

# E-Musyawarah: Innovative ADR for resolving administrative disputes outside the court from the perspective of Lawrence M. Friedman's legal system theory

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**Abstract:** The continuous development of administrative disputes has highlighted the need for Alternative Dispute Resolution (ADR) to resolve these disputes outside the court system in Indonesia. The concept of E-Musyawarah represents a form of ADR that offers new legal perspectives. The data collection method used in this research is secondary data obtained through library research, with the theoretical approach being Friedman's legal system theory. The concept of E-Musyawarah as an ADR for resolving administrative disputes outside the court reflects the trend of utilizing information and communication technology to facilitate dispute resolution outside the judiciary. The resolution of E-Musyawarah is agreed upon with electronic signatures registered in the E-Court, giving them the same legal standing as decisions by the Administrative Court. However, this concept also faces legal challenges, particularly regarding legal equality.

**Keywords:** Indonesia. E-Musyawarah. Alternative Dispute Resolution (ADR). Administrative Dispute Resolution. Legal System Theory. Information and Communication Technology (ICT) in Law.

**Summary:** Introduction – Research methods – The essence and application of musyawarah in conflict resolution – E-Musyawarah as Alternative Dispute Resolution (ADR) for resolving Administrative Disputes outside the Court – Legal challenges faced by the concept of E-Musyawarah as Alternative Dispute Resolution (ADR) for resolving Administrative Disputes Outside the Court – Conclusion – References

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## Introduction

Enforcing the law in society has a crucial impact on establishing fairness, predictability, and advantages for all individuals.<sup>1</sup> Compliance with the law promotes justice, predictability, and advantageous results for the entire community.<sup>2</sup>

Expeditious population expansion might result in heightened demand for public services.<sup>3</sup> The increasing population fosters a heightened legal consciousness within the community, prompting individuals or organizations to initiate legal proceedings against government actions or policies perceived to infringe upon their rights.<sup>4</sup>

Administrative conflicts are the subject matter of administrative courts.<sup>5</sup> Numerous developing and developed nations endeavour to discover resolutions to tackle the escalating administrative conflicts arising from societal expansion.<sup>6</sup>

Alternative Dispute Resolution (ADR) is a widely used approach for settling problems outside the court system's jurisdiction.<sup>7</sup> It includes a range of methods, such as negotiation, mediation, and arbitration. ADR provides a more adaptable, less confrontational method for resolving disputes. It necessitates a significant level of intelligence and logical reasoning. Logic is essential in ADR as it assists parties in identifying difficulties, analyzing arguments, and achieving mutually agreeable solutions.<sup>8</sup>

Indonesia's civilization is characterized by a deeply ingrained idea that can be utilized to address conflicts among its population effectively. This principle is referred to as Musyawarah. The Musyawarah principle can facilitate the implementation of ADR as a method of settling administrative issues outside the judicial system, thereby exemplifying Indonesia's enduring history.

The Musyawarah principle is rooted in Indonesia's state ideology, Pancasila, which emphasizes the value of democratic decision-making through wise

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<sup>1</sup> Muhamad Romdoni et al., "A Critique and Solution of Justice, Certainty, and Usefulness in Law Enforcement in Indonesia", *Journal of Law Science* 5, no. 4 (2023): 174–81, <https://doi.org/10.35335/jls.v5i4.4269>.

<sup>2</sup> Annisa Farah Azizah, "Kepatuhan dan Ketaatan Hukum Masyarakat Lamaru terhadap Hukum di Indonesia", *De Cive: Jurnal Penelitian Pendidikan Pancasila dan Kewarganegaraan* 2, no. 2 (2022): 61–69, <https://doi.org/10.56393/decive.v2i2.1497>.

<sup>3</sup> Yurike Siti AS Mariyam, *E-Government Dalam Pelayanan Publik* (Pasaman Barat: CV. Azka Pustaka, 2024).

<sup>4</sup> Qinwen Deng, Shuai Xiang, and Boli Chen, "Rural Land Consolidation and Social Consciousness Change: A Case Study of a Land Consolidation Program in Rural Chongqing, China", *Sustainability* 15, no. 22 (2023): 15853, <https://doi.org/10.3390/su152215853>.

<sup>5</sup> Agustien Wereh and Istiislam Istiislam, "Conflict in Management of Passive State Administrative Decision in State Administrative Dispute", *Brawijaya Law Journal* 5, no. 2 (2018): 249–60, <https://doi.org/10.21776/ub.blj.2018.005.02.08>.

<sup>6</sup> Louis Kriesberg and Joyce Neu, "Conflict Analysis and Resolution as a Field", in *The International Studies Encyclopedia* (Wiley-Blackwell, 2017).

<sup>7</sup> Borut Strazisar, "Alternative Dispute Resolution", *Law. Journal of the Higher School of Economics*, no. 3 (2018): 214–33, <https://doi.org/10.17323/2072-8166.2018.3.214.233>.

<sup>8</sup> Frank Fleerackers, "Alternative Dispute Resolution and Affective Legal Analysis", *Revue interdisciplinaire d'études juridiques* 43, no. 2 (1999): 93–134, <https://doi.org/10.3917/riej.043.0093>.

deliberation and representation. This principle aims to ensure fairness by seeking consensus and plays a significant role in developing the legal system.<sup>9</sup>

Efforts are needed to support individuals seeking administrative justice and aid administrative courts in reducing their caseload due to the ongoing rise and rising number of administrative disputes.<sup>10</sup>

Presently, technological progress has been integrated into the fabric of societal existence. Using cutting-edge technology in the legal domain is a highly appreciated advancement that has effectively resolved numerous legal challenges. Courts have widely employed technology to offer services to the public or legal organizations needing legal assurance. The legal system has seen substantial changes due to technological improvements, transforming how courts work and provide services to the population.<sup>11</sup>

The author suggests the notion of “E-Musyawarah” by combining ADR as an alternative to the court for settling administrative issues, the culturally established Musyawarah principle in Indonesia, and the application of technology as a modern innovation.

