

# The Ontological Dimension of *Adat Badamai* in Legal Conflict Resolution: A Restorative Justice Perspective

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**Abstract:** *This study aims to dissect the ontological dimension of Adat Badamai in legal conflict resolution through the lens of restorative justice. The primary focus is to understand the essential nature of local values as a foundation for living law within the community. This is normative legal research employing conceptual and legal philosophy approaches. The analysis is conducted on secondary legal materials, including customary law literature and theories of justice. Data are analyzed qualitatively and descriptively to dissect the norms and values embedded within Adat Badamai. The findings indicate that ontologically, Adat Badamai is rooted in the values of balance and communality, representing the existential nature of law as a living state of social equilibrium rather than mere dogmatic rules. From a restorative justice perspective, this norm perceives legal violations not merely as breaches of statutory law, but as a disruption of human relations. Adat Badamai serves as a normative bridge that prioritizes victim restitution and social reconciliation through a consensus that is both morally and legally binding. Philosophically, Adat Badamai holds a position as an independent legal norm relevant to the Pancasila legal ideals. Strengthening this ontological dimension provides theoretical legitimacy for the implementation of restorative justice that is deeply rooted in Indonesia's national identity.*

**Keywords:** *Adat Badamai, Law Conflict, Law Philosophy, Ontological Dimension, Restorative Justice.*

## Introduction

Indonesia is a country based on the rule of law, as stated in the Indonesian Constitution, namely the 1945 Constitution, which often refers to this article as indicating that all state administration, government, and community life in Indonesia must be regulated and based on the law.

Social life requires humans to interact or establish relationships with one another in order to fulfill their needs. Every individual has rights and obligations that must be respected and honored by others. Therefore, rules are needed to govern activities in order to create order in society. The rules that bind society in this case are referred to as laws that are born in a country and bind citizens and everyone within the country's territorial

boundaries. The law is then enforced by state organs that have authority based on the constitution and legislation. (Bambang Sugeng A. S., 2013).

In dispute resolution, there are two types of resolution, namely litigation and non-litigation. Litigation takes the form of a trial, while non-litigation is the resolution of disputes outside of court. According to Sudikno Mertokusumo, litigation refers to the enforcement of law in concrete cases involving claims of rights, a function carried out by an independent body established by the state and free from any influence, which issues binding decisions. (Mertokusumo, 2018). Meanwhile, non-litigation dispute resolution refers to the resolution of disputes using methods outside of court or using alternative dispute resolution institutions.

Nowadays, many people tend to avoid litigation. This is because the process is very formal, time-consuming, costly, and does not necessarily result in a fair decision for both parties, so that in dispute resolution, the parties sometimes prefer non-litigation dispute resolution.

In positive law, we can find various forms of non-litigation dispute resolution, such as mediation, negotiation, arbitration, and ADR (alternative dispute resolution). Even judges in court always offer the parties the option of mediation before choosing to continue with the trial.

Resolving disputes through ADR has advantages over resolving disputes through litigation, including the voluntary nature of the process due to the absence of coercion, fast procedures, non-judicial decisions, confidential procedures, flexibility in determining the terms of dispute resolution, time and cost savings, a high probability of implementing agreements and maintaining working relationships. (Rengga Kusuma Putra, 2024)

Related to ADR, in Banjar society, there is a dispute resolution mechanism based on local wisdom called *adat badamai*, which is a local court-based dispute resolution process that prioritizes deliberation, consensus, and the restoration of social relations between the disputing parties. Substantively, *adat badamai* has strong similarities with the concept of Alternative Dispute Resolution in positive law. The convergence lies in the use of dialogue and consensus as the main instruments in conflict resolution. However, *adat badamai* is not only oriented towards conflict resolution, but also the restoration of relations between the two parties as a value of social equilibrium. The fundamental philosophical distinction is that while modern ADR is anchored in individualistic Western liberalism and transactional efficiency (win-win solution), *adat badamai* is driven by a communitarian and socio-spiritual paradigm. Furthermore, unlike the detached and neutral mediators found in modern mediation, the *Tatuha Kampung* in *adat badamai* possess inherent moral authority and existential responsibility to safeguard the harmony of the entire *bubuhan* (community).

