

DISPUTE SETTLEMENT IN ANTROPOLOGI OF LAW PERSPECTIVE

Taryono
Technology University Of Sumbawa
taryonjogja1465@gmail.com

Abstract

In the perspective of anthropology of law, disputes are social phenomena that are inseparable from human life, especially in multicultural society. He cannot be avoided or neglected in common life. What must be done is how the conflict is managed, controlled, accommodated, and resolved peacefully and wisely so as not to cause social disintegration in people's lives. In anthropology of law, the dispute and its settlement are one of the points that get a lot of attention. This focus of attention is the focus of anthropology of law in relation to the perception that the law operating actually appears in the process of dispute, in the settlement process taken, and in matters that occur after the decision is handed down by mediators or by parties negotiating, or by neutral third party. In the perspective of anthropology of law, the settlement of disputes can be done in two ways, namely first, the settlement of disputes through non-legal institutions; and second, settlement of disputes through legal institutions. The selection of dispute resolution through legal institutions and non-legal institutions tends to be determined by the community itself. In a simple or traditional society whose legal system has not developed tends to resolve the dispute with non-legal institutions. Whereas for modern and advanced society whose legal system has developed and the problems faced increasingly complex tend to resolve the dispute to legal institutions.

Keywords: Dispute resolution, anthropology of law, settlement of litigation disputes, non legal dispute resolution

INTRODUCTION

The process of socialization in a society that is getting bigger and no longer as simple as before must have special consequences in order to uphold order.¹ This can be described as follows, namely: *first of all, the* contents of the association rules will be increasingly increased in number in line with the multiplication of the number and type of association. Here the old unwritten rules, understood in memory in their main points, become inadequate. The rules increasingly require clear, written and archived affirmations and interpretations, but are also announced to be known with certainty. In its

continued development, recording and organizing and developing interpretations to explore its intentions is needed. This is where special experts appear who work to care for and support these rules.

Second, except just recording and confirming the existing and contested social rules as a daily reality, the community that develops into a large and not simple (complex) requires new rules that must be made first. Rules will thus not only come from old habits but also from social agreements and/or political decisions that are deliberately processed. "Artificial rules" are needed because people no longer want to be organized to perpetuate the old system, but also to regulate the new relations of relations from the future.

¹ Soetandyo Wignjosoebroto, 2002, *Hukum, Paradigma, Metode dan Masalah*, Jakarta: Elsam dan Huma, p. 172-173.

Third, local and simple communities simply educate social rules through informal channels in families and neighbors; Likewise with the imposition of penalties (if there is a violation). However, large and complex societies (such as the state community) cannot rely solely on the role of families only to educate obedience and to enforce rules and order, the state society must develop special apparatus for those purposes.

Humans as social beings or *zoon Politikon* are beings who have the desire to live in groups. The desire for group life is driven by biological needs in the form of: (1) a desire to fulfill food and drink or to meet economic needs; (2) the desire to defend themselves; and (3) the desire to have children.²

In the life of the group, human beings with each other will interact to meet their needs. In the interaction it does not rule out the possibility that there will be disputes and conflicts between them. This is because basically humans are always dominated by natural desires to fight for their own interests.

The result of this natural lust is the emergence of a war of all people against all people (*bellum omnium contra omnes*) in order to seize and defend their rights. What Hobbes calls "*homo homini lupus*" is a werewolf for other humans.

Disputes contain the meaning of a hostile and contradictory situation arising from different interests between two or more parties, both between individuals and

individuals, individuals with community groups, individuals with legal entities, community groups with community groups, community groups with legal entities or bodies law with a legal entity. According to Andri Harjanto, conflicts of interest in a dispute arise because they control a region, natural resources, potential powers, ideology or trade. The realization of this kind of dispute varies in form, can be in the form of a quarrel, a fight, a court, a revolution or even a war.³

In the perspective of anthropology of law, dispute or conflict is an social phenomenon inherent of human life, especially in multicultural society. He cannot be avoided or neglected in common life. What must be done is how the conflict is managed, controlled, accommodated, and resolved peacefully and wisely so as not to cause social disintegration in people's lives.⁴ Therefore, anthropology of law is a branch of legal science that studies patterns of disputes and their solutions to simple societies and communities that are undergoing a process of development and development.⁵

Thus, in anthropology of law, the dispute and its settlement are one of the points that get a lot of attention. This focus of attention is the focus of anthropology of law in relation to the perception that the law operating actually appears in the process of dispute, in the settlement process taken, and

³ Andri Harjanto Hartiman, 2002, *Alternative Dispute Resolution (ADR) Dalam Perspektif Antropologi Hukum*, Bengkulu: Lemlit Unib Press, p. 1.

