

Utilization of Customary Law for Resolution of Land and Natural Resource Disputes: A Restorative Approach

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ABSTRACT

This article examines the utilization of customary law in resolving land and natural resource disputes through a restorative justice approach within Indonesia's plural legal system. Although customary institutions remain actively used by indigenous communities to resolve disputes based on consensus and social harmony, their normative status within the formal legal system remains uncertain. This study identifies three core legal issues: normative ambiguity concerning the legal force of customary dispute resolution, a legal vacuum in the formal recognition of restorative mechanisms outside judicial processes, and conflicts of norms between customary law and positive state law governing land and natural resources. Using a normative juridical method with statute, conceptual, and case approaches, this article analyzes constitutional provisions, land and natural resource regulations, and legal doctrines on restorative justice and legal pluralism. The analysis demonstrates that customary dispute resolution inherently reflects restorative justice principles, including harm repair, communal participation, and restoration of social relations. However, these mechanisms lack formal legal recognition as binding and enforceable outcomes. Judicial and administrative practices tend to prioritize procedural legality and formal documentation, thereby marginalizing customary restorative settlements and perpetuating legal uncertainty for indigenous communities. This article argues that the persistence of land and natural resource disputes reflects structural deficiencies in Indonesia's legal framework rather than isolated implementation failures. It proposes a prescriptive framework for institutionalizing customary restorative mechanisms through statutory recognition, administrative integration, and pluralistic judicial interpretation to ensure legal certainty, substantive justice, and constitutional compliance.

Keywords: customary law, restorative justice, land disputes, natural resource conflicts, legal pluralism.

INTRODUCTION

Land and natural resource disputes involving indigenous communities remain a persistent structural problem within Indonesia's plural legal system. Despite constitutional recognition of indigenous peoples and their traditional rights, disputes concerning land and natural resources continue to escalate, particularly in areas where state-driven development intersects with customary territories. These disputes reveal not merely social disagreements but deeper normative problems arising from the interaction between customary law and positive state law. In this context, the utilization of customary law as a dispute resolution mechanism, particularly through a restorative approach, raises critical legal questions regarding its normative status, legal effectiveness, and compatibility with the formal justice system.¹

Article 18B paragraph (2) of the 1945 Constitution recognizes indigenous peoples and their traditional rights, subject to their continued existence and conformity with

¹ Sunarno and H. Khan, "Customary Land Disputes in Indonesia," *International Journal of Academic Research in Business and Social Sciences* 13, no. 10 (2023).



national principles.² While this provision establishes constitutional legitimacy for customary law, it does not provide operational clarity regarding how customary dispute resolution mechanisms should function within the state legal order. This constitutional ambiguity is reflected in sectoral legislation governing land and natural resources, which prioritizes administrative legality, licensing, and state control. As a result, customary law is often marginalized or treated as an informal alternative rather than an integral component of the national dispute resolution framework.

The Basic Agrarian Law of 1960 recognizes customary land rights (*hak ulayat*) as part of national land law but simultaneously subjects them to national interests and state regulation.³ This formulation creates a conflict of norms when customary communities rely on traditional mechanisms to resolve disputes over land and natural resources, while state institutions insist on formal judicial or administrative processes. The problem is further compounded in natural resource disputes, where sectoral laws on forestry, mining, and conservation often disregard customary tenure systems, leading to criminalization or displacement of indigenous communities.⁴

In practice, many indigenous communities continue to resolve land and natural resource disputes through customary institutions that emphasize consensus, social harmony, and restoration of communal relationships. These mechanisms align closely with restorative justice principles, focusing on repairing harm rather than determining winners and losers.⁵ However, the legal status of such customary resolutions remains uncertain. Courts and administrative authorities frequently question their binding force, especially when disputes involve external actors or intersect with state-issued permits. This situation exposes a legal vacuum concerning the formal recognition and enforceability of customary restorative mechanisms.

Existing scholarship has extensively discussed customary dispute resolution, yet significant gaps remain. Akbar et al. (2023) analyze customary dispute resolution from a progressive legal perspective but do not address its normative integration with positive law.⁶ Darmawansyah et al. (2025) examine restorative justice in indigenous land disputes empirically, without critically assessing the statutory framework governing such practices.⁷ Meanwhile, Watofa et al. (2025) explore integration between customary and state law in natural resource conflicts but stop short of proposing a coherent normative model.⁸ These studies highlight the practice of customary dispute resolution but leave unresolved the core normative question of how customary restorative mechanisms should be positioned within Indonesia's formal legal system.