*Adat badamai* is a compound word that means a peace effort that is carried out repeatedly and becomes an institutionalized custom in Banjar society. *Adat badamai* can be elevated to customary law when the community considers *badamai* to be something that must apply in Banjar customary society, because it is something that must be done (Hasan, 2012).

Within the framework of national law, particularly criminal law, there has been a paradigm shift from the classical criminal law paradigm of retributive justice to the

strengthening of restorative justice values in response to social developments. In fact, restorative justice values are strongly emphasized in the new KUHP (Kitab Undang-Undang Hukum Pidana).

This development shows that the criminal justice system in Indonesia is no longer solely retributive in nature, but rather focuses on restoring the consequences of criminal acts, both in terms of responsibility and compensation. In this context, the *Badamai* customary law finds its relevance both normatively and sociologically.

In fact, the principles of restorative justice are not new to Indonesian society, especially to the Banjar customary law community in South Kalimantan, which has long implemented the *Badamai* customary law system. An analytical integration reveals that *Adat Badamai* structurally operates through the exact metrics of restorative justice. This locally-based restorative justice demonstrates peace efforts that not only resolve conflicts legally, but also maintain social harmony in the community through living cultural values that are accepted by all. Analytically, the active role of *Tatuha Kampung* serves as a manifestation of community accountability, while the post-peace customary ritual acts as a cultural instrument for social reintegration. (Safira, 2025).

Based on this construction, it is interesting to examine further not only the functional aspects of *adat badamai* as a dispute resolution mechanism, but also its ontological dimensions and how *adat badamai* fits into the perspective of restorative justice. This is because dispute resolution systems are not only built on procedures, but also on basic assumptions about human beings, social relations, and the meaning of justice embraced by the communities that give rise to them.

## Methodology

In this study, the author uses normative legal research. Peter Mahmud Marzuki explains that normative legal research is a process of discovering legal rules, legal principles, and legal doctrines in order to answer legal issues that are faced (Marzuki, 2017).

The normative legal research method describes the perspective of the approach or type of legal research, the type of research, then discusses the legal research approach (when distinguished from the type of research), the nature of legal research, and then describes the sources and types of legal materials; the procedures or techniques for collecting legal materials; and how to process and analyze these legal materials (Erliyani, 2021). To sufficiently support the ontological claims made in this study, the selection of legal materials was specifically focused on documents with high historical and regulatory authority, such as the Undang-Undang Sultan Adam (UUSA) 1835 and modern restorative justice regulations.

There are several approaches in legal research. With these approaches, researchers will obtain information from various aspects regarding the issues they are trying to find answers to. Various approaches to problems used in normative legal research, which are necessary to clarify scientific analysis. (Erliyani, 2021). The approaches used in legal research are the statute approach, case approach, historical approach, comparative approach, and conceptual approach. (Marzuki, 2017).

This study uses the statute approach and the conceptual approach. The statute approach is an approach that is carried out by examining all laws and regulations related to

the legal issues being addressed. Meanwhile, the conceptual approach is based on the views and doctrines that have developed in legal science. By studying the views and doctrines in legal science, researchers will find ideas that give rise to legal definitions, legal concepts, and legal principles relevant to the content at hand. In this research, the legal materials were analyzed not merely for their procedural mechanics, but through conceptual to extract the underlying values of balance, communality, and kinship. Understanding these views and doctrines provides a foundation for researchers in constructing a legal argument to resolve legal issues (Gozali, 2021).

## Result and Discussion

The existence of customary law as a dispute resolution mechanism based on local wisdom cannot be separated from the constitutional legitimacy granted by the state to customary law. Within the framework of national law, recognition of customary law communities and their traditional rights is explicitly stated in the Undang-Undang Dasar 1945 specifically Article 18B paragraph (2), which states that “The state recognizes and respects special or unique regional government units as well as customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.” From there, *adat badamai* as a legal practice that lives and flows within Banjar society has gained legal legitimacy as part of the national legal system within the framework of legal pluralism.

In spite of this, within this pluralistic framework, a critical evaluation reveals a persistent structural tension between customary autonomy and the state's monopoly over penal authority. While regulations like Perpol No. 8/2021 or Perjak No. 15/2020 acknowledge restorative values, the ultimate authority to validate a settlement remains highly state-centric, risking the subordination of traditional institutions. Therefore, stronger affirmation and normative support from the national legal system is needed so that this customary dispute resolution mechanism, especially for the Banjar community, can continue to exist and be used optimally as a legal basis for maintaining social balance without being eroded by state hegemony.

