RESOLUTION OF LAND DISPUTES THROUGH CUSTOMARY LAW IN PANAKKUKANG, GOWA REGENCY FROM THE PERSPECTIVE OF SIYASAH SYAR'IYYAH

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ABSTRAK

Penelitian ini bertujuan mengkaji penyelesaian sengketa tanah melalui hukum adat di Panakkukang Kabupaten Gowa perspektif siyasah syar'iyyah. Penelitian merupakan penelitian kualitatif. Desain penelitian ini adalah penelitian lapangan. Hasil penelitian ini menunjukkan bahwa; Pertama, praktik penyelesaian sengketa tanah melalui hukum adat di Desa Panakkukang Kabupaten Gowa. Misalnya memanggil para pihak yang bersengketa membicarakan secara baik-baik permasalahan, menjadikan musyawarah mufakat sebagai nilai dan prinsip utama yang menjadi landasan hukum dalam penyelesaian sengketa tanah di Desa Panakkukang Kabupaten Gowa, dan upaya pembagian tanah dalam sengketa menjadi tujuannya adalah mencapai keadilan. Selain itu terdapat ketidakjelasakan pemangku adat dalam penyelesaian sengketa tanah melalui hukum adat di Desa Panakkukang. Kedua, praktik penyelesaian sengketa tanah melalui hukum adat di Desa Panakkukang Kabupaten Gowa belum sepenuhnya sejalan dengan Siyasah Syar'iyyah. Diantaranya karena tidak adanya pemangku adat yang jelas. dalam penyelesaian sengketa tanah melalui hukum adat di Desa Panakkukang. Ketidaksejalanan tersebut karena tindakan pemerintah dalam hal ini aparat desa tidak menunjukkan realiasasi suatu manfaat dalam tahapan tersebut.

Kata Kunci: Sengketa Tanah, Hukum Adat, Siyasah Syar'iyyah

ABSTRACT

This study aims to examine the settlement of land disputes through customary law in Panakkukang, Gowa Regency, from a siyasah syar'iyyah perspective. This is a qualitative study. The research design is field research. The results of this study show that: First, the practice of settling land disputes through customary law in Panakkukang Village, Gowa Regency. For example, calling the disputing parties to discuss the issue amicably, making consensus deliberation the main value and principle that forms the legal basis for land dispute resolution in Panakkukang Village, Gowa Regency, and the division of land in disputes with the aim of achieving justice. In addition, there is a lack of clarity regarding the role of customary authorities in resolving land disputes through customary law in Panakkukang Village. Second, the practice of resolving land disputes through

customary law in Panakkukang Village, Gowa Regency, is not fully in line with Siyasah Syar'iyyah. This is partly due to the absence of clear customary authorities in the settlement of land disputes through customary law in Panakkukang Village. This non-alignment is due to the actions of the government, in this case the village officials, who have not demonstrated any benefits in this stage.

Keywords: Land Disputes, Customary Law, Siyasah Syar'iyyah

PENDAHULUAN

Land is an integral part of Indonesian society and, in fact, when viewed solely from an economic perspective, land is a vital component of human life. Indonesian society can utilize land to determine its national territory by considering the areas under its control, particularly land, water, and sovereign territory. Land has value in that the land, water, and natural resources found there are directly owned by the state and are used to the greatest extent possible for the greatest prosperity of the people, in accordance with Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. Indonesia.[1]

The resolution of land disputes in Indonesia has become a complex and sensitive issue, given the diversity of cultures, customs, and laws that exist in this country. One approach used to resolve land disputes is the application of customary law.[2]

The State and Government recognize and appreciate communities in Indonesia that adhere to customary law. This recognition and respect can be seen in the legal framework that supports empowerment and protection initiatives for indigenous peoples carried out by institutions in the public sector as well as by social and commercial groups. From the perspective of society as a whole, the efforts made by social groups and non-governmental organizations to defend their basic rights, including rights to customary land, education, health, and welfare, are reflected in the focus on customary law. This demonstrates an understanding of the presence of Indonesian communities that live with distinctive cultures, norms, and practices that have good values, especially in challenging situations, when recognition and admiration for customary law communities are demonstrated. Nevertheless, they are still able to uphold peaceful interactions with other people, nature, and their creator even in an era of rapid social and cultural transformation. All of these countries demonstrate how culture can serve as the best form of social capital and significantly advance development. The current issue of land disputes is inevitable, not only because of the weakness of law enforcement, but also because of the high demand for land in the current era while land availability is limited. In other words, land disputes involve a battle for land ownership between two competing parties

[1] Naufal Riski, Shafarra Octaviyanda, and Wilson Fernando, "Implementasi Hukum Adat Dalam Penyelesaian Sengketa Tanah Di Indonesia," *Qistina Jurnal Multidisiplin Indonesia* 2, no. 2 (2023).