⁴ I Nyoman Nurjaya, 2011, *Memahami Kedudukan Dan Kapasitas Hukum Adat Dalam Politik Pembangunan Hukum Nasional*, Perspektif, Vol. XVI, No. 4, Edisi September, p. 237.

⁵ R. Soeroso, *Op Cit*, hlm. 305

² R. Soeroso, 2014, *Pengantar Ilmu Hukum*, Cet. Keempat belas, Jakarta: Sinar Grafika, p. 215.

in matters that occur after the decision is handed down by mediators or by parties negotiating, or by neutral third party.⁶

By referring to the background of the above problems, the formulation of the problem in this paper is how is the dispute resolution mechanism in the perspective of anthropology of law?

DISCUSSION

Theory of Emergence of Disputes

Viewed from the perspective of anthropology of law, the phenomenon of disputes arises because of a *conflict of values*, conflict of norms, and / or *conflict of interest* from ethnic, religious, or class communities including also the political community in society. In addition, it can be observed that conflicts that occur in the community also stem from discrimination issues regulating and treating the central government towards community communities in the region, by using a term called Bodley as a *political of ignorance*, as a treatment that ignores, displaces and even break the values, legal norms of the people (*folk law*), including religion and traditions of the people in the region through the domination of state law (*state law*) which is characterized by *legal centralism*.⁷

According to Takdir Rahmadi, there are several theories about the reasons for the emergence of disputes, namely:

1. Theory of public relations.

The theory of public relations, emphasizes the distrust and rivalry of groups in society. The adherents of this theory provide solutions to conflicts that arise by increasing communication and understanding between groups that experience conflict, as well as the development of tolerance so that people can more accept diversity in society.

2. Principles negotiation

Negotiation theory explains that conflicts occur because of differences between parties. Proponents of this theory argue that for a conflict to be resolved, the perpetrator must be able to separate his personal feelings from problems and be able to negotiate based on interests rather than on a fixed position.

3. Theory Identity.

This theory explains that conflict occurs because a group of people feel their identity is threatened by another party. Adherents of identity theory propose conflict resolution because threatened identities are carried out through facilitation of workshops and dialogue between representatives of conflict-affected groups with the aim of identifying the threats and concerns they feel and building empathy and reconciliation. The ultimate goal is the achievement of a collective agreement that recognizes the main identity of all parties.

4. Theory of intercultural misunde-rstanding.

The theory of intercultural misunderstanding explains that conflict occurs because of incompatibility in commu-

⁶ TO Ihromi, 1986, *Bianglala Hukum*, Bandung: Tarsito, p. 24.

⁷ Lihat I Nyoman Nurjaya, *Loc Cit.*

nication between people from different cultural backgrounds. For this reason, dialogue is needed between people who experience conflict in order to know and understand the culture of other communities, reduce the *stereotypes* they have for other parties.

5. Theory Transformation.

This theory explains that conflict can occur due to problems of inequality and injustice and gaps that manifest in various aspects of people's lives both socially, economically and politically. The adherents of this theory argue that conflict resolution can be done through several efforts such as changes in the structure and framework that causes inequality, increased relations, and long-term attitudes of parties who experience conflict, as well as the development of processes and systems to realize empowerment, justice, reconciliation and recognition of each other's existence.

6. Need theory or human interest.

In essence, this theory reveals that conflict can occur because human needs or interests cannot be fulfilled/ obstructed or feel blocked by other people/parties. Human needs and interests can be divided into three types, namely substantive, procedural, and psychological. Substantive interests relate to human needs related to material such as money, clothing, food, housing / property, and wealth. Procedural interests are related to the arrangement in the community, while the psychological (*psychological*) interests are related to

non-material or not material like appreciation and empathy.⁸

Dispute Settlement Mechanism in the Perspective of Anthropology of law.