*Badamai* customary law, as a manifestation of the local wisdom of the Banjar people, emphasizes the values of peace, deliberation, and kinship as the foundation for dispute resolution. The *Badamai* philosophy is not just a common social practice, but an informal legal system that plays a role in restoring social harmony. This pattern is very much in line with the principle of restorative justice that is now widely developed in modern law, especially one that places dispute resolution not only through formal legal mechanisms but also by prioritizing the restoration of relations between the disputing parties. (Safira, 2025)

According to Ahmadi Hasan in his dissertation, *adat badamai* is a form of dispute resolution commonly practiced by the Banjar community. *Adat badamai* also refers to the result of a deliberation or discussion process with the aim of reaching a decision to resolve an issue. (Hasan, 2007).

Looking at the development of criminal justice theory, which initially focused on the position of the perpetrator, it has continued to emphasize the important role of the victim. In the development of criminal justice thinking, a new philosophy of criminal justice has emerged that is oriented towards resolving criminal cases in a way that benefits all parties, including the victim, the perpetrator, and society. In resolving a criminal case, it is unfair to only consider the interests of one party, whether the perpetrator or the victim. Therefore, a theory of the objectives of punishment is needed that represents all aspects in the resolution of a case, including the victim, the perpetrator, and society. For this reason, a combination of theories is necessary (Muladi, 1995).

The restorative justice approach is a paradigm that can be used as a framework for criminal case handling strategies aimed at addressing dissatisfaction with the current criminal justice system. In the mechanism for resolving criminal cases using the restorative justice approach, the community's position is not limited to that of participants or victims. The community can be given a broader role to monitor the implementation of an agreement as part of the settlement of criminal cases. Through the restorative justice approach, it is hoped that recovery for victims can be realized, the objectives of punishment for perpetrators will be achieved, and community involvement can be achieved. Restorative justice is an alternative to achieving justice in accordance with the objectives of the law. (Flora, 2017).

Following the development of a penal orientation that places victims as an important part and objective of punishment, as in the theories of restitution, reparation, and compensation, thinking about punishment has moved towards a new orientation in which the resolution of criminal cases is beneficial to all parties, becoming the most current discourse today.

Restorative justice is a concept that responds to the development of the criminal justice system by emphasizing the need to involve the community and victims who feel marginalized by the mechanisms that operate within the current criminal justice system. On the other hand, restorative justice is also a new framework that can be used in responding to criminal acts by law enforcement and legal professionals. Handling criminal cases with a restorative justice approach offers a different perspective and approach in understanding and dealing with a criminal act.

Liebmann simply defines Restorative Justice as a legal system that “aims to restore the welfare of victims, perpetrators, and communities damaged by crime, and to prevent further violations or criminal acts.” (Liebmann, 2007)

Liebmann also provides the following basic principles of Restorative Justice: (Liebmann, 2007)

1. Prioritize support and healing for victims.
2. Offenders are responsible for their actions.
3. Dialogue between victims and offenders to reach understanding.
4. Efforts to properly assess the damage caused.
5. Offenders must be aware of how to avoid committing crimes in the future.
6. The community helps to integrate both parties, both victims and offenders.

Toni Marshal, in his article "Restorative Justice: An Overview," developed by Susan Sharpe in her book "Restorative Justice: A Vision for Hearing and Change," reveals five key principles of restorative justice, namely:

- a. Restorative justice involves full participation and consensus.
- b. Restorative justice seeks to heal the damage or harm caused by crime.
- c. Restorative Justice provides direct accountability from the perpetrator as a whole.
- d. Restorative Justice seeks to reunite community members who have been divided or separated due to criminal acts.
- e. Restorative Justice provides resilience to the community in order to prevent further criminal acts.

The Dakan Handbook on Restorative Justice Programs states that "Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies, and the community." (Setyowati, 2019)

From the above expert opinions, it can be concluded that the main objective of restorative justice is to create a fair trial. In addition, it is hoped that all parties, including the perpetrator, the victim, and the community, will play a major role in this process. The victim is expected to receive appropriate compensation, agreed upon with the perpetrator, to compensate for the losses and reduce the suffering experienced. In restorative justice, the perpetrator must take full responsibility so that they can realize their mistakes.

