



Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes

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ABSTRACT

Inheritance disputes in Banjar customary society extend beyond material distribution and are closely connected to kinship relations, moral obligations, and communal harmony. When such disputes are resolved exclusively through state law, particularly the Compilation of Islamic Law (KHI), the outcomes often fail to accommodate the social and cultural realities of indigenous Muslim communities. Formal litigation, with its adversarial structure and procedural rigidity, may intensify conflict rather than restore family relationships. This study adopts a normative legal research design using conceptual, doctrinal, and comparative approaches to examine Banjar customary inheritance mechanisms, namely *bac'u'ur* (genealogical tracing), *basuluh* (moral and religious consultation), and *bapatut* (consensus-based deliberation). These mechanisms are analyzed through the perspectives of restorative justice and *fiqh al-aqalliyyat* as frameworks of contextual Islamic legal reasoning. The analysis relies on primary legal sources, including the 1945 Constitution, the KHI, and legislation on alternative dispute resolution, as well as secondary literature from legal anthropology and restorative justice studies, without employing empirical methods. The findings indicate that the Banjar *karakatan* system embodies restorative justice principles such as dialogue, collective responsibility, and relational repair. From the perspective of *fiqh al-aqalliyyat*, these practices constitute legitimate forms of Islamic legal reasoning that prioritize *maslahah*, *islah*, and social cohesion within plural legal settings. This study argues that Banjar customary inheritance resolution offers a normatively grounded model for integrating Islamic law, customary practices, and restorative justice within Indonesia's alternative dispute resolution framework, contributing to broader debates on legal pluralism and the contextual application of Islamic law.

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1. INTRODUCTION

Inheritance disputes in indigenous communities often go beyond material issues. They also involve issues of kinship relations, social status and cultural values that are rooted in the community structure (Adli, 2020a; Baihaqi, Kasdi, Farida, & ..., 2022). When universal state laws are applied in pluralistic local contexts, these complexities are often not accommodated fairly (Fatahullah, 2023). This leads to tensions between the formal legal system and customary law practices that live in the community.

Litigation in the courts, as the main mechanism in the national legal system, is often considered unsatisfactory in the context of resolving customary inheritance disputes. Its formalistic procedural character, high court costs, and win-lose verdicts exacerbate conflicts and damage family social cohesion. In indigenous societies that highly value harmony, such solutions are often seen as lacking the substance of justice.

This discrepancy shows the limitations of positive law in accommodating legal pluralism, particularly in the aspect of customary inheritance (Adli, 2020b; Andayani & Hariyati, 2020; Anshari, 2023). The national justice system tends to fail to understand the dynamics of kinship, the position of traditional leaders and the structure of customary rights that form the basis of inheritance distribution in various communities, including the Banjar community. This community has its own value system that is not always in line with the legal structure of the state.

In response to this inequality, there is a need for alternative approaches that are more contextual and adaptive. One approach that has gained widespread attention in the dispute resolution discourse is *restorative justice* (RJ). The RJ paradigm emphasizes conflict resolution through the restoration of relationships, the active involvement of all parties, and the deliberative development of solutions (Forsyth, 2022). These values are consistent with the practice of conflict resolution in indigenous communities, which prioritizes agreement and harmony, not punishment (Hopipah, 2023).

In the context of the Banjar community in South Kalimantan, the RJ principle has long been embedded in customary resolution practices, which are carried out through three main stages: *bacu'ur*, *basuluh* and *bapatut*. These three stages form a collective, participatory and reconciliation-oriented dispute resolution system. This makes RJ not just a theory adopted from outside, but a framework that has been internalized in Banjar customary law.

Locality plays an important role in shaping the nature of conflict resolution. Only by understanding local social structures, cultural values and kinship systems can fair and sustainable solutions be formulated (Hasan, 2012). In Banjar society, kinship structures even influence the distribution of inheritance, which in practice is the result of a synthesis between Islamic and customary norms. Here are some examples of inheritance disputes in Indonesia that have been highlighted by the media, accompanied by an analysis of the causes of the conflict and its resolution:

Table 1. of Inheritance Dispute Cases in Indonesia (Names Have Been Anonymized)

Case Description	Parties Involved	Type of Dispute	Resolution Process	Source
Dispute between a mother and her four biological children over inheritance in Yogyakarta	Mother vs. Four biological children	Dispute over inheritance distribution	Legal process in District Court	tvOne News
Heir's lawsuit against step-siblings in a prominent business family	Child from second wife vs. five step-siblings	Inheritance rights over family business	Lawsuit in Jakarta District Court	Kompas
Will-related dispute in the family of a public figure	Public figure vs. family members	Validity and execution of a will	Legal process in court	CNBC Indonesia
Three children suing their biological mother over inheritance in Baubau	Three biological children vs. biological mother	Ownership of house and land	Religious Court	Kompas
Land inheritance dispute between a family and a government institution in South Tangerang	Heirs vs. government institution	Ownership of inherited land	Legal process and mediation	Kompas

Source: tvOne News, Kompas, CNBC Indonesia, Kompas (2020-2025)

The table 1. above illustrates that inheritance disputes in Indonesia occur not only among ordinary citizens but also within the families of public figures and major business owners. The issues range from conflicts among biological siblings and disputes with parents to clashes with government institutions over claims to inherited land.