The E-Musyawarah concept is an ADR method to resolve administrative conflicts outside the judicial system. It introduces innovative legal perspectives. This research examines the E-Musyawarah idea as an ADR method for resolving administrative conflicts outside the court. Additionally, the study will assess the legal obstacles encountered by the E-Musyawarah concept as an ADR for resolving administrative disputes outside of the court.

## Research methods

The data collection method used in this research is secondary data obtained through library research. This involves examining literature such as books, laws, scholarly opinions, lecture materials, and online resources.<sup>12</sup> The research method employed in this study involves secondary data analysis, primarily conducted through extensive library research.

This process includes a comprehensive literature review, which encompasses several vital steps. Firstly, it involves reading and analyzing relevant legal textbooks

<sup>9</sup> Koichi Kawamura, “Consensus and Democracy in Indonesia: Musyawarah-Mufakat Revisited”, *IDE Discussion Paper* 308 (2011), <https://www.ide.go.jp/English/Publish/Reports/Dp/308.html>.

<sup>10</sup> Ahmad Siboy et. al., “The Effectiveness of Administrative Efforts in Reducing State Administration Disputes”, *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2 April 2022): 14–30, <https://doi.org/10.53955/jhcls.v2i1.23>.

<sup>11</sup> James E Cabral et. al., “Using Technology to Enhance Access to Justice”, *Harvard Journal of Law & Technology* 26, no. 1 (2012): 241–324.

<sup>12</sup> Aga Natalis, Ani Purwanti, and Teddy Asmara, “Determining Appropriate Policies for Prostitution Reform in Indonesia: Evaluating Harm Reduction Versus Harm Elimination Strategies”, *Journal of Southeast Asian Human Rights* 7, no. 2 (2023): 176–213, <https://doi.org/10.19184/jseahr.v7i2.37952>.

and publications to understand foundational concepts and theories pertinent to the study. Secondly, it examines legislative documents, regulations, and statutes governing various jurisdictions' administrative dispute resolution and ADR mechanisms. Thirdly, the study reviews academic journal articles, theses, and dissertations to gather diverse scholarly perspectives and interpretations on E-Musyawarah and ADR methods. Additionally, it utilizes lecture notes, presentations, and educational resources from legal education to supplement and validate findings from other sources. Furthermore, the research explores credible online databases, legal websites, and digital libraries for the most recent developments, case studies, and expert commentaries related to the research topic.

The collected literature is systematically categorized and analyzed to identify key themes, concepts, theories, and definitions relevant to legal issues surrounding E-Musyawarah as an ADR method. Cross-referencing and triangulation techniques are applied to ensure the reliability and validity of the secondary data. The theoretical framework utilized in this research is Lawrence M. Friedman's legal system theory, chosen for its comprehensive nature encompassing three critical components of a legal system: legal structure, legal substance, and legal culture.

In applying this theory, the research analyzes the formal mechanisms and institutional frameworks that support E-Musyawarah as an ADR process. It investigates the substantive legal principles, rules, and norms underpinning the operation of E-Musyawarah. Additionally, it explores the attitudes, values, and perceptions of stakeholders – including disputants, mediators, and legal professionals – towards E-Musyawarah and its efficacy in resolving administrative disputes. Integrating theoretical insights from Friedman's legal system theory with empirical data from the literature review facilitates a comprehensive understanding of E-Musyawarah's role and effectiveness as an ADR mechanism. This synthesis helps identify gaps, challenges, and opportunities for enhancing the implementation and acceptance of E-Musyawarah in administrative dispute resolution.

## The essence and application of musyawarah in conflict resolution

The primary objective of resolving disputes through debate (musyawarah) and consensus and through consultation, negotiation, conciliation, and expert judgment is to achieve peaceful resolutions to conflicts. Musyawarah, consensus, consultation, negotiation, mediation, conciliation, and expert judgment significantly depend on mutual understanding, connections, and communication. This strategy aims to attain a mutually agreeable outcome for all parties involved.<sup>13</sup>

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<sup>13</sup> Abdurrahman Konoras, *Aspek Hukum Penyelesaian Sengketa Secara Mediasi di Pengadilan* (Jakarta: PT. RajaGrafindo Persada, 2017).

Participating in deliberation, consensus-building, consultation, negotiation, mediation, conciliation, and expert judgment provides a more efficient and cost-effective approach to resolving conflicts. It can enhance strained relationships instead of relying on arbitration institutions or courts for settlements. Consensus is a state of agreement that is achieved by the parties involved through musyawarah, which is a process that facilitates the attainment of consensus among the parties.

The phrase *syūrā* (musyawarah) is taken from Arabic, stemming from the base words “syawara” and “asyara”, which denotes the act of extracting honey from a beehive. Initially, it denoted the action of obtaining honey from a beehive. However, its definition has expanded to include all things that can be acquired or derived from another origin (including viewpoints). Certain interpreters limit the extent of musyawarah to secular affairs while ignoring religious concerns. The directive to engage in discussions with secular matters without relying on divine revelation is a guiding principle for all Muslims, especially leaders, to seek input from their constituents.