[2] Riski, Octaviyanda, and Fernando.

claiming rights to the land. Due to a lack of regulations, non-compliance with regulations, and a lack of action by the authorities in maintaining the integrity and amount of available land, this issue dominates land conflicts. Incorrect and incomplete land data, a lack of funds for resolution, property transaction errors, lawsuits filed by applicants, and comparisons with other authorities are additional problems.[3] Land disputes are one of the social issues that often occur in Indonesian society, including in the Panakkukang area of Gowa Regency.

Customary law in Indonesia generally plays a role in law enforcement and dispute resolution. The first role of customary law is to enforce the law in indigenous communities, especially in regulating social, economic, and spiritual life. Customary law includes rules regarding traditional ceremonies, rituals, and other cultural practices. By preserving and applying customary law, indigenous communities maintain their cultural identity and ensure that traditions are passed on to the next generation.[4]

Customary law also plays an important role as a legitimate source of law because its existence is recognized by state courts. In several court decisions, judges have referred to customary law as the basis for their decisions, especially in cases involving indigenous peoples. This recognition shows that customary law still has a place in the national legal system, even though it is not always used as the primary reference.[5]

Customary law is considered effective in resolving conflicts, given that customary legal authorities are often more respected than formal state laws, especially in areas far from the center of power. Compliance with customary law and the authority of customary leaders creates order and stability in these communities. However, customary law often does not have the same legal force as state courts. The government often acts as a mediator in customary land disputes, but its decisions do not always favor indigenous peoples, especially when there is economic or political pressure. In some other regions, the effectiveness of customary law faces challenges.[6]

Modernization, urbanization, and the influence of state law often diminish the role and authority of customary law. Conflicts between customary law and state law can also reduce the effectiveness of customary law, especially when state law does not recognize or respect local customary rules. To ensure that customary law can function effectively within a modern and inclusive national legal framework, the government needs to formally recognize the rights of indigenous peoples and

[3] Riski, Octaviyanda, and Fernando.
[4] Ni Nyoman Tri Partini, "Peran Hukum Adat Dalam Penegakan Hukum Dan Penyelesaian Sengketa," *Virtue Jurisprudence* 2, no. 2 (2024): 192–201.
[5] Partini.
[6] Partini.

formulate policies that support the preservation of customary law without compromising the principles of human rights and social justice.[7]

With the majority of Indonesia's population being Muslim, Islamic law is considered part of the Law of Life, which is strongly related to the percentage of Muslims who constitute the majority. Therefore, siyasah syar'iyyah is a part of Islamic law that directly highlights the relationship between society and the state. Thus, the review of siyasah syar'iyyah on the settlement of land disputes through customary law is considered compatible in detecting the benefits of an action taken by the authorities.

Siyasah Syar'iyyah in the sense of science is a field of study that examines the regulation of society and the state through all forms of laws, rules, and policies made by state authorities in accordance with the spirit and basic principles of Islamic law to achieve the welfare of society.[8]

The fuqaha define siyasah syar'iyyah as government action on a matter in order to achieve a benefit, even if that action has no specific basis in the text. In another definition, they say it is managing human affairs in accordance with the provisions of the Shariah. Most writings related to Islamic politics define the concept of politics within the scope of these two definitions.[9]

The novelty of this research can be seen through the literature review, namely the results of previous relevant studies. Among the studies relevant to the resolution of land disputes through customary law in Panakkukang, Gowa Regency, is the perspective of Siyasah Syar'iyyah. Ni Nyoman Tri Partini highlights the role of customary law in law enforcement and dispute resolution.[10] Ardilla Sulvina et al. focused on examining the integration of customary law and positive law in land dispute resolution in modern Indonesia.[11] Meanwhile, Naufal Riski et al. focus on the implementation of customary law in land dispute resolution in Indonesia.[12] On the other hand, Stella highlighted the influence of customary law in the settlement of

[7] Partini.

[8] Hasan, "Tinjauan Siyasah Syar'iyyah Terhadap Pelayanan Publik Dalam Penerbitan Dokumen Kartu Tanda Penduduk (KTP) Dan Kartu Keluarga (KK)(Studi DISDUKCAPIL Kabupaten Polewali Mandar)" (IAIN Parepare, 2024).