Most of these disputes are triggered by disagreements over inheritance distribution, unclear wills, or overlapping ownership documents. The majority of cases are resolved through litigation in either the District Court or the Religious Court. However, some cases also involve attempts at mediation or peaceful settlement, though such efforts may sometimes end in deadlock. This reality highlights the urgency of establishing a fair, transparent, and deliberation-based inheritance system, especially within large families and in matters involving immovable assets such as land.

This confirms that the resolution of inheritance disputes in Banjar society cannot be fully reduced to a formal legal framework. An approach that accommodates local flexibility and values is required. This is where it is important to examine in depth the mechanisms of *bacu'ur*, *basuluh* and *bapatut* as a unique and structured restorative resolution framework. Starting from this background, the problem formulation in this research includes two main points. First, how does the *bacu'ur-basuluh-bapatut* model in Banjar customary law represent the principles of restorative justice? Secondly, to what extent can this mechanism be a more effective alternative to the litigation approach in resolving inheritance disputes?

The novelty of this research lies in the construction of a three-stage model that is not only conceptual, but also reflective of the practices that live in the community. Unlike previous studies that discuss RJ in general or customary inheritance law partially, this research builds a bridge between the two through structural-functional analysis.

Bacu'ur, as an early stage, is not just a genealogical tracing, but also a space to restore dialog and rebuild trust between parties (Asfa, 2023). This is in line with RJ principles such as *inclusivity* and *storytelling*, where personal narratives become part of the recovery process. *Basuluh*, the stage of seeking advice from traditional or religious leaders, reinforces the moral and spiritual dimensions of the resolution process (Hayati, 2016). The role of these leaders represents the values of *voluntary participation* and *neutral facilitation*, which are also central to the RJ process (Adrian-Kalchhauser, 2020)

The culminating stage, *bapatut*, is a deliberative forum that results in a decision based on mutual consensus. Unlike coercive court decisions, *bapatut* allows the parties to create a solution that is not only socially legitimate, but also restores relations between families.

These three stages form a settlement system that not only procedurally resolves the conflict, but also repairs the social bonds that have been damaged by the dispute. This element of restoration is often absent in formal litigation processes (Gade, 2021; Pelu, Syaikh, & ..., 2019).

This study offers a conceptual and normative contribution by situating Banjar customary inheritance dispute resolution mechanisms within an integrated framework of *fiqh al-aqalliyat* and restorative justice. Previous studies have generally examined Banjar customary inheritance law as a self-contained local practice or explored restorative justice primarily within the context of criminal law and modern dispute resolution, without a direct engagement with contemporary Islamic legal reasoning (Hududillah, Nikmah, Hamdi, & Bawana, 2025). At the same time, *fiqh al-aqalliyat* has most often been applied to issues faced by Muslim minorities in Western societies, and has therefore rarely been used to analyze indigenous Muslim communities in Indonesia that operate within plural legal environments (Kurniawan, 2025). This study addresses that gap by demonstrating that *fiqh al-aqalliyat* is not limited to situations of demographic minority, but is also relevant as a form of contextual *ijtihad* for Muslim communities confronted with constraints in the formal application of Islamic law. Through an analysis of the stages of *bacu'ur*, *basuluh*, and *bapatut*, this research shows how the values of *maslahah*, *islah*, and the restoration of social relations are articulated in living customary practices.

This approach affirms that consensus-based settlements in inheritance disputes should not be reduced to deviations from Islamic law, but rather understood as expressions of Islamic legal reasoning oriented toward the objectives of the Sharia. Accordingly, this study not only broadens the application of *fiqh al-aqalliyat* within Islamic family law scholarship, but also enriches discussions of restorative justice in the context of civil and customary law (Riandi & Rusdiah, 2025). An additional contribution lies in linking Banjar customary practices to alternative dispute resolution frameworks that possess normative legitimacy both socially and religiously. Overall, this research contributes to a deeper understanding of Islamic law as a living and adaptive normative system capable of responding substantively to the complexities of multicultural societies.

2. METHODS

This study employs a normative legal research approach, which focuses on analyzing legal norms, principles, and doctrines relevant to the object of inquiry. The primary aim is to assess the compatibility of the Banjar customary inheritance settlement mechanism comprising the stages of *bacu'ur*, *basuluh*, and *bapatut* with the principles of restorative justice. Since the research is theoretical and does not involve empirical data collection, the normative method is applied consistently to interpret customary law as a living system of norms (Manzilati, 2017).

