105.

<sup>37</sup> Gill Marvel P. Tabucanon James A. Wall Jr. Wan Yan, Philippine Community Mediation, Katarungang Pambarangay. *Journal of Dispute Resolution*, Vol. 1, No. 2, (2008) 502-513.

involving offenses punishable by a maximum sentence of 30 days' imprisonment or a fine not exceeding 200 pesos (Php 200.00). However, this law was later repealed and replaced by the Revised Katarungang Pambarangay Law under the Local Government Code (Republic Act No. 7160) on January 1, 1992.

At the grassroots level, customary justice is still predominantly managed by local traditional authorities, such as tribal chiefs or village councils. These institutions mediate disputes within indigenous communities, rendering decisions based on customary law and regional traditions. In the Philippines, the Indigenous Peoples' Dispute Resolution Mechanism has evolved into the Barangay Justice System (BJS)<sup>38</sup>, a nationwide conciliation and mediation program implemented in all 42,000 barangays. Established in 1978 through the Local Government Code, the BJS operates as a hybrid system of formal and informal dispute resolution. Its core principle mandates that no dispute should be brought before the formal court system unless barangay-level mediation has been attempted. In this context, as Ewa Wojkowska notes, the barangay court functions as "an informal structure that may also comprise one section of the lowest tier of court within the entire formal state structure."<sup>39</sup>

The informal nature of the Barangay Justice System (BJS) is evident in its mediation procedures and the absence of formal rules of evidence, highlighting its function as an alternative dispute resolution mechanism. Each BJS consists of a mediation body led by the village chief (barangay captain) and composed of up to 20 members, depending on the size and population of the barangay. Disputes brought before the BJS are initially handled by the barangay captain, who facilitates mediation between the parties. If a compromise is reached, both parties sign an agreement, which is then recorded and treated as if it were a court ruling.

However, if the barangay captain is unable to mediate a resolution, the dispute is referred to a three-member council (*Pangkat ng Tagapagkasundo*), whose members are chosen by the disputing parties. If mediation remains unsuccessful at this stage, the case may proceed to formal court proceedings.<sup>40</sup>

Despite its limitations, the BJS has demonstrated a high degree of effectiveness in resolving disputes and ensuring community-based justice. However, its jurisdiction is subject to specific exclusions under Article 408 of the Local Government Code of 1991, including cases where:<sup>41</sup>

1. One of the parties is a government official.
2. The offense carries a penalty of more than one year of imprisonment or a fine exceeding five thousand pesos.
3. The dispute involves real estate developers from different cities.
4. The courts determine that the case should be resolved in the interest of justice.

The demarcation of authority between formal and informal justice systems in the Philippines is established through national legislation. These legal boundaries, for instance, restrict the jurisdiction of informal institutions in adjudicating serious criminal cases such as rape and sexual violence, reinforcing the role of the police and the formal judiciary.

<sup>38</sup> Grace H. Lupao, Harvey T. Alejandro, "Barangay Justice System In The Philippines: Challenges And Innovations", *EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal* 8, No.10, (2022), 182-187, DOI: 10.36713/epra2013.

<sup>39</sup> Tim Justice The Poor World Bank, *Menemukan Keseimbangan, Mempertimbangkan Keadilan Non Negara Di Indonesia*, Jakarta: Justice The Poor World Bank-Sub Office, 2009, p. 54

<sup>40</sup> Ewa, Wojkowska, *Doing Justice, How Informal Justice System Can Contribute*, Oslo, United Nations Development Programme Oslo Governance Centre The Democratic Governance Fellowship Programme, 2006, p. 26.

<sup>41</sup> G. Sidney Silliman, *A Political Analysis Of The Philippines Katarungang Pambarangay System Of Informal Justice Trough Mediation*, Law & Society Review 19, No. 2, (1985), 279

However, despite these limitations, severe crimes are sometimes still arbitrated at the barangay level, often in direct violation of national law.<sup>42</sup>

Several notable cases have highlighted the struggles of indigenous communities in asserting their rights against state-backed projects. One such case is the Chico River Basin Hydroelectrification Complex Project, which faced fierce opposition from the Kalinga and Bontoc tribes in the 1970s. The resistance was met with state repression, culminating in the assassination of Macliing Dulag, an indigenous leader, by security forces carrying out orders under President Ferdinand Marcos' regime.<sup>43</sup>

Similarly, large-scale dam projects have historically displaced indigenous communities with little to no compensation. In the 1950s, the construction of the Ambuklao and Binga dams led to the forced displacement of 300 Benguet households. In the early 1970s, the Magat Dam project in Isabela required 5,100 hectares of land, displacing 304 people. However, the promised relocation of affected communities never materialized, and they never received full compensation for their lost homes and land.

