**Bapalas as Alternative Dispute Resolution of Fighting on Muslim Dayak Community in Muara Teweh, Central Kalimantan**

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**Abstract:** This study discusses the tendency of the Muara Teweh Muslim Dayak community, who prefers *bapalas* in resolving fighting disputes over other legal remedies. *Bapalas* is a traditional dispute resolution of fights with the help of *mantir* and community leaders and is attended by the families of both parties. In the Dayak community, there are various *bapalas*, such as midwives *bapalas*, marriages *bapalas*, births *bapalas*, death *bapalas*, and fights *bapalas*. This research focuses on studying the fight *bapalas* as an alternative dispute resolution for fights in the community. Fighting is part of criminal law, usually resolved through litigation by repressive settlements. However, it is different in the Muslim Dayak community in Muara Teweh. They prefer to settle the dispute through this *bapalas* tradition. The research was conducted using empirical legal research methods using an Islamic law approach. The theory used is the theory of *'urf* and the concept of *iṣlāḥ* in Islam. The study result indicates that the Muslim Dayak community in Muara Teweh prefers this settlement because, first, it has become customary law that has been passed for generations. Second, *bapalas* minimize the grudges between the conflicting parties. Third, compared to other resolutions, primarily through litigation, *bapalas* are much easier and more effective in resolving conflicts, especially in terms of time. This dispute resolution model aligns with Islamic law according to *'urf* and the concept of Islam. *'Urf* can be a source of law as long as it does not conflict with sharia and is in line with the *sadd al-żarī‘ah* method, which means if the customs in society can prevent or block the harm, then it is allowed. It is also in line with the concept of *iṣlāḥ* that *bapalas* is a conflict resolution method that can eliminate and stop hostility and conflict between humans.

**Keywords:** Alternative dispute resolution, *Bapalas*, Dayak customary law, Islamic Law.

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Kata Kunci: Alternatif penyelesain sengketa, Bapalas, hukum adat Dayak, hukum Islam.

Introduction
Conflicts are generally based on differences. The difference is an inseparable part of the reality of life. Differences can be a potential, but on the contrary, they can be a problem in society. It has the ability to enrich the meaning of life if it is adequately understood and managed in a constructive manner. However, differences can become a problem if they are resolved violently. Conflict can also have a positive value when conflict can be managed wisely. In addition, conflict can make social processes more dynamic and
constructive for social change in society and does not bring violence so that conflict can be connoted as a source of change.\footnote{Abdul Jamal Wahab, \textit{Manajemen Konflik Keagamaan: Analisis Latar Belakang Konflik Keagamaan} (Jakarta: Elex Media Komputindo Kompas Gramedia, 2014).}

The cause of the conflict must be resolved immediately. It is to anticipate prolonged conflicts that cause disharmony in social life. According to positive Indonesian law, there are generally two methods for resolving conflicts: litigation and non-litigation or alternative dispute settlement.\footnote{Akhmad Kamil Rizani, “Musyawarah Sebagai Alternatif Penyelesaian Sengketa Waris Beda Agama: Avidence Based Solution From Indonesia,” \textit{El-Mashlahah} 10, no. 2 (2020): 52–64, https://doi.org/10.23971/maslahah.v10i2.2063.}

The litigation approach entails dispute settlement through the judicial system. Alternative dispute resolution techniques, such as mediation, conciliation, negotiation, and arbitration, are utilized to resolve disputes outside of court.


Dispute settlement through non-litigious methods is quite popular since it provides a win-win result. Indonesian society is rich in customs and tends to resolve conflicts amicably through collaborative discussion (non-litigation). Similarly, the Dayak community in Muara Teweh, Barito Utara Regency, Central Kalimantan Province, resolves various conflicts—especially fighting or brawling—through the \textit{Bapalas}.

\textit{Bapalas}, as a custom practiced from generation to generation, is a reconciliation process between the two warring parties. Based on initial observations, this community has something unique; they prefer to resolve various disputes through \textit{bapalas} custom\footnote{Observation, (1-30 September 2020)} despite the availability of numerous alternative dispute resolution, both litigation and non-litigation.