To construct the analysis, this study integrates three complementary normative approaches: conceptual, doctrinal, and normative-comparative. The conceptual and doctrinal approaches are used to examine legal reasoning within the 1945 Constitution, the Compilation of Islamic Law (KHI), and Law No. 30/1999 on Arbitration and ADR. The normative-comparative approach is employed to juxtapose the Banjar *karakatan* mechanism with both national inheritance law standards and global restorative justice practices, as well as with selected indigenous dispute-resolution traditions (Dekker & Breakey, 2016).

The legal materials consist of primary sources—including the 1945 Constitution (Article 18B(2)), the KHI, the ADR Law, and documented Banjar customary deliberations—and secondary sources such as literature on customary law, legal anthropology, and restorative justice theory (Christiani, 2016). These materials have been consolidated into a concise corpus emphasizing relevance over exhaustive description.

Data analysis is conducted through a descriptive-analytical technique, which systematically outlines the stages of *bacu'ur*, *basuluh*, and *bapatut* and links each stage to core restorative justice principles. The alignment is structured as follows:

1. *Bacu'ur*: genealogical narration, inclusive participation, and reconstruction of relational identity;
2. *Basuluh*: moral mediation, community guidance, and reinforcement of social responsibility;
3. *Bapatut*: consensus building, reparative decision-making, and restoration of family cohesion.

This analysis is supplemented by a comparative-values perspective to illuminate intersections and divergences between Banjar customary norms and broader national or international legal frameworks. To strengthen analytical validity, the study employs written-source triangulation, limited strictly to the comparison of statutory texts, customary manuscripts, and academic literature. This clarification ensures methodological consistency and avoids the implication of fieldwork-based triangulation, which is not part of this research design. Brief critical reflections inspired by feminist, pluralist, and postcolonial perspectives are incorporated only to the extent necessary to avoid normative bias in interpreting customary doctrines (Hayati, 2016).

The main limitation of the study lies in the scarcity of formally documented Banjar customary records, necessitating reliance on legal anthropology literature and previously published case studies. Consequently, the findings are analytical-normative in nature, not intended for empirical generalization, but rather to offer a conceptual template that may be applied or further developed in other indigenous contexts. Through this methodological framework, the research contributes conceptually and theoretically to strengthening the position of customary law within civil dispute resolution, especially in inheritance matters, in Indonesia's pluralistic legal landscape.

3. RESULTS AND DISCUSSION

History of the Banjar Community in Inheritance and Settlement Issues

The Banjar people, originally from South Kalimantan, have a unique inheritance system that is influenced by three sources of law: customary, Islamic and national. Before Islam entered, inheritance distribution was based on flexible customary law, where decisions were left to the deliberation of the family and village elders. After Islam spread, Islamic inheritance law (*faraidh*) began to be applied, but did not completely replace customary traditions. The two systems blended harmoniously, with the division of inheritance referring to Islamic law but still considering family values and common interests (Hafidzi, 2020).

The inheritance system within Banjar society reflects a long-standing interaction between pre-Islamic customary norms and Islamic legal principles. Historically, inheritance distribution was governed by flexible customary deliberations led by elders, while the arrival and gradual adoption of Islam introduced *faraidh* rules (Firdaus, 2015; Riandi & Rusdiah, 2025). Rather than replacing the earlier system, Islamic norms were integrated into existing customary practices, producing a hybrid model. The persistence of this mixed system is not merely historical; it is sustained by two key factors. First, customary norms remain flexible, enabling families to adapt inheritance outcomes to social needs and kinship obligations. Second, religious legitimacy strengthens community acceptance, as decisions endorsed by ulama or based on Islamic reasoning are perceived as morally binding. These two forces cultural adaptability and religious authority explain why Banjar inheritance practices continue to synthesize state, Islamic, and customary principles (Fatahullah, 2023).

The process of resolving inheritance issues in Banjar society usually starts with a family meeting (*bapatut*). The extended family gathers to discuss the division of property, led by a respected figure, such as a traditional elder or ulama. In the event of a dispute, the deliberation focuses on finding a fair solution without damaging the relationships between family members. This approach reflects the principle of *gotong royong* and respect for each party's rights, both according to customary law and religion (Ariyani, Rahman, & Aziza, 2023).

Traditional and religious leaders play an important role in resolving inheritance disputes. A *pambakal* (customary chief) or *ulama* (religious scholar) is often the mediator who helps families reach an agreement. They ensure that the division of inheritance follows Islamic rules, such as a son's right to twice a woman's share, but also take into account special circumstances, such as economic need or a person's service to the family. If there is disagreement, they encourage peace by prioritizing family spirit (Muzainah, 2022).