Regarding musyawarah and societal issues, the Prophet Muhammad and the Rightly Guided Caliphs displayed a range of practices. They occasionally choose individuals considered competent for the particular matter, involve community leaders, and seek input from all parties involved. During the process of *syūrā*, decisions were not made quickly based on the majority after one or two musyawarah sessions but instead required repeated deliberations until a consensus was formed. This is because *syūrā* is carried out by individuals of high commendation who do not possess personal or group biases. Thus, in *syūrā*, the primary focus lies on fostering a sense of fraternity rooted in an unwavering belief in Allah and for the betterment of the collective rather than individual triumph. The crucial factor is the individual's thoughts or ideas concerning the stated problem.<sup>14</sup>

Musyawarah is a deliberative activity in which individuals from different groups engage in a discussion to exchange their perspectives on a particular problem to reach a decision that benefits the collective welfare. The objective of musyawarah is to attain a collective consensus and provide an accurate resolution since it is grounded in the interests of all parties and mutual accord.<sup>15</sup>

Implementing the fourth principle of Pancasila can be achieved through joint decision-making. The fourth premise asserts that the sagacity of deliberation and representation guides democracy. The implementation of Pancasila as a guiding principle in the functioning of the state was initially established by the Decree of the MPR No.II/MPR/1978, and later improved by the MPR No.1/MPR/2003 Decree.

<sup>14</sup> Abdul Ghani, Asep Fathurohman, and Ade Jamarudin, “Komparasi Tafsir Mafatih Al-Ghaib dan Anwar Al Tanzil Wa Asrar Al Ta’wil tentang Musyawarah QS Ali Imran Ayat 159”, *Reslaj : Religion Education Social Laa Roiba Journal* 5, no. 6 (2023): 159, <https://doi.org/10.47467/reslaj.v5i6.2908>.

<sup>15</sup> Dudung Abdullah, “Musyawarah dalam Al-Quran (Suatu Kajian Tafsir Tematik)”, *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 3, no. 2 (2014): 242–53, <https://doi.org/10.24252/ad.v3i2.1509>.

The critical aspects are as follows: Every Indonesian, as a citizen and part of society, possesses an equitable standing, entitlements, and responsibilities. No individual must impose their desires upon others. Emphasize the practice of musyawarah in decision-making for the collective benefit. Musyawarah for consensus is distinguished by a sense of kinship. Respect and adhere to every decision made through musyawarah; Embrace the outcomes with benevolence and a conscientious attitude, and put them into practice. During musyawarah, the collective interest takes precedence over individual or group interests; Musyawarah is performed rationally and in alignment with a virtuous conscience. Decisions must be ethically answerable to the Divine, respecting the dignity of humanity, truth, and justice, focusing on unity and collective welfare. Trusted representatives are entrusted with the responsibility of executing musyawarah.

According to the traditions above, making decisions together in line with the ideals of Pancasila is done through musyawarah. Therefore, decisions can be made through a consensus infused with a sense of familial unity. Musyawarah is a unique characteristic of the Indonesian population in effectively addressing shared issues. The Indonesian nation strongly values the principle of human equality. Consequently, it is imperative to respect all individuals' opinions. Musyawarah is a process in which individuals exchange opinions over a specific problem or topic. During the musyawarah, the participants will express a multitude of ideas. Every individual articulates their viewpoint and attentively hears the perspectives of others. The exchange of thoughts in musyawarah is conducted with camaraderie while emphasizing proper etiquette. Following a discussion and sharing of viewpoints, a conclusion is reached. The conclusion in musyawarah is determined by consensus rather than by a majority vote or compulsion from certain parties. Consensus refers to the unanimous agreement reached by all persons involved in a musyawarah without compulsion. Consensus should take into account the collective welfare. In this instance, it is necessary for agreement to be based on religious morality and justice norms. The outcome of musyawarah will be transformed into a collective agreement if the participants are willing to conform to the consensus reached.

When there are conflicts between the government and the people, the main principle that should be prioritised is resolving disputes through musyawarah using administrative methods, with judicial administration as a final option. Using administrative methods to resolve disagreements is anticipated to uphold and reinstate the harmony of relationships between the government and the populace, hence restoring harmony. Thus, administrative efforts will be perceived as necessary since they can serve as a mechanism for legal safeguarding, akin to judicial administration.<sup>16</sup>

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<sup>16</sup> Hardi Munte, *Model Penyelesaian Sengketa Administrasi Pilkada* (Medan: Puspantara, 2017).

Resolving conflicts using administrative methods By promoting musyawarah, support can be gained as it aligns with the Indonesian society's values of familial spirit, mutual collaboration, living in harmony, peace, and compromise. The strategic positioning of administrative efforts will be strongly evident in this context, highlighting the growing necessity of their existence to reduce the occurrence of administrative disputes before administrative courts, where administrative bodies or officials would interact with the public.

Musyawarah offers many advantages, such as allowing us to gauge the amount of intelligence, comprehension, empathy, and genuine commitment to collective welfare. The level of human intelligence varies, and individuals exhibit different cognitive processes. Some individuals inside their group may possess unique advantages that leaders lack. All opinions presented in a musyawarah are evaluated for their competence. Subsequently, the superior opinion is selected. During musyawarah, individuals' collective determination and consensus are evident, leading to success in their endeavours. Undoubtedly, this is vital for the successful resolution of the current difficulties.

