

THE PROGRESSIVE LEGAL PERSPECTIVE OF LEGAL JUSTICE IN CUSTOMARY DISPUTE RESOLUTION RELATED TO NATURAL RESOURCES

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Abstract

The absence of special arrangements regarding customary law has the potential to cause inferiority in the position of customary law compared to the substance of national law in customary disputes relating to natural resources. This study seeks to analyze and formulate the idea of resolving customary disputes over the management of natural resources in a progressive legal perspective to achieve justice. The results of the study confirmed that the problems of customary disputes related to the management of natural resources, especially those that occurred in the territories of indigenous peoples, made the position of customary law weaker compared to national law. This happens because regulations regarding indigenous peoples have not been ratified. Legal efforts to settle natural resource customary disputes to achieve justice in a progressive legal perspective need to be regulated through the establishment of a Perppu (Government Regulation in Lieu of Law) to facilitate the position of customary law in resolving customary disputes in the field of natural resource management. In the Perppu, it is hoped that there will be confirmation regarding the enactment of the conception of legal pluralism so that customary law has an equal position with national law in customary disputes over natural resource management.

Keywords: *Dispute; Indigenous Peoples; Natural Resources*

1. INTRODUCTION

Natural resources are an important aspect of human life, including for indigenous peoples. Indigenous peoples view that natural resource management must be aligned with environmental sustainability values and goals.¹ This is intended so that natural resources can be sustainable and enjoyed for posterity in the future. Efforts to preserve these natural resources by indigenous peoples are believed to be contained in unwritten norms or rules maintained by indigenous peoples and commonly referred to as customary law.² Regulation of natural resources by indigenous peoples applies to internal indigenous peoples and other

¹ Wimba Roofi Utama, "Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019," *Notaire* 4, no. 3 (2021): 489, <https://doi.org/10.20473/ntr.v4i3.28036>.

² Lestari Victoria Sinaga, *Hukum Adat Dalam Perspektif Umum* (Batu: Literasi Nusantara, 2020). 13

parties outside indigenous peoples who seek to manage natural resources in indigenous peoples' territories.

Potential disputes occur when the management of natural resources in the territory of indigenous peoples is managed by other parties who are not in accordance with the management of natural resources in accordance with customary law provisions.³ Other parties who manage natural resources in indigenous peoples' territories generally refer only to positive legal provisions issued by the state and often ignore provisions in customary law. This neglect of customary law has the potential to cause problems in natural resource management disputes because on the one hand the other party who manages natural resources in the territory of indigenous peoples already feels that they obey the existing positive laws but on the other hand is considered unlawful by indigenous peoples.⁴ One of the conflicts between indigenous peoples and other parties who manage natural resources is the conflict between the Besipae indigenous people in NTT. In addition to involving other parties in the form of companies, the conflict also involves local governments that insist on implementing the provisions of regional laws and regulations. Due to the conflict that occurred in the Besipae indigenous people in NTT, many children and women of the Besipae indigenous people in NTT were displaced and did not have proper settlements.⁵

The conflict that occurred in the Besipae indigenous community in NTT above is one of the facts that occur between the clash of natural resource management arrangements based on customary law which clashes with natural resource arrangements carried out based on national law. Factually, the clash between customary law and natural resource management based on national law is usually won by national law because national law guarantees more legal certainty and is the "official" law of the state.⁶ This research seeks to analyze and formulate the idea of customary dispute resolution of natural resource management in a progressive legal perspective to realize justice. A progressive legal perspective is used in this study to reinforce aspects of legal morality and humanity to deliver the law to achieve justice expected by indigenous peoples.

³ Abd. Hadi, "Desa Adat Dalam Sistem Ketatanegaraan Republik Indonesia Sebagai Implikasi Hukum Setelah Berlakunya Uu No. 6 Tahun 2014 Tentang Desa," *DiH: Jurnal Ilmu Hukum* 13, no. 26 (2018): 162–74, <https://doi.org/10.30996/dih.v0i0.1580>.

⁴ Putu Putra Pradiatmika, Ida Ayu Putu Widiati, and Ni Made Sukaryati Karma, "Perlindungan Hukum Terhadap Masyarakat Di Daerah Pertambangan," *Jurnal Analogi Hukum* 2, no. 2 (2020): 252–57, <https://doi.org/10.22225/ah.2.2.1929.252-257>.

⁵ Kornelis Kewa Ama, "Koordinator Masyarakat Adat Pubabu-Besipae, NTT, Ditangkap Polisi" (www.kompas.id, 2023).