The research gap addressed in this article lies in the absence of a normative juridical analysis that conceptualizes customary law-based dispute resolution as a restorative justice mechanism within the framework of land and natural resource law. This article does not merely describe customary practices but critically examines their legal standing, normative coherence, and potential institutionalization. It argues that the failure to formally recognize customary restorative mechanisms perpetuates legal

² Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, art. 18B(2).

³ Republic of Indonesia, *Law No. 5 of 1960 on Basic Agrarian Principles*.

⁴ Y. Watofa et al., "Integration of Customary Law and State Law in Resolving Natural Resource Conflicts in Indigenous Areas," *Journal of the American Institute* (2025)

⁵ Suhermi, "Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities," *Journal of Adat Recht* (2024).

⁶ M. Akbar et al., "The Progressive Legal Perspective of Legal Justice in Customary Dispute Resolution Related to Natural Resources," *Jurnal IUS* 11, no. 2 (2023)

⁷ D. Darmawansyah et al., "Restorative Justice in Settlement of Indigenous Based Land Dispute," *Jurnal Mediasas* 8, no. 2 (2025).

⁸ Y. Watofa et al., "Integration of Customary Law and State Law," 2025.

uncertainty and undermines substantive justice for indigenous communities. Accordingly, this article proposes a prescriptive legal framework for integrating customary law-based restorative dispute resolution into Indonesia's land and natural resource governance system.

METHODS

This research employs a normative juridical method to analyze the utilization of customary law in resolving land and natural resource disputes through a restorative approach. The choice of a normative method is grounded in the nature of the legal issues examined, which concern normative ambiguity, legal vacuums, and conflicts of norms between customary law and positive state law. Rather than assessing empirical effectiveness, this study focuses on legal norms, doctrines, and principles governing dispute resolution mechanisms within Indonesia's plural legal system.⁹

The statute approach is used to examine constitutional provisions, land law legislation, and sectoral regulations related to land and natural resource governance. Primary legal materials include the 1945 Constitution, the Basic Agrarian Law of 1960, and relevant statutory frameworks governing dispute resolution and restorative justice.¹⁰ This approach enables an assessment of whether existing laws provide sufficient normative space for customary law-based restorative mechanisms or whether they implicitly exclude such practices through procedural formalism.

The conceptual approach is employed to analyze the theoretical foundations of customary law and restorative justice. Customary law is examined as a living legal system rooted in communal values, while restorative justice is conceptualized as an alternative paradigm emphasizing harm repair and social equilibrium. By integrating these concepts, the research evaluates whether customary dispute resolution mechanisms inherently embody restorative principles and how these principles align with contemporary legal discourse. This approach also exposes conceptual inconsistencies in the treatment of customary law as merely informal or extra-legal.

The case approach complements the statutory and conceptual analyses by examining patterns in judicial and administrative responses to customary dispute resolution outcomes. Although this research does not focus on a single court decision, it analyzes tendencies in how customary settlements are recognized or disregarded in land and natural resource disputes. This approach reveals the absence of a consistent normative framework guiding state institutions in engaging with customary restorative mechanisms. Through the integration of statute, conceptual, and case approaches, this research constructs a comprehensive normative evaluation of customary law-based restorative dispute resolution. The methodological framework provides the foundation for prescriptive recommendations aimed at institutionalizing customary restorative mechanisms within Indonesia's formal legal system, thereby enhancing legal certainty, substantive justice, and respect for indigenous legal traditions.

RESULTS AND DISCUSSION

Normative Status of Customary Law in the Resolution of Land and Natural Resource Disputes

The utilization of customary law in resolving land and natural resource disputes raises a fundamental normative question regarding its legal status within Indonesia's formal legal system. Although customary law is constitutionally acknowledged, its position in dispute

⁹ □ Peter Mahmud Marzuki, *Legal Research*, rev. ed. (Jakarta: Kencana, 2017).