In the perspective of anthropology of law, the dispute resolution process can be carried out through 2 (two) types of dispute resolution, namely:

1. Settlement of disputes through legal institutions.

Legal institutions are institutions that are used by citizens to resolve disputes that arise between citizens and are a tool to *counter act* against gross or heavy misuse of the rules that apply from various other community institutions.⁹ Thus, legal institutions have two inherent characteristics, namely:

- a. legal institutions must be able to resolve disputes that arise in other social institutions;
- b. legal institutions must be associated with the existence of a form of political organization.¹⁰

Related to the settlement of disputes through legal institutions, can be divided into two types of solutions, namely:

a. Settlement of Disputes in Litigation (Court).

The dispute resolution process that is carried out through the court or which is often referred to as "litigation", is a

⁸ Takdir Rahmadi, 2011, *Mediasi: Penyelesaian Sengketa Melalui Pendekatan Mufakat*, Jakarta: Rajawali Pers, p. 8-10.

⁹ Hilman Hadikusuma, 2004, *Pengantar Antropologi Hukum*, Cet. Kedua, Bandung: Citra Aditya Bakti, p. 80.

¹⁰ *Ibid*, p. 81.

settlement of disputes carried out with the proceedings in court where the authority to regulate and decide is carried out by a judge. Litigation is a dispute resolution process in the court, where all parties to the dispute face each other to defend their rights before the court. The end result of a dispute resolution through litigation is a decision stating a *win-lose solution*. In other words, dispute resolution or conflict through the court (litigation) the final goal to be achieved is win-lose solution.

The procedure in the litigation path is more formal and technical, resulting in a win-lose agreement, tends to create new problems, is slow in its settlement, requires expensive, unresponsive and hostile costs among the parties to the dispute.

The opinion above, reinforced by the criticism that emerged against the judiciary as stated by Arie S. Hutagalung are: *first*, the settlement of the dispute is slow. *Second*, court fees are expensive. *Third*, the judiciary is not responsive. *Fourth*, judicial decisions do not solve problems. Fifth, the ability of judges is generalist.¹¹

Another opinion was expressed by Teguh Prasetyo who argued that the deficiencies contained in the litigation pathway in resolving disputes are:¹²

- 1) Long-winded and slow dispute resolution.

Article 2 paragraph (4) Law No. 48 of 2009 regulates that the judiciary is carried out quickly but in reality the process of dispute resolution in the courts is long and slow. This is for example if one of the parties is dissatisfied with the judge's decision then he can appeal at the high court level and even file an appeal and review at the Supreme Court level. Thus it will take a very long time. the length of time can be seen from the time span of the process in the Court, namely: 5-15 (five to fifteen) years, even up to 20 (twenty) years, this happens because at the first level the court takes 1-2 (one to two) years, the appellate court level takes 1-2 (one to two) years, the cassation court takes 1-3 (one to three) years, and the review rate takes 2-3 (two to three) years.

- 2) Court fees borne by expensive litigants.

As with the principle of speedy judiciary, the principle of justice with a low cost as stipulated in Article 2 paragraph (4) No. 48 of 2009 in practice did not occur. Because in court proceedings the parties will incur expensive costs, for example to hire a lawyer. In addition, the expensive costs borne by each party if one party submits an appeal and cassation, the costs borne by the parties will swell.

¹¹ Arie S. Hutagalung, *Op Cit*, p. 3.

¹² Teguh Prasetyo, dkk, 2015, *Hukum Dan Undang-Undang Perkebunan*, Bandung: Nusa Media, p. 150

- 3) The law that is used as a reference by judges is sometimes not in accordance with the conditions and circumstances of the community.

Because basically a law is always left behind from the conditions and circumstances that occur in the community it regulates. Whereas every dispute is always related to non-legal technical issues, for example economic, social, political aspects etc. The court tends to focus on normative legal technical issues by ignoring other susceptible questions, so that the outcome of the final settlement is partial and there will be *win-lose*.

- 4) Sometimes the judge does not really master the problem or case he is facing.

The weakness or lack of settlement of disputes in the courts is exacerbated by the low quality and ability of judges in the control of the issues and cases of disputes. Many judge decisions in handling cases of dispute that are not argumentative and not based on juridical reasons in accordance with the provisions of the applicable law.

- 5) Judicial decisions are considered not to solve the problem.

With a lack of mastery, understanding and not argumentative judges in disputes, a court decision decided by a judge is deemed not to solve the problem and is deemed not to provide a sense of justice for the litigants.