There are still a few research exploring the custom of the \textit{bapalas}. In 2017, Yuliyanto, for instance, focused his research on the position, role, and influence of traditional institutions in avoiding and resolving conflict in the Dayak community, as well as its relevance to Law Number 7 of 2012.\footnote{Yuliyanto Yuliyanto, “Peranan Hukum Adat Masyarakat Dayak dalam Menyelesaikan Konflik Untuk Mewujudkan Keadilan Dan Kedamaian,” \textit{Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional} 6, no. 1 (2017): 37.}


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same thing. Apart from those studies, no more studies have examined the bapalas to the author's knowledge. Likewise, research examining Dayak customary law is uncommon. Ibnu Elmi's research examined the legitimacy of giving Central Kalimantan residents Dayak customary titles. Sandi also focuses on the customary rights of the Dayak in Central Kalimantan.

From the studies above, no research specifically examines bapalas in dispute resolution of fights in the Muara Teweh Dayak community. In fact, non-litigation dispute settlement, such as that used by the community, is crucial to examine. The community also loves the settlement of this type of dispute at this time.

This paper used empirical legal research, using an Islamic legal approach through the theory of 'urf and the concept of ishlah in Islam. This study collected data through interviews, observation, and documentation. The data results were filtered using data triangulation techniques and analyzed through Islamic legal theories.

Implementation of Bapalas in Dispute Resolution for the Muslim Dayak Community of Muara Teweh

Bapalas is a custom practice carried out from generation to generation by Muslim Dayak tribes in the Muara Teweh, North Barito Regency, Central Kalimantan. Bapalas is a reconciliation process between the two warring parties with the help of a mantir or a traditional community leader and attended by the families of both parties. Many types of bapalas are known by the people of Muara Teweh, such as bapalas of fights, marriage, childbirth, and death. In this study, the author focuses on bapalas of fights to provide in-depth research results.

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Before discussing the process of implementing bapalas, it is necessary to explain in advance the parties involved in the process. According to RH as the party who has been involved in the bapalas, he said: The people involved in the Bapalas are the family of the person in the dispute, especially the parents, the perpetrator, and the victim. If there are no parents, then they should be relatives. For big problems, there are other parties involved, such as the head of the local RT, a traditional leader or the village chief, but for small-scale problems, only the family gets involved without any help from village officials or anything.13

Similarly, DMN, as the same party said that “certainly, there are the traditional leaders and community leaders and the traditional mantir awen ji berperan helu”.14 The parties involved in the bapalas are:

a. The perpetrator and his family: the party starting the fight or attacking the victim.
b. The victim and his family: The victim that is attacked by the perpetrator.
c. Mantir: traditional leaders in charge of bapalas.
d. Village chief or community leader: a neutral party who assists in the implementation of bapalas, especially in big cases.

The initial stage of bapalas is by preparing the necessary materials. The materials are free-range chicken eggs, coconut, coins, kambat leaves, and nails. TN then added and detailed the required materials and explained the philosophy of using these materials. As he said the following: In the implementation of the Bapalas in the Bakumpai custom in villages like ours here, usually, the material needed for the Bapalas are eggs which are used for memalas (purification) then coconut and rice placed into a white plate because it has meaning, this bapalas is already good then it is even better if you add rice oil because it has a certain meaning then as a habit of people doing memalas, they have to use a knife but it must be a compound knife because it also has a certain meaning as well.15

After the materials have been prepared, then the bapalas is started. The bapalas process is detailed as follows:

a. The warring parties are united by the mantir, and witnessed by community leaders and their families.
b. The mantir then starts the bapalas by breaking the egg and separating the white into a glass. Then water and perfume are added and then stirred using banana leaves.16 Some people also add likat oil.17 Some also use coconut and rice.18

14Interview with DMN, September 27, 2020.
15Interview with TN, in Muara Teweh, September 22, 2020.
16Interview with NI, in Muara Teweh, September 22, 2020.

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c. The mantir then rubs the potion water using banana leaves onto the head, right and left shoulders, right and left knees, and the two palms of the disputed parties.
d. In this bapalas practice, there are incantations used by the mantir. It consists of traditional oaths and prayers for the good of the disputed parties and the local community.\(^\text{19}\) This incantation is to provide hope and calm the emotions of the parties as represented by the cold egg philosophy.\(^\text{20}\)
e. The parties take traditional oaths\(^\text{21}\) and avoid prohibitions.\(^\text{22}\) On this oath, both disputed parties have an obligation to follow and obey the customary oath that has been pronounced.