In some cases, complex inheritance disputes may be brought to the religious court or local adat institutions for a more formal decision. However, the Banjar community tends to avoid legal action if it can be resolved within the family. For example, if there is a dispute between siblings, the family will try to find a solution through open discussions, even by allocating a portion of the property for mutual benefit, such as the cost of caring for the elderly or the education of orphans (Assaad, Qudsy, Hasyim, & ..., 2022; Ipansyah, Mahmud, Ruslan, & Hafidzi, 2021).

The settlement of inheritance in Banjar society reflects a balance between customary, religious and national law. Although Islamic law provides clear rules on the division of property, family values remain the main foundation. Deliberation, respect for elders, and maintaining harmonious

social relations are prioritized. In this way, the Banjar community not only upholds justice in inheritance but also maintains strong bonds of brotherhood between family members.

Tensions between State and Customary Law in Inheritance Disputes and the Urgency of Karakatan as an Integrated Restorative System

The resolution of inheritance disputes in Banjar society reflects the ongoing tension between the state legal system and customary law. While national law, particularly through the Compilation of Islamic Law (KHI), offers a uniform framework of standards, it often fails to accommodate the complexity of kinship structures and communal ownership principles underlying Banjar customary law (Thontowi, 2021). This tension leads to normative confusion, with heirs often filing claims through both formal courts and customary institutions simultaneously.

Obstacles also arise in jurisdictional practice. Although Constitutional Court Decision No. 35/PUU-X/2012 theoretically protects the existence of customary law, in reality, district courts often ignore customary procedures when handling inheritance cases. Decisions issued tend to be legalistic, but can contradict cultural norms that live in the community, such as the matrilineal principle in some Banjar lines of inheritance that is not recognized in the formal division (Suparto, 2019).

The Banjar's bilateral but matrilineal kinship structure requires a settlement mechanism that recognizes the role of *bubuhan* - the extended family *network* - in every process. A formal legal system with a narrow division of actors between plaintiff and defendant is not sufficient to address this social demand. In contrast, customary mechanisms such as *bacu'ur*, *basuluh* and *bapatut* are able to fully engage social networks in the mediation process. In the adat mechanism, the first stage is *bacu'ur*, which aims to trace the family tree through oral narration (*tutur*). This process involves a senior customary figure (tuan guru) who remembers and conveys family history for up to seven or nine generations. More than just verifying the validity of inheritance rights, *bacu'ur* becomes an arena for reconstructing collective identity and a tool for reconciliation through reminders of blood ties, in line with the concept of storytelling as a restorative practice. In addition to its legal function, *bacu'ur* has a spiritual dimension (Mohlis, 2025).

Restorative Justice in Banjar Customary Inheritance: Karakatan within a Plural Legal Framework

Within adaptive Islamic legal practices, particularly in minority or structurally constrained contexts, *maqāṣid al-sharīʿah* functions as a normative anchor that stabilizes legal reasoning amid contextual flexibility. Rather than serving as an abstract ethical framework, *maqāṣid* operates as an evaluative criterion through which adaptive strategies such as institutional accommodation, legal substitution, and procedural modification are assessed for their normative legitimacy. In this sense, *maqāṣid* delineates the boundary between justified adaptation and impermissible legal dilution.

Empirical practices in marriage, inheritance, and waqf demonstrate that adaptive mechanisms grounded in *taysīr* and *rafʿ al-ḥaraj* remain normatively valid only insofar as they preserve the core objectives of Islamic law, particularly the protection of lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and legal order (*ḥifẓ al-niẓām*). For instance, civil registration of Islamic marriages or the institutionalization of waqf under secular legal entities does not constitute a departure from *Sharīʿa*

norms, provided that these measures secure rights, prevent harm, and ensure continuity of religious obligations (Kamali, 2008, 2012). Here, *maqāṣid* acts as a stabilizing reference point, preventing adaptive reasoning from collapsing into pragmatic legal pluralism.

In the Indonesian colonial context, *maqāṣid al-sharīʿah* similarly functioned as an implicit normative compass guiding Muslim legal responses to colonial legal domination. Although the Dutch colonial administration administratively subordinated Islamic law to colonial courts and regulations, Muslim communities consistently oriented their adaptive practices toward preserving essential religious and social interests. The selective engagement with colonial legal mechanisms such as registering waqf assets or accommodating procedural constraints in family law can thus be read as *maqāṣid*-based compliance rather than acquiescence. This historical pattern reinforces the argument that *maqāṣid* provides continuity across time, linking colonial adaptations with contemporary *fiqh al-aqallīyyāt*. The effectiveness of the Banjar custom-based dispute resolution system - through *bacu'ur*, *basuluh* and *bapatut* - does not automatically guarantee formal recognition in the national legal system. While this framework has proven to be functional and responsive to the local context, structural challenges still hinder its integration into the state legal system. First, the absence of standardized documentation recording customary processes and decisions makes formal legitimacy difficult to uphold. Second, the stigma of customary law as a "primitive" or non-modern system is still strong among the bureaucracy and judiciary (Thontowi, 2021). Third, there are overlapping jurisdictions between adat mechanisms and religious courts, especially in inheritance disputes which are formally under the authority of Islamic religious courts.