Meanwhile according to A. Mukti Arto, from the rules stated formally there are several problems that are carried out by the judiciary in resolving a dispute including: the

- 1) process of resolving a case usually goes too formal and rigid so it is less flexible and does not reach all aspects of the dispute (case);
- 2) the judicial process seems haunted because it only pays attention to the juridical aspects without regard to the sociological, psychological and religious aspects which are elements of holistic voice disputes;
- 3) the judicial process is slow and complicated, so it is considered wasteful and a waste of time and money that is very detrimental to justice seekers;
- 4) there is no reciprocal communication between the judge and the parties. Most judges dominate the judicial process and provide less opportunity for parties to be active as subjects in the dispute resolution process. Judges tend to place parties as objects that must be examined and prosecuted;
- 5) truth and justice are measured by the opinions, beliefs and feelings of judges unilaterally so that the parties cannot understand and accept the decisions of judges who are subjectively beyond their opinions, beliefs and feelings;
- 6) judges tend to be formal because they only pay attention to legal aspects based on doctrine or legal texts only

without regard to the legal awareness factors of the parties;

- 7) most civil cases turned out to be a large part of which were appealed for or appealed. This shows that most decisions are *judex factie* not accepted by justice seekers. Even though the case has been decided and the decision has permanent legal force, it turns out that the disputes between the parties have not been extinguished, and that tend to cause resentment and hatred and prolonged hostility resulting in negative excesses in the community and so on. The court turned out to have failed in carrying out the core and mission as well as its function to resolve disputes and restore social relations between litigants. For this reason it is necessary to find a new solution so that the Court can carry out its duties and functions in resolving cases that are mandated to him, both juridically, sociologically, psychologically and religiously by giving a decision that is practically (real) final and complete.¹³

This condition causes people to look for other alternatives, namely the settlement of disputes outside the formal justice process. Dispute resolution outside the formal justice process is what is called "*Alternative Dispute Resolution*" or non litigation dispute resolution.

- b. Non Litigation (*Alternative Disputes Resolution*).

Alternative Dispute Resolution (ADR) is a foreign term that still needs to be found in Indonesian. Several terms in Indonesian have been introduced in various forums by various parties. Some of which have been identified are: alternative dispute resolution¹⁴, alternative dispute resolution (APS)¹⁵, alternative dispute resolution mechanism (MAPS)¹⁶ and dispute resolution options (PPS).¹⁷

There are two different understandings of the meaning of the ADR. First, ADR is interpreted as *an alternative to litigation* and the second ADR is interpreted as *an alternative to adjudication*. The selection of one of the two meanings has different implications. If the first definition becomes a reference (alternative to litigation), then the entire dispute settlement mechanism outside the court including arbitration is part of

¹⁴ Erman Rajagukguk, 2000, *Arbitrase Dalam Putusan Pengadilan*, Jakarta: Chandra Pratama; also Ali Budiharjo dkk, 1999, *Reformasi Hukum di Indonesia*, Jakarta: Cyber Consult; also read Suyud Margono, *ADR & Arbitrase*, 2000, *Proses Pelembagaan dan Aspek-Aspek Hukum*, Jakarta: Ghalia Indonesia.

¹⁵ Joni Emirzon, 2001, *Alternatif Penyelesaian Sengketa di Luar Pengeadilan* (Negosiasi, Mediasi, Konsultasi dan Arbitrase) Jakarta: PT. Gramedia Pustaka Utama, p. 25-26.

¹⁶ look Takdir Rahmadi, 1994, *Mekanisme alternatif Penyelesaian Sengketa Dalam Konteks Masyarakat Indonesia Masa Kini*, makalah disajikan dalam Seminar Sehari Alternatif Penyelesaian Sengketa Dalam Kasus-Kasus Tanah, Perburuhan dan Lingkungan, Diselenggarakan Oleh Studi dan Advokasi Masyarakat bekerjasama dengan Dewan Pimpinan Pusat IKADIN, di Jakarta, 11 Agustus.

¹⁷ Look Runtung Sitepu, 2002, *Keberhasilan dan Kegagalan Penyelesaian Sengketa Alternatif*, Disertasi, Program Pascasarjana USU Medan, p. 84.