There is no time limit for the bapalas. When there is a dispute, for example, the bapalas can be carried out immediately\(^\text{23}\) or according to the agreement of the disputed parties.\(^\text{24}\) In fact, it should be as soon as possible.\(^\text{25}\) Because it will result in protracted problems and can grow into a bigger problem if it is procrastinated.

Bapalas as a Dispute Resolution Options for the Traditional Muslim Dayak Community of Muara Teweh

An interesting thing to explore further is why the Muslim Dayak community in Muara Teweh prefers to resolve their disputes through bapalas compared to other dispute resolutions. Based on the author's search, the community's reasons can be classified as follows:

a. Implementing Customary Law (‘Urf)

In Muara Teweh, Bapalas has evolved into a customary law that has been passed down from generation to generation by the ancestors.\(^\text{26}\) This is a tradition that they believe may resolve conflicts in society while keeping friendships. In their culture, it has become customary to utilize bapalas to resolve disputes.

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\(^{17}\) Interview with RH, in Muara Teweh, September, 23 2020.
\(^{18}\) Interview with TN, in Muara Teweh, September 22, 2020.
\(^{19}\) Interview with DN, in Datai Nirui Village, September 20, 2020.
\(^{20}\) Interview with TN, in Muara Teweh, September 22, 2020.
\(^{21}\) Interview with DN, in Datai Nirui Village, September 20, 2020.
\(^{22}\) Interview with DMN, in Muara Teweh, September 27, 2020.
\(^{23}\) Interview with JN, in Muara Teweh, September 15, 2020.
\(^{24}\) Interview with DMN, in Muara Teweh, 27 September 27, 2020.
\(^{25}\) Interview with DN, in Datai Nirui, September 20, 2020.
\(^{26}\) Interview with JN, in Muara Teweh, September 15, 2020.

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Out-of-court settlement methods are more effective than court settlements because they can resolve disputes without leaving harm to the involved parties. It is in line with the spirit of Islam, which Umar bin Khattab implicitly explained; "Return the settlement of the case to relatives so that they can make peace because actually, the settlement of the court can cause discomfort." \( ^{27} \)

Indigenization of Islam is accommodation to customs which in the language of \( uṣūl al-fiqh \) is called 'urf. 'Urf' is a custom that applies in a certain community and is one of the considerations of Islamic law. \( ^{28} \) 'Urf has become a tradition, either in words or actions and or things that leave something is also called 'ādah (custom). \( ^{29} \) Because according to the term syara' there is no difference between 'urf and 'ādah. \( ^{30} \)

In addition to being derived from the Qur'an and hadith, Islamic law continues to incorporate positive cultural components and maslahah (something that benefits the people). Consequently, the formation of Islamic law emanating from the community is also a component of the system of Islamic law development that employs an ijtihād (independent reasoning) approach that relies on 'urf. \( ^{31} \)

Therefore, customary law is the entire positive code of conduct that, on the one hand, contains sanctions (thus, it is a law), but is not codified (that is why it is a custom). This conforms to customary rules, which are deemed legal benchmarks when they are widely recognized; if they deviate, they cannot serve as legal benchmarks. \( ^{32} \)

'Urf' can be a legal basis with the following conditions:

\begin{thebibliography}{99}
\bibitem{29} ‘Urf is something (both action and expression) where the soul feels calm in doing it because it is in line with logic and can be accepted by human nature. Sucipto, “‘Urf Sebagai Metode Dan Sumber Peneman Hukum Islam” 7, no. 1 (2015): 25–40, https://doi.org/https://doi.org/10.24042/asas.v7i1.1376.
\bibitem{32} Sucipto, “‘Urf Sebagai Metode Dan Sumber Peneman Hukum Islam.”
\end{thebibliography}
1. 'Urf does not conflict with qat'i nash (clear legal injunction). It is not justified if something that has become commonplace is contrary to the nash that qath'i.
2. 'Urf must generally apply to all events or is generally applicable.
3. 'Urf must last forever. So it's not justified 'urf that comes later. Therefore, the person who gives a waqf must be brought to 'urf at the time of giving the waqf, even though it is contrary to 'urf which comes later.
4. There is no specific proof for this case in the Qur'an or Hadith.
5. Its use does not result in the exclusion of nash and does not result in harm and difficulty. According to Sulfan Wandi, 'urf is like two sides of a coin in addition to functioning as a methodology of Islamic law, it can also be a source of law as long as it does not conflict with sharia. In addition, the validity of 'urf can also be studied from the perspective of sadd al-zarī‘ah. As the research conducted by Yuni Roslaili, it was found that if the customs in the community can prevent or block the harm then it is allowed. Based on the above study, it shows that the Bapalas custom can be categorized as 'urf, because it is not against the sharia.

b. Preventing Revenge Between the Disputing Parties

The people's perception of the tradition of the bapalas is already anchored in social life. In addition, the community is compelled to preserve the inherited traditions practiced by the ancestors of its local community.