Law No. 1 of 2023 itself also implies restorative justice approaches, for example, the purpose of punishment in Article 51 point d, which states that punishment aims to resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace to society. Then, in Article 54 point j regarding considerations for punishment, it is mandatory to consider forgiveness from the victim and/or the victim's family.

In positive law regulations in Indonesia, there are many rules related to restorative justice, such as:

1. Surat Edaran Kapolri Nomot SE/8/VII/2018 No. SE/8/VII/2018 on the Application of Restorative Justice in the Settlement of Criminal Cases. Point 2 b states that: "The development of the law enforcement system and methods in Indonesia shows a tendency to follow developments in social justice, especially the development of the principle of restorative justice, which reflects justice as a form of balance in human life, so that offenders are assessed as having committed acts that destroy this balance. Thus, the case resolution model is an effort to restore that balance by imposing obligations on the perpetrator to acknowledge their mistakes, apologize, and restore the damage and losses suffered by the victim to their original state or at least to a condition resembling the original state, which can satisfy the victim's sense of justice."
2. Surat Keputusan Jendral Badan Peradilan Umum No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of Restorative Justice in the General Judicial System provides information on the principles of restorative justice. stating that the principle of restorative justice is one of the principles of law

enforcement in case resolution that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enforcement (Supreme Court Regulations and Supreme Court Circular Letters).

3. Peraturan Kejaksaan Republik Indonesia Number 15/2020 About Termination of Prosecution Based on Restorative Justice provides an understanding of Restorative Justice, which is the resolution of criminal cases by involving the perpetrator, victim, families of the perpetrator/victim, and other related parties to jointly seek a fair resolution with an emphasis on restoration to the original state, rather than retribution.
4. Peraturan Kepolisian Negara Republik Indonesia Number 8/2021 Regarding the Handling of Criminal Acts Based on Restorative Justice, which provides a definition of restorative justice as the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair resolution through reconciliation, with an emphasis on restoring the situation to its original state.

Thus, it can be said that in Indonesia itself, there has been a shift in the criminal law paradigm from retribution to restoration, in line with local values such as *adat badamai*.

In relation to *adat badamai* in the social practices of the Banjar community, *Adat Badamai* has proven to be effective as an alternative means of dispute resolution. Traditional leaders and communities remain committed to preserving these values so that they are not lost to the passage of time, making *Adat Badamai* not only a mechanism for dispute resolution but also a symbol of the unity and wisdom of the Banjar community. (Khairunnisa et al., 2025).

This mechanism focuses on a repeated mediation process, deliberation to reach consensus, and the formulation of a fair agreement that is acceptable to all parties to the dispute (win-win solution). Through *adat badamai*, conflict resolution is achieved relatively quickly, at low cost, without being constrained by formal procedures, and in a persuasive manner, making it easy for the parties to implement. Another advantage can be seen in the ability of *adat badamai* to reduce the potential for resentment and strengthen social cohesion, which collectively contributes to the realization of substantive and sustainable peace.

However, in the context of modernization and the dynamics of the national legal system, customary law faces significant challenges, particularly in relation to the limitations of formal recognition and its integration into the positive legal framework. Therefore, stronger affirmation and normative support from the national legal system is needed so that this customary dispute resolution mechanism, especially for the Banjar community, can continue to exist and be used optimally as a legal basis for maintaining social balance in the community.

*Adat badamai* itself with its local wisdom, generally resolves criminal cases procedurally by holding a meeting between the families of both parties, mediated by village elders or community leaders. Once a peaceful (win-win) solution has been reached, a celebration is held as an expression of gratitude by the parties for having reached an

agreement to make peace. This is in line with Article 21 of the Undang-Undang Sultan Adam (UUSA) of 1835, which reads: "*Tiap kampung kalau ada perbantahan isi kampungnja ija itu tetua kampungnja kusuruhkan membitjarakan mupaqat lawan jang tuha-tuha kampungnya itu lamun tiada djuga dapat membitjarakan ikam bawa ke hakim*".

Article 21 of the UUSA 1835 has been used as the basis for the norms and behavior of the Banjar community in resolving all disputes, including criminal cases, through family meetings between both parties with village elders or community leaders, followed by a celebration, forgiveness, and an agreement not to prolong feelings of resentment and hostility (Syaufi et al., 2021).