## 2. National Commission on Indigenous Peoples (NCIP):

The National Commission on Indigenous Peoples (NCIP) is a government agency responsible for overseeing and regulating the implementation of indigenous rights, including the administration of customary justice. While the NCIP does not function as a conventional court, it possesses the authority to review and adjudicate cases previously decided by lower-level customary courts, particularly when such cases involve violations of national law or indigenous rights. The legal framework governing the NCIP reflects the Philippine government's commitment to safeguarding the rights of indigenous communities.

Whereas, Indonesia does not yet have an equivalent legislative framework. The only existing draft legislation addressing indigenous rights, the Bill on the Recognition and Protection of Indigenous Peoples' Rights, remains under deliberation by the People's Consultative Assembly.

A key feature of the Philippine approach to indigenous governance is the NCIP's comprehensive mandate, which encompasses policy development, rights protection, and the recognition of ancestral land claims. As outlined in Section 44 of the governing legislation, the NCIP is tasked with 17 specific functions, including formulating and implementing plans, projects, policies, and programs aimed at advancing the social, cultural, and economic well-being of indigenous peoples. Additionally, the NCIP certifies ancestral domain claims, convenes assemblies or conventions to facilitate discussion and policy recommendations, and performs various other regulatory and administrative duties. Given its extensive jurisdiction, the NCIP plays a pivotal role in shaping indigenous policies in the Philippines. However, it remains committed to democratic principles by ensuring that indigenous communities actively participate in policy development and decision-making processes, as mandated by law.<sup>44</sup>

The indigenous judicial system of the Philippines is governed by Republic Act No. 8371, commonly referred to as the Indigenous Peoples' Rights Act (IPRA), which establishes a hierarchical and structured legal framework. The government-administered barangay justice system adjudicates disputes across approximately 42,000 barangays—local government units—and is fully integrated into the state judiciary. This system is primarily based on traditional mediation, serving as a foundational mechanism for dispute resolution. The

<sup>42</sup> Alfredo Tadiar, *Institutional Traditional Dispute Resolution: The Philippine Experience, Transcultural Mediation In The Asia Pasific, Paper Presented In Asia Pasific Organization For Mediation (APOM)*, Manila, 1988, p. 9

<sup>43</sup> Prill-Brett, *Supra* Note 24, At 16; James M. Balao, *The Land Problem Of The Cordillera National Minorities*, Paper Presented At The First Multi-Sectoral Land Congress (Mar. 11-14, 1983) *Supra* Note 17, At 13.

<sup>44</sup> Jose Mencio, "The Philippine Indigenous Peoples' Struggle For Land And Life: Challenging Legal Texts", *Arizona Journal of International & Comparative Law* 21, No. 1 (2004): 270-306

customary justice system in the Philippines operates within the parameters of national law and is subject to government oversight to ensure compliance with state legislation and fundamental rights. However, indigenous communities retain the autonomy to resolve disputes in accordance with their own traditions and customary practices.

The similarities and differences between the customary justice systems of the Philippines and Indonesia reflect the distinct legal, cultural, and social contexts of each country. In the Philippines, decisions rendered by customary courts are more systematically integrated into the formal legal system, ensuring their recognition and enforcement by state judicial institutions. This integration facilitates a more cohesive approach to justice for indigenous peoples. A comparative analysis of the implementation of customary law in both countries can contribute to the development of more effective policies aimed at safeguarding the rights of indigenous peoples, particularly in relation to land tenure, religious freedoms, and social justice. Moreover, such research could serve as a basis for encouraging the Indonesian government, particularly policymakers, to enact the Indigenous Peoples Bill.

### C. Conclusion

The customary courts in the Philippines and Indonesia exhibit both similarities and differences that reflect the distinct legal, cultural, and social contexts of each country. A key similarity is that in both nations, customary courts serve to fulfill the indigenous peoples' sense of justice, which may not always be attainable through state courts.

However, notable differences exist in the legal recognition and regulation of customary justice in each country. In the Philippines, customary justice is formally recognized and regulated under Republic Act No. 8371, known as the Indigenous Peoples' Rights Act (IPRA). In contrast, in Indonesia, customary justice is acknowledged in the state constitution—specifically in Article 18B, paragraph (2) of the 1945 Constitution—and is further implied in various legal frameworks, including the Judiciary Law, the Village Law, and other related regulations.

Another distinction pertains to the function of customary dispute resolution. In both countries, customary courts resolve disputes within indigenous communities based on their respective customary laws and traditions. However, in the Philippines, customary courts predominantly handle cases related to indigenous land disputes, whereas in Indonesia, the scope of disputes addressed by customary courts is more diverse, covering a broader range of legal and social issues.

Furthermore, differences emerge in the extent of government oversight. The Philippine customary justice system operates under national legal provisions and is supervised by government bodies to ensure that judicial decisions do not contravene state laws or fundamental rights. Conversely, in Indonesia, the customary justice system operates with minimal government supervision, leading to instances where decisions by customary judges may conflict with national law.

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