One of the advantages of the bapalas tradition in resolving disputes is that it can minimize the resentment between the two parties. This is because dispute resolution through the bapalas is resolving problems amicably. The Muslim Dayak community of Muara Teweh feels that fellow local residents who live in one village are family. If there are problems, including fights between residents, efforts are made to resolve them peacefully through this bapalas tradition.

Through the bapalas, people involved in the dispute will pronounce the customary oath. The oath consists primarily of a peace agreement and a pledge

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36 Interview with JN, in Muara Teweh, September 15, 2020.
37 Interview with TN, in Muara Teweh, September 22, 2020.
not to repeat the same conduct. The community holds that the oath must be upheld and that its violation is unacceptable. So that the people who have attended the bapalas always try to maintain the best possible traditional oath that has been said.

Peace through bapalas is in line with the ḥālīḥ process in Islam, in which every conflict between believers must be resolved peacefully. Ḥālīḥ is a way of resolving conflicts that can eliminate and stop all forms of hostility and conflict between humans. Ḥālīḥ or ṣulḥ can be interpreted as sidd al-iqtislad, an enhancement, which can be used to resolve and stop disputes.

From a positive legal perspective, the settlement of criminal cases through non-litigation is an alternative way to the main way, litigation. In reality, neither the core rules of criminal procedural law nor the Criminal Procedure Code recognize the existence of this alternative means of resolving criminal cases. Nevertheless, it exists and is accepted by the community, therefore it is utilized to resolve criminal cases. Similarly, the conflicts that happened in the Muslim Dayak community of Muara Teweh, which constituted a felony, favored the out-of-court option, via the bapalas.

M. Kasim's research demonstrates the superiority of the bapalas in resolving fighting issues for the Muslim Dayak community of Muara Teweh. He noted that conflict resolution based on custom offers benefits such as preserving brotherhood and removing resentment. This is because of the involvement of traditional institutions as social elites who have both social and juridical legitimacy.

c. Easy and Effective

The Muslim Dayak community of Muara Teweh prefers bapalas in dispute resolution because it is easier, the implementation process does not take a long time, and the costs are not high. In addition, this family-friendly solution can maintain ties of friendship in the community.

Disputes may be settled in court (in court) or outside of court. Dispute resolution outside of court begins with discontent with the lengthy and

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expensive legal process for resolving disputes. In addition, court decisions frequently result in resentment among the parties or the perception that they are the "losing" party.

To find an alternative dispute resolution, in 1976, a former judge, Chief Justice Warren Burger, in The Roscoe Pound Conference, invited conference participants consisting of academics, judges, and lawyers to look for other ways to resolve disputes.

Since then, Alternative Dispute Resolution (ADR) has been developed as an alternative to out-of-court dispute resolution. The development of ADR is also supported by several factors, including (1) the method of solving is well known in various cultures; (2) the settlement is non-adverse; (3) enables all parties, directly or indirectly related to the dispute, to be included in the negotiations; (4) win-win solution is achieved.42