[9] Mahmood Zuhdi Abd Majid, "SIYASAH SYAR'IYAH DALAM PELAKSANAAN UNDANG-UNDANG JENAYAH ISLAM," *Jurnal Syariah* 12, no. 1 (2004): 89–100.

[10] Partini, "Peran Hukum Adat Dalam Penegakan Hukum Dan Penyelesaian Sengketa."

[11] Ardilla Sulvin et al., "Kajian Integrasi Hukum Adat Dan Hukum Positif Dalam Penyelesaian Sengketa Tanah Di Era Modern Di Indonesia," *Jurnal Pendidikan Tambusai* 8, no. 3 (2024).

[12] Riski, Octaviyanda, and Fernando, "Implementasi Hukum Adat Dalam Penyelesaian Sengketa Tanah Di Indonesia."

customary disputes in customary courts.[13] Alexzandro D. Manafe highlights customary land disputes from the perspective of local wisdom in the village of Umakatahan, Central Malaka District, Malaka Regency.[14] Tri Putri Sari highlighted land disputes and the implementation of customary law on Rempang Island.[15] Thus, the four form a complementary framework for examining land dispute resolution through customary law based on Siyasah Syar'iyyah, from upstream (policy) to downstream (technical implementation).

The fundamental difference from the four previous studies is that this study specifically focuses on highlighting the resolution of land disputes through customary law in the village of Panakkukang, Gowa Regency, from the perspective of Siyasah Syar'iyyah. Therefore, based on this novel approach, the results of this study can contribute to the realization of land dispute resolution through customary law in Indonesia based on Siyasah Syar'iyyah.

RESEARCH METHOD

This research is qualitative in nature. The research design is field research. This research was conducted in Panakkukang Village, Gowa Regency, examining the process of resolving land disputes through customary law from the perspective of Siyasah Syar'iyyah.

RESEARCH RESULTS AND DISCUSSION

1. Overview of Land Dispute Resolution in Panakkukang Village

Syaifuddin A.R., as the Head of Panakkukang Village, emphasized the importance of the role of customary law in resolving land disputes in his village community. According to him, the elders or traditional leaders in the village always prioritize local customs in the conflict resolution process, especially those related to land. This is conveyed as follows.

[13] Stella, "Pengaruh Hukum Adat Dalam Penyelesaian Sengketa Adat Di Pengadilan Hukum Adat," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 09 (2023): 894–903.

[14] Alexzandro D Manafe et al., "Sengketa Tanah Adat Dalam Perspektif Kearifan Lokal Di Desa Umakatahan Kecamatan Malaka Tengah Kabupaten Malaka," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023).

[15] Tri Putri Sari et al., "Konflik Sengketa Tanah Dan Implementasi Hukum Adat Di Pulau Rempang," *Innovative: Journal Of Social Science Research* 4, no. 1 (2023).

> Customary law in dispute resolution on the grounds that elders in resolving land disputes always prioritize the customs and traditions of the village for the benefit of the community so that prolonged conflicts do not occur.[16]

Anwar Dg. Rowa explained the steps for resolving land disputes through customary law in Panakkukang, Gowa Regency, as follows.

> The government continues to take a legal approach to disputes. If customary law can no longer be applied, only then does the government take legal action, whether under positive law or other laws governing land disputes. [17]

Based on the results of an interview with Anwar Dg. Rowa, he emphasized that as an official of Panakkukang village, his role is vital in ensuring that every land dispute is resolved in accordance with customary rules and norms that apply in the community. Basically, the village government always prioritizes resolution through customary law mechanisms first.

However, Anwar Dg. Rowa also realizes that not all disputes can be resolved through customary channels. When customary law is no longer able to provide a fair solution or is not accepted by one of the parties, the village government will take further steps by applying a formal legal approach.

Amiruddin Dg.Naba, as a village official in Panakkukang, conveyed the main values and principles that form the legal basis for resolving land disputes through customary law in Panakkukang, Gowa Regency, as follows.

> The main values and principles that form the legal basis for resolving land disputes in the community are deliberation and consensus. This is because almost all land issues that arise in the community are brought to the local government to be resolved amicably through deliberation and consensus in order to find a middle ground.[18]

In an interview, Amiruddin emphasized that the main values and principles that form the legal basis for resolving land disputes in the community are deliberation and consensus.

Abd.Malik B.S Dg.Gassing, a community leader in Panakkukang Village, shared the following regarding the distribution efforts in the land dispute case.