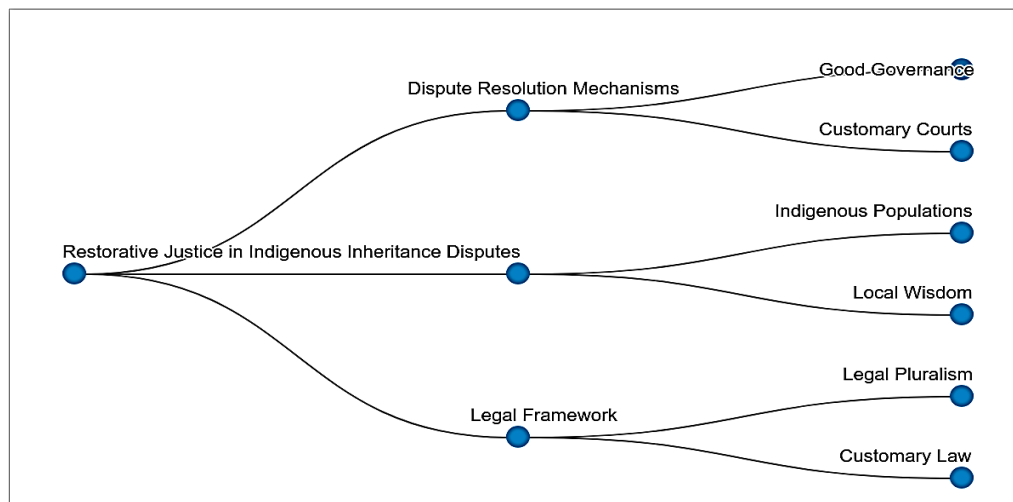


Figure 1. Concept Map of Restorative Justice in Indigenous Inheritance

source: researcher

This concept map (figure 1) maps three main clusters that show the interdisciplinary dimensions of restorative approaches in the context of customary inheritance, namely: dispute resolution mechanisms, the legal framework, and the socio-cultural dimensions of indigenous peoples. Each cluster shows specific relevance that intertwines and forms a system of thought that supports this approach.

The first cluster is Dispute Resolution Mechanisms, which includes the concepts of *customary courts* and *good governance*. Customary courts, as part of a community-based resolution system, play an important role in resolving disputes with principles rooted in local values. In this sense, restorative approaches are not separate from such systems, but rather integral to the way communities administer justice. This relationship shows that restorative justice living within indigenous communities not only resolves disputes, but also contributes to the strengthening of good governance, by encouraging participation, transparency and social accountability.

The second cluster is the Legal Framework, which contains two main aspects: *legal pluralism* and *customary law*. Legal pluralism emphasizes that the legal system in Indonesia, and many ethnically diverse countries, is not singular. State law, religious law and customary law coexist and often intersect. Inheritance disputes are at the intersection of all three. This is where restorative justice becomes a bridge - filling the gap between legal positivism and the values that live in society. Customary law in this case is not only a system of norms, but also a resolution mechanism capable of restoring social relations damaged by conflict, which cannot be reached by formal judicial decisions.

Meanwhile, the third cluster highlights the cultural and social dimensions, through the elements of *indigenous populations* and *local wisdom*. The existence of indigenous peoples is the focus of the restorative approach because it is only in the context of such communities that the values of reconciliation and collective integrity remain firmly in place. Traditional legacies such as *karakatan* in the Banjar community - consisting of the stages of *bacu'ur*, *basuluh*, and *bapatut* - are manifestations of how local wisdom structures a dialogic, participatory, and consensus-based settlement model. In this framework, restorative justice is not an imported concept, but a form of re-articulation of local mechanisms that have long lived in society.

This concept map (table 1) underscores the importance of adopting restorative approaches rooted in local culture, especially in resolving inheritance issues in indigenous communities. The presence of customary communities, customary courts, legal pluralism and good governance principles confirm that restorative justice-based conflict resolution is an approach that is not only socially legitimate, but also has the potential to be formally recognized within the national legal framework.

Thus, this visual shows that restorative justice in customary inheritance disputes should be seen as a nexus of interactions between local values, customary settlement systems and national legal reform opportunities. It is not only an alternative to litigation, but also an affirmation of diverse legal systems and inclusive and humane justice practices.