¹³ A. Mukti Arto, 2001, *Mencari Keadilan, Kritik dan Solusi Terhadap Praktek Peradilan Perdata di Indonesia*, Yogyakarta: Pustaka Pelajar, 2001, hlm. VI-VII

the ADR. But if the ADR is interpreted as *an alternative to adjudication*, then only the settlement mechanism of consensus or cooperative dispute is the ADR. While arbitration is adjudication is not included in it, because as well as the decision of the court tends to produce a win-lose (win-lose).

Before searching for the appropriate terms in Indonesian, it is necessary to equate perceptions about the concept and understanding of the ADR. If viewed from Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Settlement, Indonesia is also one of the adherents of the second view, because the law explicitly separates the term arbitration by alternative dispute resolution.

In the context of this study alternative dispute resolution will be used in the sense of *alternative to adjudication*, by not reducing the meaning and truth of other terms. The aim of developing alternative dispute resolution is to provide a forum for parties to work towards voluntary agreements in making decisions regarding the disputes they face. Thus alternative dispute resolution is a potential means to improve relations between the parties to the dispute.

If today the field of modern law practice develops *Alternative Dispute Resolution (ADR)*, it is better to observe it as a field in contact with the

study of disputes that continue to be studied from the perspective of anthropology of law. The principles in ADR can be found in the character of disputes that are studied anthropologically. Dispute resolution aims to achieve a *win-win solution*, where all parties feel they are benefited and won. Now ADR is widely studied and developed in any society in the world. There can also be a dispute resolution mechanism in certain local communities 'borrowed' by other local communities.¹⁸

Various reasons why a person uses alternative dispute resolution. Besides acting as a means of resolving disputes that have the potential to avoid high costs, delays and uncertainties inherent in the litigation system, it is also intended as a means to improve communication between parties. Because the decision is taken based on an agreement, the result is *win-win*, so the settlement of the dispute is complete (not false).

The decision to use alternative dispute resolution methods depends on the consideration of the parties. It's just that there are at least 2 (two) things that need to be considered to use alternative dispute resolution. First, alternative dispute settlement procedures are more effective than

¹⁸ Sulistyowati Irianto, 2012, *Pluralisme Hukum Dalam Perspektif Global*, Dalam Kajian *Socio Legal*, Editor Adriaan W. Bedner, dkk, Denpasar: Pustaka Larasan, p. 160.

litigation procedures and secondly, it is necessary to determine which form of alternative dispute resolution is most appropriate for the type of dispute faced.

There are several reasons why alternative dispute resolution needs to be put forward, namely:

- 1) dissatisfaction with the role of the court in resolving disputes that are too formal, old, expensive and unjust;
- 2) the availability of a more flexible and responsive dispute resolution mechanism for the parties to the dispute;
- 3) encourage people to participate in resolving disputes in a participatory manner; and
- 4) expanding access to justice for the community.

Please note that according to W. Moore and James Creighton there are several follow-up questions that must be answered as a consideration for parties to use alternative dispute resolution patterns, namely:¹⁹

- 1) How much relative strength is owned by the parties involved, and how important the dispute is this for everyone? Sources of strength include:
 - a) Formal power or authority, namely the authority given legally to set policies, draft

regulations, give permits and others;

- b) Expertise or strength of information, namely having access to or relationships with people who are knowledgeable or have information that is not owned by others;
- c) Procedural strength, namely control of decision-making procedures;
- d) The strength of the association, namely the power that comes from associating with those in power;
- e) The power of mastering resources, namely the ability to cause something dangerous or refuse to resist the benefits of dispute resolution;
- f) The power gained from working for others, namely the ability to cause discomfort for others;
- g) Habitual or acquired power from habits, namely the power or power of the status quo or as usual something is done;
- h) Moral strength, namely the ability to increase conflict in terms of the value of other power sources;
- i) Personal strength, namely personal attributes or expertise that enlarge other sources of expertise.

¹⁹ Joni Emirzon, *Op Cit*, p. 41-43.

- 2) Taking into account the relative strength and commitment of each party if this dispute continues until now. Which procedure seems best for its completion?
- 3) Taking into account the relative strengths and commitments given by one party, if the dispute must last until now, what substantive results or consequences are most likely to occur and how much relative opportunity (*relative probabilities*)?
- 4) Taking into account your estimates or predictions in questions number two and three, how much is the potential profit / cost of the procedure currently applied and how will a dispute be resolved. These benefits and costs can include:
 - a) Process costs (staff, time, delays, legal fees, etc.);
 - b) Impact on the relationship between you / your organization and other parties;
 - c) Financial gain or liability;
 - d) Risk of increase / decrease resulting from unacceptable settlement results;
 - e) Establish legal procedures;
 - f) Political impacts;
 - g) Internal / moral support.
- 5) Has the justification (justified) been used for using the established procedure?