The concepts of Musyawarah have a strong foundation in Indonesian culture. The principle of gotong royong, which refers to cooperation, is a fundamental virtue that enhances the implementation of musyawarah. This principle promotes community, unity, and collaborative endeavour, crucial for resolving issues and making decisions that benefit the overall welfare.

Throughout history, musyawarah has played a crucial role in many Indonesian communities, ranging from local decision-making procedures in villages to national political structures. The customary village gatherings, referred to as "rapat desa", exemplify the practical implementation of musyawarah. These gatherings entail the assembly of villagers to deliberate and address local matters, ensuring that each individual's perspective is acknowledged and valued. The judgments reached in these meetings demonstrate majority rule and serve as evidence of the community's collective consensus and cohesion.

Musyawarah has significantly impacted Indonesia's political environment at the national level. The country's legislative entities, namely the DPR (Dewan Perwakilan Rakyat – House of Representatives) and the MPR (Majelis Permusyawaratan Rakyat – People's Consultative Assembly), exemplify the concepts of musyawarah. These institutions are specifically created to embody the Indonesian population's varied perspectives and reach choices by means of careful discussion and agreement rather than relying just on confrontational debates and voting.

In present-day Indonesia, the practice of musyawarah goes beyond politics and society to include corporate and organizational environments. Many firms and organizations embrace the musyawarah principles in decision-making, establishing a collaborative environment that promotes employee appreciation and active

participation. This strategy not only improves employee satisfaction but also results in more imaginative and successful solutions since it utilizes the combined knowledge and creativity of the group.

Furthermore, musyawarah is crucial in resolving conflicts at different societal levels. It serves as a structured platform for calm and productive discussions, whether addressing family issues, communal problems, or industrial conflicts. Musyawarah's emphasis on comprehension, empathy, and mutual respect averts the intensification of disputes and fosters enduring concord.

Musyawarah offers numerous advantages. First and foremost, it fosters inclusivity and encourages democratic involvement. Musyawarah enhances the credibility of choices and cultivates a feeling of ownership and dedication among participants by ensuring that all perspectives are considered. In a varied country like Indonesia, where various cultural, ethnic, and religious groups coexist, this inclusivity is of utmost importance.

Furthermore, musyawarah promotes societal unity. Promoting transparent communication and fostering mutual regard cultivates trust and enhances interpersonal connections within the community. Social cohesiveness is crucial for preserving peace and stability since it decreases the probability of conflicts and promotes a supportive and cooperative atmosphere.

Furthermore, musyawarah facilitates enhanced decision-making. Considering many viewpoints and concepts facilitates a more thorough comprehension of the current issues. This comprehensive analysis aids in identifying the most efficient and unbiased solutions, guaranteeing that decisions are not only pragmatic but also morally upright and impartial.

In addition, musyawarah promotes both individual and communal development. It promotes expressing ideas, active listening, and healthy interaction among persons. This process improves cognitive reasoning, verbal and written expression, and understanding and managing emotions. Simultaneously, it fosters a sense of obligation and liability as participants acquire the skill of managing their interests in harmony with the collective welfare.<sup>17</sup>

## E-Musyawarah as Alternative Dispute Resolution (ADR) for resolving Administrative Disputes outside the Court

The ongoing evolution of administrative disputes requires legal initiatives that facilitate access to justice for those seeking it. The Administrative Court is undoubtedly the most trusted institution for people seeking justice in administrative

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<sup>17</sup> Mukhid, "Musyawarah Dalam Perspektif Ekonomi Islam", *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah* 1, no. 2 (2016): 15–27, <https://doi.org/10.30651/jms.v1i2.760>.

matters. Up to now, the Administrative Court has been making attempts to decrease the number of administrative conflicts by taking legal measures prior to the occurrence of administrative lawsuits before the Administrative Court.<sup>18</sup>

Prior to initiating a complaint in the Administrative Court, Indonesia provides legal options for seeking redress. These legal remedies are referred to as administrative measures. The institution that issues the state administrative judgment is responsible for carrying out administrative efforts in the context of the administrative dispute. Administrative initiatives have had a negligible impact on reducing the number of administrative conflict settlements and have not instilled a strong sense of confidence among those seeking justice. An innovative approach is required to introduce a new notion into the procedural process of the Administrative Court, which is external to the court itself.<sup>19</sup>

E-Musyawararah, or Electronic Musyawararah, is a suggested concept for an out-of-court procedure known as ADR.<sup>20</sup> It is drawn from Indonesia's state ideology, Pancasila. Moreover, the significance of Pancasila stems from its relative position to ideologies. For the Indonesian society who believes in, internalizes, and comprehends the reasons why Pancasila serves as the fundamental principle and objective in multiple facets of life, such as social, national, state, and political domains, they can utilize Pancasila as the basis and objective in their personal growth.<sup>21</sup>

From a philosophical standpoint, the fourth principle of Pancasila, "Democracy led by the wisdom of deliberations among representatives", emphasizes the importance of musyawarah (deliberation).<sup>22</sup> In this context, musyawarah mufakat, or consensus deliberation, is conducted with sagacious leadership. Aligned with the fundamental principles of the fourth Pancasila, musyawarah mufakat is a process that fosters consensus through informed and wise discourse among representatives. Within this framework, each choice must be undertaken with accountability and adhere to the tenets of Pancasila or the 1945 Constitution. Everyone must be granted equal rights and opportunities to participate in the deliberation process.<sup>23</sup>

<sup>18</sup> Enrico Parulian Simanjuntak, "The Rise and the Fall of the Jurisdiction of Indonesia's Administrative Courts: Impediments and Prospects", *Indonesia Law Review* 10, no. 2 (2020): 159–90, <https://doi.org/10.15742/ilrev.v10n2.611>.