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¹⁰ Republic of Indonesia, *Law No. 5 of 1960 on Basic Agrarian Principles*.

resolution remains legally ambiguous. Article 18B paragraph (2) of the 1945 Constitution recognizes indigenous peoples and their traditional rights, yet such recognition is framed conditionally and lacks implementing norms that clearly define the legal force of customary dispute resolution outcomes.¹¹ This constitutional formulation creates a normative gap when customary institutions resolve disputes that intersect with state-regulated land and natural resource regimes.

The Basic Agrarian Law of 1960 acknowledges the existence of customary law as the foundation of national land law, but it does not explicitly regulate the role of customary institutions in dispute resolution.¹² Instead, dispute settlement mechanisms are largely governed by positive law procedures that emphasize litigation, mediation under court supervision, or administrative remedies. As a result, customary dispute resolution operates in a legal gray area: socially legitimate but legally precarious. This condition is particularly problematic in disputes involving natural resources, where sectoral regulations prioritize licensing, state control, and economic utilization over communal rights.

Normative ambiguity is further reinforced by the absence of statutory recognition of customary restorative mechanisms. While restorative justice has gained increasing recognition within Indonesia's criminal justice reform discourse, its application in civil and administrative disputes, particularly those involving land and natural resources, remains underdeveloped.¹³ Customary law-based dispute resolution inherently embodies restorative principles such as consensus-building, restoration of social harmony, and collective accountability. However, these characteristics are rarely acknowledged as legally relevant criteria in formal dispute resolution frameworks.

Empirical studies demonstrate that customary dispute resolution continues to function effectively at the community level. Haning (2025) shows that indigenous communities rely on customary institutions not merely due to cultural preference but because such mechanisms provide substantive justice and long-term social stability.¹⁴ Similarly, Riski et al. (2023) highlight that customary settlements often prevent dispute escalation and reduce litigation costs.¹⁵ Despite these advantages, state institutions frequently treat customary resolutions as informal agreements lacking binding legal force, especially when disputes involve third parties or economic interests.

This normative marginalization reflects a deeper conflict between legal pluralism and legal centralism. Positive law tends to monopolize dispute resolution authority, relegating customary law to a supplementary or optional role. Judijanto et al. (2024) observe that courts often acknowledge customary norms rhetorically while ultimately prioritizing statutory provisions and formal evidence.¹⁶ Such judicial practice undermines the normative autonomy of customary law and perpetuates legal uncertainty for indigenous communities.

From a prescriptive standpoint, the normative status of customary law in dispute resolution must be clarified through explicit statutory recognition. Customary dispute resolution outcomes should be legally recognized as binding, provided they meet substantive and procedural safeguards consistent with constitutional principles. This does not require the absorption of customary law into rigid procedural frameworks but rather the acknowledgment of its normative authority within a plural legal order. Without such clarification, the utilization

¹¹ Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia*, art. 18B(2).

¹² Republic of Indonesia, *Law No. 5 of 1960 on Basic Agrarian Principles*

¹³ Suhermi, "Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities," *Journal of Adat Recht* (2024).

¹⁴ S. Haning, "The Role of Customary Law in Resolving Land Disputes in Indonesia's Indigenous Communities," *International Journal of Social and Human* (2025).

¹⁵ N. Riski, S. Octaviyanda, and W. Fernando, "Implementation of Customary Law in Settlement of Land Disputes in Indonesia," *QISTINA* 2, no. 2 (2023).

¹⁶ L. Judijanto et al., "Comparative Analysis of the Use of Customary Law in Land Dispute Resolution," *Rechtsnormen Journal of Law* 2, no. 2 (2024).

of customary law in resolving land and natural resource disputes will remain vulnerable to exclusion and contestation.

Restorative Justice as a Normative Framework for Customary Resolution of Land and Natural Resource Disputes

The application of a restorative justice framework provides a coherent normative basis for legitimizing customary law-based dispute resolution in land and natural resource conflicts. Restorative justice emphasizes the repair of harm, restoration of relationships, and reintegration of affected parties, rather than adversarial determination of rights.¹⁷ This orientation aligns closely with the philosophical foundations of customary law, which prioritize communal harmony and social equilibrium over individual entitlement.

Customary dispute resolution mechanisms typically involve collective deliberation, acknowledgment of harm, and consensus-based outcomes. In disputes over land and natural resources, these mechanisms address not only legal claims but also the broader social and environmental consequences of the conflict. Darmawansyah et al. (2025) demonstrate that restorative approaches in indigenous land disputes facilitate sustainable outcomes by reintegrating disputing parties into the community.¹⁸ However, the absence of formal legal recognition often limits the broader applicability and enforceability of such outcomes.