- 6) Which alternative settlement dispute mechanism is most suitable for handling this dispute?
2. dispute resolution through non-legal institutions.

In addition to resolving disputes through legal institutions, the parties to the dispute can also settle disputes through non-legal institutions. This non-legal institution can also be called a social institution. According to Malinowski, social institutions are a group of people who are united (organized) for a particular purpose which to achieve these goals is characterized by:

- a. having material and technical means;
- b. make a reasonable business;
- c. support certain values (ethics, trust); and
- d. continually perform predictable actions.²⁰

The selection of dispute resolution through legal institutions and non-legal institutions tends to be determined by the community itself. In a simple or traditional society whose legal system has not developed tends to resolve the dispute with non-legal institutions. Whereas for modern and advanced society whose legal system has developed and the problems faced increasingly complex tend to resolve the dispute to legal institutions.

In addition to the above, the method chosen by the parties in resolving disputes is also determined by the legal culture adopted,

²⁰ Hilman Hadikusuma, *Pengantar Antropologi Hukum, Op Cit*, p. 80

not by law. If one party chooses to use a method of settlement by means of physical violence, this means that the legal culture adopted by one of the parties is a legal culture of violence or vigilantism. Whereas if the parties choose to settle the dispute by way of deliberation or win-win solution, the community's legal culture is a legal culture that promotes the values of peace. The desire to dispute is to get the fairest justice in a fast and inexpensive way, but in reality through litigation (justice), disputes are often resolved in a very long time and cost a lot, thus the wishes of those who dispute to immediately settle problems with cheap costs are not achieved.

In connection with the institutions used by parties in the resolution of disputes and conflicts, Chamblis was quoted as saying by Satjipto Rahardjo that there were two elements which were factors that determine the resolution of the disputes taken, namely:

1) the objectives to be achieved by resolving the dispute. If the goal to be achieved by the institution is to reconcile the parties so that they can then live together again after the dispute, then one can expect that the pressure will be placed more on the ways of mediation and compromise. Conversely, if the purpose of the institution is to implement the rules (*rule enforcement*), then bureaucratic solutions may be used more widely, where the main goal is to explicitly determine what is actually the content of the regulation and further determine whether the regulation has been violated;

2) coating level factors contained in the community. The higher the level of coating contained in the community, the greater the difference in interests and values contained there. In such circumstances, the dominant layer or group will try to maintain its strength by enforcing the regulations there which guarantee its position. In contrast to the simple situation in society, where the level of technology usage and the division of labor within it is still low, the agreement of values is still easy to achieve, where shamanism is a pattern of dispute resolution, then in society that has a high level of coating with the formation of the community that encourages inequality (*inequality*), the application of regulations with imposition of sanctions is a work pattern that is suitable for the community.²¹

Based on the type above, that a society that is less layered and less complex will tend to use patterns of settlement in a manner. In societies with high and more complex social coatings, the tendency is to apply the rules.²²

CONCLUSION

In the perspective of anthropology of law, dispute or conflict is an inherent social phenomenon of human life, especially in multicultural society. He cannot be avoided or neglected in common life. With these disputes and conflicts, it is necessary to restore the

²¹ Satjipto Rahardjo, 1980, *Hukum Dan Masyarakat*, Bandung: Angkasa, p. 52-53.

²² *Ibid*, p. 53.

original condition (*restitutio in integrum*), namely a balanced situation in an atmosphere of peace, order and security. In order to create a harmonious and orderly community life, a mechanism or procedure for resolving disputes in the form of disputes and conflicts is needed.

In the perspective of anthropology of law, the settlement of disputes can be done in two ways, namely first, the settlement of disputes through non-legal institutions; and second, settlement of disputes through legal institutions. The selection of dispute resolution through legal institutions and non-legal institutions tends to be determined by the community itself. In a simple or traditional society whose legal system has not developed tends to resolve the dispute with non-legal institutions. Whereas for modern and advanced society whose legal system has developed and the problems faced increasingly complex tend to resolve the dispute to legal institutions.

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