<sup>19</sup> Indriati Amarini et. al., "Exploring the Effectiveness of Mediation in Resolving Disputes in the Indonesian Administrative Court", *Journal of Indonesian Legal Studies* 9, no. 1 (2024), <https://doi.org/10.15294/jils.vol9i1.4632>.

<sup>20</sup> Hikmahanto Juwana, *Dispute Resolution Process in Indonesia* (Institute of Developing Economies, 2003).

<sup>21</sup> Otto Gusti Ndegong Madung and Winibaldus Stefanus Mere, "Constructing Modern Indonesia Based on Pancasila in Dialogue with the Political Concepts Underlying the Idea of Human Rights", *Journal of Southeast Asian Human Rights* 5, no. 1 (2021): 1–24, <https://doi.org/10.19184/jseahr.v5i1.20258>.

<sup>22</sup> Hamdan Zoelva, "The Development of Islam and Democracy in Indonesia", *Constitutional Review* 8, no. 1 (2022): 37–61, <https://doi.org/10.31078/consrev812>.

<sup>23</sup> Agus Suwignyo and Rhoma Dwi Aria Yuliantri, "An Analysis of The Discursive Gap in the Ideas and Practices of Musyawarah Mufakat in the Indonesian Nation-State Formation, 1900-1980s", *Paramita: Historical Studies Journal* 33, no. 1 (2023): 1–15, <https://doi.org/10.15294/paramita.v33i1.41514>.

The topic of Pancasila remains a matter of continuous discourse. The fourth principle emphasizes the significance of wisdom and democracy, specifically emphasizing the role of wisdom in ensuring fairness during the process of deliberation and representation.<sup>24</sup> Within student elections, the fourth principle is pivotal in highlighting the significance of equitable and astute leadership while fostering vigorous engagement from individuals in the electoral proceedings.

The E-Musyawararah, also known as Electronic Musyawararah, is a legal concept under ADR. It involves using electronic technology to aid in deliberation or mediation between parties involved in a dispute.<sup>25</sup> This exemplifies a pattern in which information and communication technology is employed to facilitate the resolution of disputes outside of the court system. Contained within it are core principles, specifically Musyawarah and Mufakat, which refer to the processes of discourse and consensus. Musyawarah and Mufakat strongly support ADR, encompassing negotiation, mediation, and arbitration.<sup>26</sup>

Negotiation is a collaborative process in which parties strive to achieve a mutually acceptable agreement.<sup>27</sup> Negotiation strategies frequently generate dynamics that lead to the emergence of winners and losers. This technique is typically characterized by assertiveness, with strong negotiators taking control of the negotiation process, making compromises, and employing threats to exert influence over the other party.<sup>28</sup> In contrast, negotiators who are more accommodating in their approach prefer to steer clear of conflicts by offering compromises to reduce tension and persistently work towards achieving a mutually satisfactory resolution. Using negotiating strategies, whether characterized by assertiveness or gentleness, frequently favours the more assertive party, leading to an outcome that establishes a dichotomy of winners and losers.<sup>29</sup>

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<sup>24</sup> Yuliana, "The Philosophy of Pancasila in the Religious Perspective in Indonesia During the Covid-19 Pandemic", *Pancasila: Jurnal Keindonesiaan* 1, no. 2 (2021): 141–51, <https://doi.org/10.52738/pjk.v1i2.29>.

<sup>25</sup> Azizah et. al., "Digitalization of Alternative Dispute Resolution: Realizing Business Fair Principles In The Current Era", *Jurnal Dinamika Hukum* 23, no. 2 (2023): 429–49, <https://doi.org/10.20884/1.jdh.2023.23.2.3667>.

<sup>26</sup> Winner Sitorus, "Online Dispute Resolution: The Conceptualization of Business Dispute Resolution Model in Indonesia", *Online Dispute Resolution* 1, no. 1 (2024): 34–41.

<sup>27</sup> David Fairman et al., "Managing the Negotiation Process", in *Negotiating Public Health in a Globalized World: Global Health Diplomacy in Action*, ed. by David Fairman et al. (Dordrecht: Springer Netherlands, 2012), 29–61, [https://doi.org/10.1007/978-94-007-2780-9\\_3](https://doi.org/10.1007/978-94-007-2780-9_3).

<sup>28</sup> P. J. Carnevale and D. G. Pruitt, "Negotiation and Mediation", *Annual Review of Psychology* (Annual Reviews, 1992), <https://doi.org/10.1146/annurev.ps.43.020192.002531>.

<sup>29</sup> Zhenzhong Ma and Alfred M. Jaeger, "A Comparative Study of the Influence of Assertiveness on Negotiation Outcomes in Canada and China", *Cross Cultural Management: An International Journal* 17, no. 4 (2010): 333–46, <https://doi.org/10.1108/13527601011086568>.

Mediation is a method of facilitating communication between two opposing parties in order to achieve a mutually agreed-upon resolution.<sup>30</sup> During the mediation process, an impartial mediator serves as a facilitator to assist the conflicting parties in achieving a consensus. Within this particular context, the mediator lacks the power to decide the specific format of the resolution or agreement to be pursued. Instead, they offer clarifications and insights to each side regarding the topic's essence.<sup>31</sup>

The mediation technique, which seeks to attain a mutually beneficial resolution, instils ease for all parties engaged in the disagreement. The parties collaboratively determine the agreements obtained in mediation by their preferences and objectives. This aligns with the fundamental values of liberty and mutual agreement in mediation, wherein the involved parties own complete authority over the ultimate resolution of the conflict.