[16] Syaifuddin A.R, "Umur 55 Tahun, Kepala Desa," *Wawancara*, n.d.
[17] Anwar Dg. Rowa, Umur 64 Tahun, Aparat Desa, *Wawancara*. (20 Mei 2025)
[18] Amiruddin Dg. Naba, Umur 50 Tahun, Aparat Desa, *Wawancara*. (20 mei 2025)

> Of course, the distribution must be fair in accordance with the expectations of those involved in the land dispute.[19]

In an interview, Abd. Malik emphasized that the main objective of land dispute resolution is to achieve a fair distribution for all parties involved. This fairness is the basis for ensuring that the outcome of the resolution is acceptable and does not cause dissatisfaction that could potentially trigger new conflicts.

Andi Akbar, a community leader in Panakkukang village, explained the role of traditional leaders as follows.

> Among the disputing parties. The main issue faced in maintaining sustainability in the use of customary law in dispute resolution in villages is that there are no clear customary authorities, making it difficult for the community to appoint someone who is suitable and entitled to resolve land disputes in the village.[20]

In the interview, Andi Akbar revealed the main challenge faced in maintaining the sustainability of customary law in dispute resolution in Panakkukang Village, namely the absence of clear customary leaders. This condition makes it difficult for the community to determine who is suitable and entitled to lead the land dispute resolution process. This uncertainty can cause confusion and the potential for new conflicts to arise.

Idham Idris, a community leader in Panakkukang Village, explained the steps taken to resolve disputes in Panakkukang Village, as follows.

> Usually, if there are disputing parties, we first call both parties to discuss the issue amicably so that it can be resolved properly and there will be no further problems. [21]

In his interview, Idham Idris explained that the first step usually taken in handling land disputes is to summon both parties involved in the dispute. The aim is to encourage them to engage in friendly and open dialogue about the issue at hand, in order to prevent the conflict from continuing.

Abd. Wahab, as a member of the Panakkukang Village community, conveyed the implications of inherited land disputes on social relations between families and neighbors, as follows.

> Land inheritance disputes often affect social relations between families and neighbors, because usually those involved in the dispute are either family

[19] Abd. malik B.S Dg.Gassing, Umur 70 Tahun, Tokoh Masyarakat, *Wawancara*. (20 Mei 2025)
[20] Andi Akbar, Umur 42 Tahun, Tokoh Masyarakat, *Wawancara*. (23 Mei 2025)
[21] Idham Idris, 'mur 60 Tahun, Tokoh Masyarakat, *Wawancara*. (25 mei 2025)

> members or neighbors who share a border with the land, so it will definitely affect social relations.[22]

In his interview, Abd. Wahab explained that disputes over inherited land often have a significant impact on social relations, both between family members and between neighbors in the surrounding community. This occurs because such disputes usually involve families with adjacent land boundaries, so that the disputes that arise are not merely a matter of land ownership. This affects social relations between them.

Bhahri Shaleh Dg.Tompo, a member of the Panakkukang village community, conveyed the urgency of the mediator's role in resolving land disputes, as follows.

> The importance of mediators in resolving land disputes is crucial because mediators can find a middle ground between the disputing parties.[23]

Bhahri Shaleh Dg. Tompo explained that the role of mediators is very important in resolving land disputes. Mediators serve as parties who can seek and offer a middle ground between the disputing parties.

Munawir, a resident of Panakkukang village, spoke about the disharmony between customary law and modern law in inheritance disputes, as follows.

> Jelas Ada sengketa waris yang melibatkan konflik antar nilai adat dan modern, karena hukum modern dengan hukum adat tidak pernah sejalan. Hukum adat selalu mengedepankan kekeluargaan sedangkan hukum modern berbicara tentang fakta hukum.[24]

In his interview, Munawir explained that the inheritance dispute in Panakkukang Village also involved a conflict between traditional and modern values, due to the differences between customary law and modern law. Customary law always prioritizes the principle of kinship, unlike modern law.

2. A Review of Siyasah Syar'iyyah on Land Dispute Resolution Through Customary Law in Panakkukang, Gowa Regency

With the majority of Indonesia's population being Muslim, Islamic law is considered part of the Law of Life, which is strongly related to the percentage of Muslims who constitute the majority. Therefore, siyasah syar'iyyah is a part of

[22] Abd. Wahab, Umur 62 Tahun, Masyarakat, *Wawancara*. (29 Mei 2025)
[23] Bhahri Shaleh Dg. Tompo, Umur 62 Tahun, Masyarakat, *Wawancara*. (2 Juni 2025)
[24] Munawir, Umur 60 Tahun, Masyarakat, *Wawancara*. (2 Juni 2025)

Islamic law that directly highlights the relationship between society and the state. Thus, the review of siyasah syar'iyyah on the settlement of land disputes through customary law is considered compatible in detecting the benefits of an action taken by the authorities.