Table 2. Conceptualization of Karakatan in Restorative Justice Framework and Normative Integration

Stages of Karakatan	Social and Cultural Functions	Compliance with Restorative Justice Principles	Potential Integration into the National Legal System
<i>Bacu'ur</i> (genealogical tracing)	Establishing a family tree, identifying kinship relationships (<i>bubuhan</i>), opening space for dialogue and building a sense of community.	- Storytelling and inclusive dialog - Recovery of collective memory - Reconstruction of social relations	- Can be recognized as expert testimony or genealogical evidence in court or BPN mediation - Supported by Village Law and Perma No. 1/2016
<i>Basuluh</i> (moral advice and mediation)	The delivery of traditional and religious advice by community leaders as arbiters; encouraging moral awareness, <i>badamai</i> , and <i>ishlah</i> .	- Moral mediation - Social responsibility (S. R. Braithwaite, Selby, & Fincham, 2011) - Reintegrative shaming and active participation	- Can be formalized as a customary mediation stage in formal ADR - Certification of customary mediators for legal recognition
<i>Bapatut</i> (consensus)	A final deliberative forum that results in a collective decision; creates an agreement and restores relationships; ends with the ritual of <i>babarakatan</i> .	- Consensus and symbolic reparations - Reconciliation and recognition of victims' rights - Collective participation of the whole community	- The result can be recorded as a deed of peace (Article 1851 BW) - Integrated into agrarian mediation system (Permen ATR No. 21/2020)
<i>Karakatan</i> system (<i>bacu'ur-basuluh-bapatut</i>)	The customary dispute resolution system is based on the values of deliberation, social harmony and restoration of family relations.	- Realizing RJ principles: dialogue, responsibility, reparation, reintegration. - Community-based recovery	- Potential to become a local wisdom-based ADR model - Special regulations are needed for procedural legalization

Source: Author's conceptual synthesis based on Banjar customary law studies and restorative justice literature

From a conceptual perspective, Table 2 demonstrates that the Banjar customary dispute resolution mechanism does not merely align with restorative justice principles, but also enriches restorative justice theory itself. In many Western restorative justice models, the restoration of relationships is primarily operationalized through dialogic processes and procedural mediation, while the emotional and spiritual dimensions of healing tend to remain implicit and unsystematized. By contrast, the Banjar model institutionalizes emotional and moral restoration through culturally embedded rituals such as *badamai* and *bapatut*. These practices transform reconciliation from a purely communicative process into a socially and symbolically structured experience of healing (J. Braithwaite, 2021). As a result, restorative justice is expanded beyond its procedural orientation to become a more anthropologically grounded and context-sensitive framework.

Based on these findings, there are several policy recommendations that can be proposed. First, there needs to be a certification system for *panghulu* or traditional leaders to be recognized as sworn genealogists, so that the results of *bacu'ur* can have the strength of legal evidence. Second, the development of a hybrid court model that combines formal and traditional ADR mechanisms (adat-ADR hybrid courts) should be encouraged, at least in areas with active adat communities. Third, it is important to formulate standardized recording protocols for customary mediation processes and outcomes so that they can be audited and gradually integrated into the legal system (Sukriono, Sudirman, Rapita, Al Atok, & Bramantya, 2025; Yasri et al., 2024).

In addition to being a practical reference, the Banjar model can also strengthen the argument in pluralistic legal theory that legality lies not only in the existence of written norms, but also in social legitimacy gained through community consensus and practice. In this context, *bapatut* is not just a customary deliberation, but a form of legal deliberation that produces a new norm that is lived and adhered to (Abduh & Hanafiah, 2021; Ahyat, 2015).

The following table is an application of the concept of *karakatan* to out-of-court settlement of inheritance disputes, showing the practical function of each stage, the resulting form of settlement, and the advantages over litigation. The table is applicative and demonstrates how *kinship* is operationalized in the context of adat-based ADR (Alternative Dispute Resolution) for inheritance disputes:

Table 3. Application of Karakatan Stages to Customary Inheritance Disputes Outside the Court

Karakatan Stage	Application in Inheritance Disputes	Type of Settlement	Advantages Over Litigation
<i>Bacu'ur</i> (Genealogy tracing)	<ul style="list-style-type: none"> - Tracing blood relations between heirs - Determining who is a legal heir according to custom - Compiling family trees up to the 3rd or 4th generation 	<ul style="list-style-type: none"> - Clarification of beneficiary status - Rejection of false claims - Strengthening of genealogical evidence 	<ul style="list-style-type: none"> - Avoiding conflict between extended families - Replacing formal documents with social validation - Reducing the cost of proof

<i>Basuluh</i> (Advice from traditional/religious leaders)	<ul style="list-style-type: none"> - Traditional leaders/ulamas give papadah to the disputing parties - Emphasis on the value of <i>badamai, isblah</i>, and moral obligation 	<ul style="list-style-type: none"> - Admission of guilt by one of the parties - Restoration of family honor - Inheritance distribution suggestions based on social justice values 	<ul style="list-style-type: none"> - Avoiding win-lose stigma - Restores relationships between heirs - Lowers emotional escalation
<i>Bapatut</i> (Consensus deliberation)	<ul style="list-style-type: none"> - Joint deliberation involving the whole family (<i>bubuhan</i>) - Resulting in an agreement on the division of inheritance or compensation 	<ul style="list-style-type: none"> - Peaceful agreement in the form of: - Land division - Grants between relatives - Non-material compensation - Reconciliation ritual (<i>babarakatan</i>) 	<ul style="list-style-type: none"> - Results are final and socially binding - Does not require an appeal process - Participatory and without high legal costs
Karakatan System (Bacu'ur - Basuluh - Bapatut)	<ul style="list-style-type: none"> - Structured and phased approach to customary inheritance conflict resolution 	<ul style="list-style-type: none"> - Sustainable settlement with social support - Can be legalized through written agreement or village peace deed 	<ul style="list-style-type: none"> - Prevent long-term conflict - Maintain family integrity and cultural heritage - Flexible, fast and based on local values