If a settlement reached through mediation establishes a binding legal connection between the parties concerned, it holds the same legal weight as any other conventional legal arrangement. Nevertheless, suppose one party engages in deceitful behaviour and breaches the mutually agreed-upon agreement. In that case, the mediation outcome does not possess an unequivocal legal authority, even if it has led to peace or agreement between the conflicting parties.

Arbitration is resolving conflicts using peaceful and suitable methods to achieve a legally binding and conclusive conclusion. During the arbitration process, the parties involved in a disagreement agree to hand up the resolution of the issue to a neutral third party, known as an arbitrator, who will make a final and enforceable ruling. Arbitration offers a prompt and effective option for settling conflicts, simplifying the procedure, and producing agreeable outcomes for all parties concerned.

Arbitration is a nonviolent process for settling conflicts suitably, leading to conclusive and obligatory legal judgments. It is an ADR encompassing many approaches to settling conflicts that do not include traditional judicial proceedings. Arbitration is acknowledged as a proficient method for resolving disputes that fall outside the judiciary's jurisdiction.

Arbitral awards commonly include "In the Name of Justice, derived from the Divine Being". Arbitral awards possess legal authority that is on par with judgments rendered by courts. The initial sentence in the award is a general rule that applies broadly, whereas its descendant is a specific rule that is obligatory in every court decision.

<sup>30</sup> Maria Zhomartkyzy, "The Role of Mediation in International Conflict Resolution", *Law and Safety* 90, no. 3 (2023): 169–78, <https://doi.org/10.32631/pb.2023.3.14>.

<sup>31</sup> Leonard L. Riskin, "Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed", in *Mediation* (Routledge, 2018), 137–81.

Arbitration, a method of resolving disputes beyond the court's jurisdiction, has gained significant recognition. This technique encompasses a range of nonviolent methods that lead to conclusive and enforceable judicial rulings. Arbitration is a dispute settlement part of ADR.<sup>32</sup>

Consensual discussion is an integral component of Indonesia's cultural history and a foundational value inscribed in the fourth principle of Pancasila. Each region may have different names and ways of implementing the culture of consensus deliberation. It is crucial to sustain, protect, and apply this culture of reaching agreement through practical discussion in different contexts, such as social, family, and educational situations. Consensus discussion is a fundamental principle deeply ingrained in Indonesian society. The fourth principle of Pancasila, which serves as the fundamental basis of our state, explicitly articulates this ideal. The fourth principle of Pancasila stipulates that the tenet of Indonesian democracy should be executed via a judicious deliberation process.

The resolution of disputes is predicated on the notion of consensus deliberation, wherein all parties are asked to engage in negotiations and arrive at a mutually acceptable accord. Every person is expected to make concessions and prioritize the common good to preserve mutual harmony. The deliberative approach has demonstrated greater efficacy in resolving societal problems, mainly when the state and legal system cannot deliver sufficient justice and alleviate the backlog of cases.

E-Musyawararah, also known as Electronic Musyawarah, employs diverse electronic technologies to enhance communication and engagement among conflicting parties while considering legal aspects such as privacy, data security, and the legal validity of agreements concluded online.

The notion of deliberation serves as the basis for the consultation process, which aims to achieve consensus or resolve issues. The principle of deliberation can be implemented by incorporating fundamental supporting elements, including openness and active listening, equality and respect, cooperation, consensus, and assertiveness. These elements constitute the basis for the principle of discussion in E-Musyawararah (Electronic Musyawararah).

E-Musyawararah (Electronic Musyawararah) is currently not explicitly regulated in Indonesia as an ADR method. However, this concept can be associated with various regulations promoting its implementation as a legal initiative that aligns with societal technological advancements. It also serves as an innovative ADR solution for resolving legal matters in the administrative domain without resorting to court proceedings.

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<sup>32</sup> Akhmad Al-Farouqi Sastrowiyono, "The Pro's and Con's Of Arbitration: A Study of International Arbitration with Perspective of Indonesian and Korean Law", *Jurnal Lex Renaissance* 4, no. 2 (2019): 231–47, <https://doi.org/10.20885/JLR.vol4.iss2.art2>.

The notion of E-Musyawararah, which refers to the use of electronic means for conducting Musyawararah (a form of deliberation or consultation), might be associated with the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018). This legislation establishes detailed legal parameters for international mediation and the resolution agreements that arise from such mediation. While electronic deliberation is not the main focus, the utilization of technology in mediation can be considered. Furthermore, it might be associated with the European Union Regulation on Electronic Identification and Trust Services for Electronic Transactions (eIDAS), which seeks to improve the portability and security of electronic transactions in order to support the concept of E-Musyawararah (Electronic Musyawararah) as an ADR mechanism.

Indonesia has specific legal provisions about the notion of E-Musyawararah (Electronic Musyawararah) as an ADR method, particularly in resolving administrative disputes through a deliberative approach. The mentioned regulations are the Perka BPA Mediation No. 1 of 2017, which outlines the procedures for resolving disputes by mediation within the Administrative Judiciary, the Electronic Information and Transactions Law No. 19 of 2016, and Law No. 30 of 2014 on Government Administration. The legal standards are a foundation for incorporating technology into the ADR procedure.