Siyasah Syar'iyyah in the sense of science is a field of study that examines the regulation of society and the state through all forms of laws, rules, and policies made by state authorities in accordance with the spirit and basic principles of Islamic law to achieve the welfare of society.[25]

The fuqaha define siyasah syar'iyyah as government action on a matter in order to achieve a benefit, even if that action has no specific basis in the text. In another definition, they say it is managing human affairs in accordance with the provisions of the Shariah. Most writings related to Islamic politics define the concept of politics within the scope of these two definitions.[26]

The settlement of land disputes through customary law in Panakkukang Village, Gowa Regency, is considered not to be fully in line with Islamic law. Among other things, this is because there is no clear customary authority, making it difficult for the community to appoint someone who is suitable and entitled to settle land disputes in the village.[27] This matter should be followed up as soon as possible. Land disputes have the potential to significantly damage social relations between the disputing parties. As Abd. Wahab explains, inheritance land disputes often have a major impact on social relations, both between family members and between neighbors in the surrounding community. This occurs because such disputes usually involve families with adjacent land boundaries, so that the disputes that arise are not only about land ownership, but also affect interactions and social relations between them.[28] This inconsistency is due to the actions of the government, in this case the village officials, who did not demonstrate any benefits at that stage. However, there was consistency with syar'iyyah politics at other stages in the resolution of land disputes through customary law in the village of Panakkukang. For example, if there are disputing parties, we would first summon both parties to discuss the issue

[25] Hasan, "Tinjauan Siyasah Syar'iyyah Terhadap Pelayanan Publik Dalam Penerbitan Dokumen Kartu Tanda Penduduk (KTP) Dan Kartu Keluarga (KK)(Studi DISDUKCAPIL Kabupaten Polewali Mandar)."

[26] Abd Majid, "SIYASAH SYAR'IYAH DALAM PELAKSANAAN UNDANG-UNDANG JENAYAH ISLAM."

[27] Andi Akbar, Umur 42 Tahun, Tokoh Masyarakat, *Wawancara*. (23 Mei 2025)

[28] Abd. Wahab, Umur 62 Tahun, Masyarakat, *Wawancara*. (29 Mei 2025)

amicably in order to resolve the problem properly with the aim of preventing the problem from continuing.[29] It also makes consensus deliberation a key value and principle that forms the legal basis for resolving land disputes in Panakkukang Village, Gowa Regency. This is because almost all land issues that arise in the community are brought to the local government to be resolved amicably through consensus deliberation in order to find a middle ground.[30] In addition, the distribution must be fair in accordance with the expectations of those involved in the land dispute. [31] The practice of resolving land disputes through customary law in Panakkukang Village, Gowa Regency. For example, calling the disputing parties to discuss the issue amicably, making consensus deliberation the main value and principle that forms the legal basis for land dispute resolution in Panakkukang Village, Gowa Regency, and the goal of land distribution in disputes is to achieve justice. This description shows the alignment of the practice of resolving land disputes through customary law in Panakkukang Village, Gowa Regency, with the perspective of Siyasah Syar'iyyah. It can be concluded that the practice of resolving land disputes through customary law in Panakkukang Village, Gowa Regency, is not yet fully in line with Siyasah Syar'iyyah.

CONCLUSION

Based on the results and discussion described above, it can be concluded that:

1. The practice of resolving land disputes through customary law in Panakkukang Village, Gowa Regency. For example, calling the disputing parties to discuss the issue amicably, making consensus deliberation the main value and principle that forms the legal basis for land dispute resolution in Panakkukang Village, Gowa Regency, and the goal of land distribution in disputes is to achieve justice. In addition, there is uncertainty regarding the role of customary authorities in resolving land disputes through customary law in Panakkukang Village.

[29] Idham Idris, 'mur 60 Tahun, Tokoh Masyarakat, *Wawancara*. (25 mei 2025)
[30] Amiruddin Dg. Naba, Umur 50 Tahun, Aparat Desa, *Wawancara*. (20 mei 2025)
[31] Abd. malik B.S Dg.Gassing, Umur 70 Tahun, Tokoh Masyarakat, *Wawancara*. (20 Mei 2025)

2. The practice of resolving land disputes through customary law in Panakkukang Village, Gowa Regency, is not yet fully in line with Siyasah Syar'iyyah. One of the reasons for this is the absence of clear customary authorities in the resolution of land disputes through customary law in Panakkukang Village.

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