The UUSA, as a historical legal document for the Banjar community, is a source of law that has been in force since ancient times. One of the articles in the UUSA that is still valid today is "*adat badamai*" (customary peace). *Adat Badamai* has become a Banjar culture that has been preserved and maintained from generation to generation since its enactment in the Sultan Adam Law (1835). As stated in Article 3 of the UUSA: "*Perkara yang ketiga, tiap-tiap tatuha kampung kusuruhkan mamadai anak buahnya dengan bamufakat, astamiyah lagi antara kerabat supaya jangan banyak bicara dan perbantahan.*" (Ihsan, 2020)

The above article serves as the basis for village elders (*tatuha*) to advise their families and subordinates to always reach consensus and hold discussions so that disputes and conflicts do not arise (Ihsan, 2020). This article implies that in resolving conflicts, it is necessary to have a mediator who has the capacity and goal of reaching consensus, which is peace.

Within the conceptual framework of *adat badamai*, there are two fundamental dimensions that deserve in-depth analysis. First, *adat badamai* can be positioned as a product of legal culture that lives and develops in Banjar society, as well as a representation of the manifestation of the law in its social function as an instrument for dispute resolution. From this perspective, *adat badamai* is not merely a traditional practice, but a normative mechanism that gains social legitimacy through the internalization of values and collective compliance within society.

Second, *adat badamai* reflects the communal solidarity of the *bubuhan* community in maintaining collective dignity and pride in response to disputes. It functions as a mechanism for restoring social honor that has been disrupted by conflict, so that its resolution is not only oriented towards legal aspects, but also ethical and social dimensions. Given that society is constantly changing, where violations and crimes are an inherent reality in social life, the existence of *adat badamai* can be understood as a reflection of collective awareness to maintain and reconstruct social harmony. Therefore, the development and strengthening of this mechanism is relevant in maintaining the sustainability of a just and balanced social order.

*Adat badamai* itself was born and developed as a form of identity for the Banjar community, who adhere to the 4th principle as a guideline and foundation for life. This is certainly in line with the opinion of Fredrick Carl. Van Savigny, a figure of the historical school of thought, said that laws are not made but are born within the nation itself as a reflection of the soul or spirit of the nation (*Historische Rechtsschool*). (Ihsan, 2020)

When viewed from a more fundamental perspective, *adat badamai* cannot be understood merely as a social mechanism or normative construct, but rather as an entity with a strong ontological foundation in the structure of Banjar society. In this context, the existence of *adat badamai* is not something artificial or formally established by state authorities, but rather something that has grown and developed as an existential reflection of the community's desire to maintain social balance.

The custom of *badamai* is rooted in the basic assumption that conflict is viewed as a disturbance to the collective balance, not merely an individual violation of written norms. Therefore, the resolution is directed at restoring relationships and reconstructing harmony in society, not simply imposing sanctions. This is where its ontological dimension lies, in that law is viewed and understood as an instrument for maintaining social order oriented towards balance, rather than as a coercive tool of the state with a repressive character. The values of deliberation and consensus, which are in line with the fourth principle of Pancasila, show that *adat badamai* operates within an epistemic and ethical framework that places collectivity and collective wisdom as the main sources of legitimacy.

## Conclusion

Ontologically, *adat badamai* provides a legal representation as a living entity that grows and takes root in the collective consciousness of the Banjar community, which views conflict not merely as a normative violation, but as a disturbance to the balance of social relations. *Adat badamai* stands on the foundations of communality, deliberation, and the restoration of harmony as an existential reality that is jointly maintained. From a restorative justice perspective, *adat badamai* is not only compatible with the modern criminal justice paradigm, but has also substantially internalized the principles of victim recovery, perpetrator responsibility, and social reintegration. Thus, *adat badamai* has philosophical, sociological, and normative legitimacy as a living law that is relevant in the framework of legal pluralism and the Pancasila legal ideal.

It is necessary to strengthen the normative integration between the *adat badamai* mechanism and the national legal system through more explicit regulations and recognition of procedures in law enforcement practices, especially in certain cases that allow for a restorative approach. The development of a policy model based on local wisdom is also important so that *adat badamai* is not only preserved as a cultural symbol but also institutionalized adaptively in the legal system in Indonesia.

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