**Islamic and Customary Law in Dispute Resolution**

The Dayak Muslim community of Muara Teweh, North Barito Regency, tends to use, accept and apply the *bapalas* tradition. This is in line with the results of Mariatul Kiptiah's research on the peace process through traditional institutions (Adat Badamai) in different indigenous peoples, especially in Banjarmasin. Mariatul Kiptiah explained that, first, the people of Banjarmasin have a fairly good and equal understanding of the *Adat Badamai* and already understand its purpose, as local wisdom to resolve conflicts in the community. Second, the *Adat Badamai* in the Banjarmasin community has universal values, such as the value of kinship, unity, and the local value which is the value of not being *Bacakut Padadaan*, which means not to fight or disagree with each other. Third, the pattern or mechanism in the *Adat Badamai* tradition is carried out by bringing together the two conflicting parties with the customary leader, through peaceful discussion and consensus. Fourth, the people of Banjarmasin view *Adat Badamai* as an effective way of resolving conflicts in the community, because it is easy, and does not take long. Fifth, the way of inheriting the Adat Badamai tradition from the older generation to the younger generation is through the formal socialization of social values, and community activities, or it could be through mass media, such as LK3 (Institute of Studies and Society) activities, FKUB (Religious Communication Forum), FKDM (Community Early Detection Communication Forum). Sixth, the nation's commitment or nationalism attitude is contained in the *Adat Badamai* tradition that exists in the Banjarmasin community. It is shown in the attitude of love for


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diversity and kinship, love for traditional/cultural values, and love for living in harmony and peace.  

Article 1338 of the Civil Code says that all legally binding contracts are binding on the parties involved. A contract can only be terminated with the consent of both parties or for grounds deemed sufficient by law. A contract must be signed in good faith. It indicates that the state permits and recognizes customary law, such as the bapalas tradition, which is considered valid, reasonable, and aimed toward peace because the custom contains a peace agreement agreed upon by both parties and witnessed directly by the mantir adat, family, and community leaders.

The view that Islam places great emphasis on resolving cases outside the judicial mechanism can be seen from the amicable settlement method. This tradition has long been rooted in Arab society, even before Islam. When Islam was present, Islamic doctrines further strengthened the tradition, which teaches Muslims to create peace and harmony in society.

Based on the explanation above, it can be seen that the bapalas tradition is in line with ‘urf in Islamic law. ‘Urf is like two sides of a coin in addition to functioning as a methodology of Islamic law, it can be a source of law as long as it does not conflict with sharia. The bapalas process, starting from the materials used and also the readings recited by the customary mantir, they do not contain elements that are prohibited in Islam. In fact, these materials are loaded with the philosophy of the importance of peace, such as egg which means to cool down the heads of the conflicting parties because people who fight are full of emotions. Likewise, the prayers are recited so that the people who are injured can get well soon. There is also an oath taken by both parties which in substance contains a promise not to fight again.

In addition, the validity of ‘urf can also be studied from the perspective of sadd al-zarī‘ah, which means if the customs in society can prevent or block the harm, then it is allowed. Based ‘n the above research, it is evident that the bapalas custom can be classified as ‘urf, which is permitted in Islam because there are no practices that contradict the norms of sharia.

Bapalas is also in line with the concept of islāh in Islam. In Islam, every conflict between believers must be resolved peacefully. Islāh is a way of resolving conflicts that can eliminate and stop all forms of hostility and conflict between human beings. Islāh or Šūlh can be interpreted as sidd al-iqtisald, an

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43 Mariatul Kiptiah, “Internalisasi Adat Badamai Sebagai Upaya Resolusi Konflik Dalam Memperkuat Komitmen Kebangsaan Pada Masyarakat Banjarmasin” (Universitas Pendidikan Indonesia, 2018), http://repository.upi.edu/35505/.
amelioration, which can be used to resolve and stop disputes.\textsuperscript{45} Therefore, the \textit{bapalas} is a means to resolve the fighting conflicts that occur in the Muslim Dayak Muara Teweh community. The virtues of this settlement lead the community to prefer to solve the dispute through this tradition. Although it is undeniable that when this effort cannot resolve the problem, then the dispute should be solved through the litigation process. However, the fact shows that this tradition is still preserved and can be an alternative dispute resolution, especially in the fights that occurred in the Muslim Dayak community of Muara Teweh.

\textbf{Conclusion}

The process of implementing the \textit{bapalas} tradition in resolving fighting disputes in the Muslim Dayak community of Muara Teweh, North Barito Regency has indirectly implemented a mediation process in which the disputing parties and their respective families are brought together to create an agreement, facilitated by the traditional \textit{mantir} and community leaders. They prefer this solution because, first, it has become customary law that has been passed down from generation to generation. Second, bapalas minimizes the resentment between the conflicting parties. Third, compared to other resolutions, especially through litigation, \textit{bapalas} is much easier and more effective in resolving conflicts, especially in terms of time. This dispute resolution model is in line with Islamic law according to \textit{urf} and the concept of \textit{iślāh}.

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**Interviews**

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