E-Musyawararah, or Electronic Musyawararah, is an ADR method that utilizes electronic technology to streamline the resolution of disputes between parties. In order to ensure the protection of personal data, it is necessary to incorporate pertinent legal considerations when utilizing electronic or virtual spaces for administrative dispute resolution. This should involve the participation of an Administrative Court Judge who is well-versed in mediation and serves as a legal expert in this field. Guidance from authoritative institutions, such as the Cyber and Crypto Agency, is necessary to provide clear instructions on using electronic rooms for ADR purposes. Apple has just unveiled a technology called Apple Version Pro that enables virtual rooms, providing a more immersive and lifelike setting for remote discussions, eliminating the need for in-person engagement.

E-Musyawararah (Electronic Musyawarah) settlement is the ultimate stage of electronic negotiation in which the parties engaged in a dispute strive to achieve a mutually agreeable agreement. Once a consensus has been reached, the involved parties must create a written document outlining the terms of the agreement. The agreement must encompass all pertinent particulars, encompassing the specifics of the mutually agreed-upon settlement, timetable for implementation, and means for resolving disputes in the event of agreement violation. Every party concerned must thoroughly examine and digitally endorse the agreement.

The Administrative Court Judge, acting as the law enforcer in the E-Musyawararah (Electronic Musyawarah), will register all signed agreements in the Administrative Court's e-court. These agreements will be ratified and hold the same legal weight as a decision made by the Administrative Court in the administrative field, by the authority of the Almighty God.

It is crucial to emphasize that the E-Musyawararah resolution process, as an ADR method, necessitates strong collaboration and effective communication among all parties involved. Furthermore, it necessitates strict compliance with the regulations and protocols outlined in the agreement established during the deliberation process. The agreed-upon agreement must be adhered to conscientiously, enabling the parties to conduct their operations without any interruption and in a peaceful manner.

The author's worry about the development of administrative disputes has led to the notion of E-Musyawararah (Electronic Musyawarah) as an ADR method. This concept originated from the author's comprehension of Lawrence M. Friedman's<sup>33</sup> legal system theory, which serves as a framework for national development strategies in legal reform. Lawrence M. Friedman contends that any reform should delineate various elements, including legal structure, legal substance, and legal culture.

The notion of E-Musyawararah is connected to the legal system theory and aims to reform by focusing on changing the legal structure. E-Musyawararah is an ADR mechanism utilized outside the Administrative Court. It represents a significant advancement in the legal domain for settling administrative conflicts. Furthermore, there is a noticeable transition in the legal culture of our day. This notion is preparing civilization, which is currently in the 5.0 era characterized by AI, Robots, and IoT, to transition into the era of Artificial Intelligence (AI). While the explicit presence of legal material may not be apparent, the restrictions outlined by the author can be connected to establishing particular guidelines for E-Musyawararah.

## Legal challenges faced by the concept of E-Musyawaralah as Alternative Dispute Resolution (ADR) for resolving Administrative Disputes Outside the Court

Administrative disputes are frequently complex and time-consuming, necessitating a methodical effort by the parties involved in their resolution. The E-Musyawarah method provides a complete framework for effectively resolving administrative problems promptly. The procedure is carried out in a series of logical

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<sup>33</sup> L.M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

stages, each contributing to the ultimate objective of arriving at a settlement that is acceptably acceptable to both parties.

Beginning with the application's registration and submission, the conflict settlement process gets underway. Parties that are interested in resolving administrative disputes through the use of E-Musyawarah begin the procedure by submitting a comprehensive application on the platform that has been allocated for this purpose. The foundation is this application, which contains all of the necessary information regarding the disagreement, such as the relevant facts, the parties engaged, and the claims submitted throughout the dispute.

Immediately following the application's acceptance and registration, the administrative staff verifies that they have received the matter and thoroughly documents it. This phase focuses on verifying required data and documents and lays the groundwork for the succeeding steps in the conflict resolution process.

Mediation and Preliminary negotiations are the next steps. They invite the disputing parties, including the applicant and the opposing party, to participate in mediation or preliminary negotiations through the E-Musyawarah platform. During this phase, the primary purpose is facilitating dialogue and investigating potential solutions acceptable to all parties concerned.

After that, the conflict resolution team will conduct an in-depth analysis and performance evaluation. During this crucial stage, additional research into the facts provided, a review of the arguments proposed, and an appraisal of acceptable prospective solutions are all required.

The parties meet and negotiate using the study's insights as a foundation. Under these circumstances, they attempt to reach a mutually advantageous consensus by engaging in open dialogue, exchanging arguments, and further deliberating on suggestions for potential solutions.

After the parties have settled, the agreed-upon parameters are formalized into a Settlement Agreement. This paper outlines the particulars of the agreed-upon solution, including the separate responsibilities each party is responsible for in implementing the agreement.

Following the establishment of the agreement, the monitoring and enforcement phase will occur. The team responsible for resolving disputes monitors the implementation of the agreement and ensures that its requirements are adhered to. This means keeping an eye on the actions taken by each party by the agreement created and taking action in situations where there is a breach or non-compliance.

Electronic Musyawarah in administrative disputes refers to using electronic means to facilitate discussions and decision-making processes in resolving administrative conflicts. Legal equality is a crucial principle that ensures fairness and equal treatment for all parties concerned. However, it also presents a legal obstacle.

Legal parity in the idea of deliberation is crucial to guarantee that all participants in the deliberation process have equitable opportunities to access the law and that their rights are impartially upheld.