Source: Author's analytical synthesis based on Banjar customary inheritance practices and restorative justice-oriented legal literature.

Table 3 illustrates the practical application of the *karakatan* stages *bacu'ur*, *basuluh*, and *bapatut* in resolving inheritance disputes outside formal judicial proceedings. The table does not represent a compilation of individual empirical cases, but rather an analytical model constructed by the author based on documented Banjar customary inheritance practices and relevant normative legal frameworks. Each stage reflects a functional role within a structured customary dispute resolution process, demonstrating how genealogical clarification, moral mediation, and consensus-based deliberation collectively produce socially binding and sustainable settlements. This model highlights the capacity of *karakatan* to operate as a customary-based alternative dispute resolution mechanism that prioritizes relational restoration, family cohesion, and social legitimacy over adversarial outcomes.

Adaptive Islamic Jurisprudence and Customary Inheritance: A *Fiqh al-Aqalliyāt* Perspective

From the perspective of contemporary Islamic jurisprudence, the Banjar customary inheritance practices particularly those emphasizing family deliberation and substantive fairness can be analytically situated within the framework of *fiqh al-aqalliyāt* (Sahidin & Rahmadi, 2021). This jurisprudential approach emerged in response to Muslim communities living within legal, social, and cultural systems not fully governed by classical Islamic law. *Fiqh al-aqalliyāt* prioritizes

contextual legal reasoning grounded in *maqāṣid al-shari'ah*, the prevention of harm (*raf' al-ḥaraj*), and the preservation of social cohesion. Accordingly, contextual adjustments to the formal application of *farā'id* should not be interpreted as deviations from Islamic law, but rather as legitimate forms of adaptive *ijtihad* aimed at safeguarding familial harmony and communal stability (Aziz, 2024).

The findings demonstrate that *karakatan* functions as a deliberative restorative mechanism through which Islamic normative values and Banjar customary law interact constructively. This practice aligns with the principles of *fiqh al-aqalliyāt*, which recognizes *'urf* (local custom) as a valid legal consideration insofar as it does not contradict the overarching objectives of Islamic law. In the Banjar context, inheritance distribution through consensual family agreements reflects a commitment to relational justice rather than rigid distributive formalism. Such an approach underscores that justice is pursued not solely through mathematical entitlement, but through the preservation of kinship, mutual consent, and long-term social harmony values deeply embedded in both Islamic ethical reasoning and local customary traditions.

By interpreting Banjar inheritance practices through the lens of *fiqh al-aqalliyāt*, this study advances the discourse on Islamic law beyond a purely textual–normative paradigm toward a contextual and restorative jurisprudential model. This integration demonstrates that Islamic law possesses internal mechanisms for adaptability within legally plural societies without compromising its theological legitimacy. The study's contribution lies in positioning customary-based restorative justice not as an alternative to Islamic law, but as an empirically grounded manifestation of contemporary Islamic adaptive jurisprudence. In this respect, *fiqh al-aqalliyāt* provides a critical normative bridge linking indigenous practices, restorative justice principles, and Islamic legal thought.

The Potential of a Normative Framework for Customary-Based ADR

To date, the Indonesian legal system has not fully accommodated *customary-based ADR* mechanisms within an operational normative legal framework (Suryandi, n.d.). Law No. 30/1999 on Arbitration and Alternative Dispute Resolution (APS Law) does provide a legal basis for mediation and arbitration practices, but tends to be dominated by formal, secular and contractual models. This results in the absence of explicit recognition of local value-based forms of settlement, such as *bacu'ur*, *basuluh*, and *bapatut* in the Banjar tradition. As a result, the resolution of inheritance disputes through customary channels is often not recognized or considered invalid by the formal justice system because it does not have the same legal force as a court decision.

The lack of a legal basis creates a gray area in the legal system, where customary settlements that have been accepted by the community can still be legally challenged or ignored. When the outcomes of adat mechanisms and court decisions conflict, this not only creates normative confusion, but also risks creating new conflicts and legal uncertainty for the parties, especially in inheritance disputes involving land and property.