Normatively, restorative justice offers an alternative to the formalistic orientation of positive law. Land and natural resource disputes often involve historical grievances, overlapping claims, and power imbalances that cannot be adequately resolved through adversarial litigation.¹⁹ By focusing on dialogue and restoration, customary restorative mechanisms provide substantive justice that formal procedures frequently fail to deliver. Nevertheless, the lack of clear legal parameters raises concerns regarding legal certainty, accountability, and protection of vulnerable parties.

The following table illustrates the normative distinctions between restorative customary dispute resolution and formal legal dispute resolution mechanisms:

Table 1. Normative Comparison Between Customary Restorative Resolution and Formal Legal Resolution

Aspect	Customary Resolution	Restorative	Formal Legal Resolution
Primary objective	Restoration of social harmony		Determination of legal rights
Decision-making process	Consensus-based deliberation		Adversarial adjudication
Role of community	Central and participatory		Limited or absent
Treatment of harm	Collective and relational		Individualized and legalistic
Legal certainty	Substantive and contextual		Procedural and formal

While restorative customary mechanisms excel in delivering substantive justice, their integration into the formal legal system requires normative safeguards. Gultom et

¹⁷ Suhermi, “Restorative Justice in Customary Law,” 2024.

¹⁸ D. Darmawansyah, J. Jainuddin, and H. Hikmah, “Restorative Justice in Settlement of Indigenous Based Land Dispute,” *Jurnal Mediasas* 8, no. 2 (2025).

¹⁹ M. Akbar et al., “The Progressive Legal Perspective of Legal Justice in Customary Dispute Resolution Related to Natural Resources,” *Jurnal IUS* 11, no. 2 (2023).

al. (2025) argue that mediation-based customary settlements must align with principles of voluntariness, transparency, and fairness to be legally acceptable.²⁰ Without such safeguards, there is a risk that restorative processes may mask power imbalances or exclude marginalized voices.

Prescriptively, restorative justice should be recognized as a legitimate normative framework for resolving land and natural resource disputes through customary law. This recognition must be accompanied by statutory guidelines that delineate the scope, procedures, and legal effects of customary restorative settlements. Such guidelines should ensure that customary resolutions are not overridden by administrative or judicial decisions without substantive review. Moreover, integration mechanisms should allow customary outcomes to be registered or endorsed by state institutions without transforming them into purely administrative products.

In sum, restorative justice provides a viable normative bridge between customary law and state law. By formally recognizing customary restorative mechanisms, Indonesia can enhance legal pluralism while ensuring legal certainty and protection of rights in land and natural resource governance.

Institutionalization of Customary Restorative Mechanisms in Land and Natural Resource Governance

The institutionalization of customary law-based restorative mechanisms constitutes a critical step toward resolving structural deficiencies in land and natural resource dispute resolution. As demonstrated in the preceding discussions, customary dispute resolution practices possess substantive legitimacy and restorative capacity, yet remain normatively marginalized within Indonesia's formal legal system. This marginalization is primarily caused by the absence of explicit legal frameworks that recognize customary restorative outcomes as legally binding and enforceable. Consequently, customary mechanisms operate in a precarious legal space, vulnerable to administrative override and judicial disregard.

A core normative issue concerns the lack of statutory integration between customary restorative mechanisms and positive law dispute resolution frameworks. While Indonesian law provides various formal dispute resolution avenues, including litigation, mediation, and administrative remedies, it does not adequately regulate the position of customary institutions within this architecture.²¹ Customary settlements are frequently treated as informal agreements rather than as legitimate legal outcomes, especially in disputes involving land titles, concessions, or natural resource exploitation. This treatment reflects a legal vacuum regarding the procedural and substantive requirements for recognizing customary restorative outcomes.

The institutionalization of customary restorative mechanisms requires a shift in legal perspective from procedural formalism to substantive justice. Restorative justice principles emphasize accountability, participation, and repair of harm, all of which are deeply embedded in customary dispute resolution practices.²² However, without legal recognition, these principles lack normative force beyond the community level. State institutions often prioritize formal legality over restorative outcomes, leading to

²⁰ A. Gultom, H. Siregar, and R. Siregar, "Legal Review of Settlement of Customary Land Disputes Through Mediation According to Positive Law," *Journal of Legal and Cultural Analytics* (2025).