The idea of deliberation in the notion of E-Musyawarah in administrative disputes is a method employed to address disagreements or divergent viewpoints that arise in administrative disputes. Deliberation in administrative problems is frequently the first step towards attaining a peaceful resolution and preventing litigation.

Legal equality poses a legal challenge to the concept of E-Musyawarah as ADR due to various supporting factors. These factors pertain to the equal treatment of the applicant who files a request or lawsuit against a state administrative decision and the official responsible for the decision.

More information needs to be provided between the applicant and the decision-making official. Officials typically possess superior access to information, procedures, and legal processes, whereas applicants may need equivalent access. Applicants may need help comprehending the underlying rationale behind the decisions rendered, which might hinder their ability to construct compelling arguments or provide substantial evidence supporting their appeals.

Information asymmetry arises when one party possesses superior or more comprehensive access to pertinent information. Officials making choices may have access to internal or sensitive information not accessible to applicants. This encompasses several types of information, such as data, reports, internal documents, or any other crucial information essential for comprehending the decision's foundation. Officials making decisions may better understand the appropriate legal procedures, laws, policies, or best practices for administrative conflicts. This suggests that individuals who make judgments frequently possess more expertise and institutional authority than those who apply.

The concept of the burden of proof. Applicants may encounter challenges in demonstrating the invalidity or lack of legal basis of a state administrative decision made by government personnel. They must present compelling and definitive proof to contest the decision's validity, which might be difficult due to the officials' discretionary power.

The burden of proof signifies that parties must assist one another in collecting evidence and presenting arguments truthfully and impartially. It necessitates the participation of an impartial third party to evaluate the evidence and facilitate the process. The involvement of a third party helps ensure that the burden of proof is evaluated unbiased and equitably.

Legal equality is a crucial aspect of contemporary society, leading to the implementation of stringent regulations through several legal mechanisms to guarantee the fair and equitable protection of individual rights under the law. A

cooperative attitude among all parties concerned is necessary. A just, transparent, and efficient process of resolving conflicts can be achieved by guaranteeing legal parity within the framework of E-Musyawarah as an ADR mechanism outside the Administrative Court for settling administrative disputes. This approach enables all parties to reach satisfactory resolutions while preserving or enhancing their relationships.

## Conclusion

Using E-Musyawarah as an ADR method for settling administrative conflicts outside the court system demonstrates a growing inclination towards employing information and communication technologies to promote dispute resolution outside the traditional judicial framework. E-Musyawarah is founded on the notion of deliberation. While there are no explicit regulations specifically governing E-Musyawarah as an ADR method in Indonesia, it can be associated with the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018), eIDAS, Perka BPA Mediation, the Electronic Information and Transactions Law, and the Government Administration Law.

E-Musyawarah is implemented through the use of electronic or virtual rooms, which can make use of Apple Version Pro technology. These rooms are facilitated by an Administrative Court Judge who acts as a mediator. The E-Musyawarah resolution is reached through consensus utilizing electronic signatures, and the agreement is then recorded in the E-Court to obtain a ruling equivalent to that of the Administrative Court, based on divine authority. This concept emerges from the author's apprehension regarding the proliferation of administrative disputes in conjunction with Lawrence M. Friedman's view of the judicial system.

The issue of legal parity is the primary obstacle encountered by the notion of E-Musyawarah as an ADR mechanism for settling administrative conflicts outside the court system. E-Musyawarah, in the context of administrative disputes, strongly emphasizes the principle of legal equality. Legal equality is a legal challenge due to several supporting factors. These factors encompass unequal access to information between the individual applying and the authority responsible for making the decision, as well as the requirement for the applicant to provide sufficient evidence to support their case.

Legal equality is a crucial aspect of contemporary society, leading to the implementation of stringent regulations through several legal mechanisms to guarantee the fair and equitable treatment of individual rights under the law.

The Administrative Court aims to enhance technology integration in the judicial system by promoting the concept of E-Musyawarah as an ADR method for resolving administrative disputes outside of court. This innovative approach seeks

to instil a sense of justice and trust among the public regarding electronically resolving administrative disputes through the Administrative Court.

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**Resumo:** O desenvolvimento contínuo dos litígios administrativos destacou a necessidade de Métodos Alternativos de Resolução de Conflitos (ADR) para solucionar essas disputas fora do sistema judicial na Indonésia. O conceito de E-Musyawarah representa uma forma de ADR que oferece novas perspectivas jurídicas. O método de coleta de dados utilizado nesta pesquisa é baseado em dados secundários obtidos por meio de pesquisa bibliográfica, com o referencial teórico fundamentado na teoria do sistema jurídico de Friedman. O conceito de E-Musyawarah como um ADR para a resolução de disputas administrativas extrajudiciais reflete a tendência de utilização de tecnologias da informação e comunicação para facilitar a resolução de conflitos fora do Judiciário. A solução alcançada pelo E-Musyawarah é formalizada com assinaturas eletrônicas registradas no E-Court, conferindo-lhes a mesma validade jurídica que as decisões do Tribunal Administrativo. Contudo, esse conceito também enfrenta desafios jurídicos, especialmente no que diz respeito à igualdade perante a lei.

**Palavras-chave:** Indonésia. E-Musyawarah. Métodos Alternativos de Resolução de Conflitos (ADR). Resolução de Disputas Administrativas. Teoria do Sistema Jurídico. Tecnologia da Informação e Comunicação (TIC) no Direito.

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