Table 4. Comparison of Court vs. Non-Court Dispute Resolution

<i>Aspect</i>	<i>Religious Court (Litigation)</i>	<i>Non-Court (Family/Customary)</i>
<i>Legal Basis</i>	Islamic law & national statutes	Customary norms & family agreement
<i>Procedure</i>	Formal lawsuits and court proceedings	Informal deliberation and mediation
<i>Binding Authority</i>	Legally binding	Socially/morally binding
<i>Time & Cost</i>	Often longer and more expensive	Generally faster and lower-cost
<i>Third-Party Involvement</i>	Judges, official mediators	Community elders, village heads, religious figures

Source: Author's comparative and normative analysis based on Indonesian inheritance law, alternative dispute resolution regulations, and customary law literature, drawing upon the Compilation of Islamic Law (KHI), Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, Article 18B(2) of the 1945 Constitution, Constitutional Court Decision No. 35/PUU-X/2012, and Banjar customary law studies (Hasan, 2012; Hayati, 2016; Hafidzi, 2020).

Table 4 presents a normative comparison between court-based litigation and non-court family or customary dispute resolution mechanisms in the context of inheritance disputes. This comparison is developed through a doctrinal and conceptual analysis of Indonesian positive law and living customary law practices, rather than through empirical case measurement. The table illustrates that while litigation before the Religious Court primarily offers formal legal certainty and enforceability, non-court mechanisms tend to emphasize relational justice, social legitimacy, and cultural appropriateness. This distinction confirms the complementary, rather than contradictory, relationship between court and non-court dispute resolution within Indonesia's plural legal system, and further underscores the relevance of customary-based mechanisms such as *karakatan* as context-sensitive alternatives to adversarial litigation.

However, there is a significant opportunity to give formal recognition to the Banjar's customary dispute resolution mechanism. Constitutionally, the basis for such recognition has been affirmed through Article 18B paragraph (2) of the 1945 Constitution as well as Constitutional Court Decision No. 35/PUU-X/2012, which affirms that the existence of customary law communities and their mechanisms must be respected as long as they are alive and operating within the community. This means that the *karakatan* mechanism, *which* consists of the stages of *bacu'ur*, *basuluh*, and *bapatut*, deserves equal recognition as part of a legitimate dispute resolution system.

In addition, the Compilation of Islamic Law (KHI) as the main reference in inheritance cases also opens up opportunities for the integration of customary principles into formal law, as many values are in line between Islamic teachings on *ishlah* (peace) and the Banjar tradition of *badamai*. From the perspective of contemporary Islamic jurisprudence, the integration of customary-based ADR mechanisms such as *karakatan* into the formal legal system can be normatively justified through the framework of *fiqh al-aqalliyāt*. This approach recognizes the legitimacy of contextual legal adaptations in socially plural environments, particularly where the rigid application of formal legal rules may generate social harm or undermine communal harmony. In inheritance disputes, *fiqh al-aqalliyāt* provides an Islamic legal rationale for accommodating deliberative and consensus-based mechanisms, as long as they remain aligned with the objectives of Islamic law (*maqāṣid al-sharī'ah*), especially the preservation of family unity and the prevention of conflict. Accordingly,

the formal recognition of *karakatan* does not contradict Islamic inheritance law as reflected in the KHI, but rather complements it by offering a restorative pathway consistent with Islamic ethical reasoning.

4. CONCLUSION

This study examines inheritance dispute resolution in Banjar society by focusing on *karakatan* as a customary-based restorative justice mechanism operating within a legally plural context. The findings confirm that *karakatan* plays a central role in resolving inheritance disputes through family deliberation, consensus-building, and relational justice, while remaining normatively connected to Islamic legal values. Rather than challenging Islamic inheritance law, *karakatan* functions as a socially embedded mechanism that prioritizes family cohesion and communal harmony, consistent with the ethical objectives of Islamic jurisprudence.

By situating Banjar inheritance practices within the framework of *fiqh al-aqalliyāt*, this study addresses the research objective of explaining how Islamic law adapts to social and legal plurality. The contextual application of *farā'id* observed in *karakatan*-based settlements reflects a form of adaptive Islamic legal reasoning grounded in *maqāṣid al-shari'ah*, the prevention of harm, and the recognition of valid local custom (*urf*). This finding supports the argument advanced in the article's title and abstract that restorative justice rooted in customary practices can be understood as an integral part of contemporary Islamic jurisprudence rather than as a departure from it.

In line with the article's analytical focus and stated contribution, this study advances scholarly discussions on Islamic law, restorative justice, and legal pluralism by demonstrating the normative compatibility between indigenous dispute resolution mechanisms and Islamic legal thought. Furthermore, the findings suggest that integrating *karakatan* into Indonesia's broader dispute resolution framework is not merely a procedural innovation but a substantive step toward culturally responsive legal reform. Such integration reinforces the relevance of restorative justice in inheritance disputes and highlights the potential of living customary law to inform the development of a pluralistic and socially grounded legal system.

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