²¹ F. Moa and G. Djajaputra, "Legal Remedies for Resolving Land Disputes under Indonesia's Positive Law," *JIHK* 7, no. 1 (2025).

²² Suhermi, "Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities," *Journal of Adat Recht* (2024)

decisions that may be legally valid but socially destabilizing. This disconnect undermines the constitutional commitment to respecting indigenous legal traditions.

Judicial practice illustrates the consequences of this institutional gap. Courts frequently prioritize formal evidence, such as land certificates or administrative permits, while discounting customary resolutions that lack formal documentation.²³ Such judicial tendencies reinforce legal centralism and erode trust in the formal justice system among indigenous communities. Moreover, they discourage the use of restorative mechanisms by signaling that customary settlements may ultimately be disregarded in favor of administrative determinations.

From a prescriptive standpoint, institutionalization must begin with statutory acknowledgment of customary restorative mechanisms as legitimate forms of dispute resolution. This acknowledgment should include clear criteria for recognition, such as voluntariness, inclusivity, transparency, and conformity with constitutional principles.²⁴ Importantly, statutory regulation should avoid excessive proceduralization that could undermine the flexibility and cultural specificity of customary practices. Instead, the law should provide a normative framework that respects customary autonomy while ensuring minimum standards of fairness and accountability.

Administrative integration is equally essential. State agencies responsible for land and natural resource governance should be required to consider customary restorative outcomes when making licensing, registration, or enforcement decisions. This requirement would prevent administrative actions that contradict socially accepted settlements and exacerbate conflict.²⁵ Furthermore, mechanisms for recording or endorsing customary settlements could enhance their legal visibility without transforming them into purely administrative constructs.

Finally, institutionalization must address power asymmetries and protect vulnerable groups within customary processes. While restorative mechanisms emphasize consensus, they may also risk marginalizing weaker parties if not properly safeguarded. Legal oversight mechanisms should therefore ensure that customary restorative processes do not perpetuate inequality or coercion. By embedding such safeguards, the law can enhance the credibility and legitimacy of customary restorative dispute resolution.

In sum, institutionalizing customary law-based restorative mechanisms is not a matter of legal accommodation but of normative integration. By formally recognizing and supporting these mechanisms, Indonesia can strengthen legal pluralism, enhance substantive justice, and reduce the structural causes of land and natural resource disputes.

CONCLUSIONS

This article demonstrates that the utilization of customary law for resolving land and natural resource disputes through a restorative approach represents a normatively viable and substantively just alternative to formal adjudication. However, the persistence of customary dispute resolution outside the formal legal framework reveals structural weaknesses in Indonesia's land and natural resource governance. Normative ambiguity, legal vacuums, and conflicts of norms continue to marginalize customary restorative mechanisms despite their constitutional legitimacy and practical effectiveness.

²³ L. Judijanto et al., "Comparative Analysis of the Use of Customary Law in Land Dispute Resolution," *Rechtsnormen Journal of Law* 2, no. 2 (2024).

²⁴ A. Adila and S. Alexandra, "Implementation of Customary Law in Land Dispute Resolution in Indigenous Law Communities," *Hakim: Jurnal Ilmu Hukum dan Sosial* 3, no. 1 (2025).

²⁵ Y. Watofa et al., "Integration of Customary Law and State Law in Resolving Natural Resource Conflicts in Indigenous Areas," *Journal of the American Institute* (2025)

The analysis confirms that customary law inherently embodies restorative justice principles, yet lacks formal legal recognition as a binding dispute resolution mechanism. Judicial and administrative practices that prioritize procedural legality over substantive justice exacerbate legal uncertainty and undermine indigenous communities' trust in state institutions. Without institutionalization, customary restorative mechanisms remain vulnerable to exclusion and override.

Prescriptively, this article argues for the statutory recognition and institutional integration of customary law-based restorative dispute resolution. Such integration must balance respect for customary autonomy with safeguards to ensure fairness, accountability, and protection of vulnerable parties. By adopting a normative framework that recognizes customary restorative mechanisms as legitimate legal processes, Indonesia can harmonize legal pluralism with legal certainty, thereby advancing constitutional values and sustainable dispute resolution in land and natural resource governance.

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