⁶ Raju Moh Hazmi, Asep Saepudin Jahar, and Nurul Adhha, "Construction of Justice, Certainty, and Legal Use in the Decision of the Supreme Court Number 46 P/HUM/2018.," *Jurnal Cita Hukum* 9, no. 1 (2021): 159–78, <https://doi.org/10.15408/jch.v9i1.11583.certainty>, and the legal use in the reality of Indonesian law reflects the strong grip of legal positivism that resides in the Supreme Court's decision and causes a waning sense of justice and public hope to obtain a track record of candidates who are proper and with integrity. This study aims to explain the philosophical dialectic between justice, certainty, and legal use in PMA No. 46 of 2018 while expressing a representation of justice, construction of legal certainty and legal use that is incarnated according to the judge's consideration in the decision. The approach through justice theory John Stuart Mill and John Rawls will be used to slice the conception of justice, certainty, and legal use that resides in the decision of the Supreme Court Number 46 P/HUM/2018. This research is a normative-philosophical legal research. The results showed that the construction of justice imprinted in the verdict tended to project the concept of justice as equality (justice as fairness

Research on customary disputes has actually been carried out by several previous researchers, such as those conducted by: Risnain, et al. (2022) who analyzed the role of North Lombok customary institutions in resolving customary disputes.⁷ The novelty in the research of Risnain, et al. (2022) that North Lombok customary institutions prioritize a deliberative approach in resolving customary disputes so that they can be accepted by various disputing parties. The next research discussing customary land disputes in Guwang Village, Gianyar was conducted by Sudibya, et al. (2023).⁸ The novelty of research conducted by Sudibya, et al. (2023) that there is a customary land dispute in Guwang Village, Gianyar, the customary court of Guwang Village, Gianyar regulates evidence efforts that are deviant and different from the provisions in the UUPA. Further research discussing efforts to resolve land disputes in maintaining national security was carried out by Widodo, et al. (2023) The novelty of Widodo, et al.'s (2023) research on the need for legal and non-legal (cultural) dispute resolution related to land disputes so that the parties to the dispute can be guaranteed social harmonization.⁹

Although the three studies above discuss the settlement of customary disputes, the specific discussion of customary dispute resolution of natural resource management in a progressive legal perspective to realize justice due to the clash of national law and customary law has never been comprehensively analyzed by previous researchers. Therefore, this study is an original research because it substantively discusses research that has not been discussed by previous researchers.

This research which discusses efforts to resolve customary disputes over natural resource management in a progressive legal perspective is a type of normative legal research based on document aspects in the form of laws and regulations along with literature sources.¹⁰ The approach used in this study is a concept and legislation approach. The primary legal materials are the 1945 NRI Constitution and Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). Secondary legal materials are the Indigenous Peoples Bill (RUU MHA), journal articles, books, and other research results that discuss customary disputes over natural resources. Non-legal material is a dictionary of languages.

2. ANALYSIS AND DISCUSSION

2.1. The Problems of Customary Disputes Related to Natural Resources Management

⁷ Hery Mahardika, M Galang Asmara, and Muh Risnain, "Pelaksanaan Penyelesaian Sengketa Adat Melalui Lembaga Adat Di Kabupaten Lombok Utara," *Justitia* 9, no. 4 (2022): 2107–21.

⁸ Diah Gayatri Sudibya Ni Kadek Putri Juniari1, I Made Suwitra2, "Penyelesaian Sengketa Hak Atas Tanah Adat Di Desa Guwang, Kec. Sukawati, Kab. Gianyar," *Wicaksana* 7, no. 1 (2023): 39.

⁹ Ayu Meiranda, Achmed Sukendro, and Pujo Widodo, "Upaya Hukum Terhadap Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Kampar Guna Menjaga Keamanan Nasional," *Analisis Hukum* 6, no. 1 (2023): 99–114, <https://doi.org/10.38043/jah.v6i1.4232>.

¹⁰ Chunuram Soren, "Legal Research Methodology: An Overview," *Journal of Emerging Technologies and Innovative Research (JETIR)* 8, no. 10 (2021): 1–44.

Natural resource management is an important aspect for indigenous peoples. Indigenous peoples view natural resource management as an activity that has religious value as well as tradition.¹¹ Religious values in natural resource management for indigenous peoples are interpreted as orientation towards proportional natural resource management and ensuring the sustainability of existing natural resources.¹² Indigenous peoples also view natural resources as belonging to God Almighty while the community is only a party who gets the mandate to protect natural resources as “God’s entrustment”.¹³ By considering natural resources as God’s entrustment, indigenous peoples in utilizing natural resources comply with the provisions of applicable rules or norms. In the traditional aspect, the use of natural resources by indigenous peoples is also oriented for the next generation. Indigenous peoples usually have certain traditions and customs that in principle provide learning for the next generation to conserve natural resources.¹⁴ Based on the religious aspects and traditional aspects above, it can be concluded that indigenous peoples view natural resource management as an act that must be carried out in accordance with the provisions of customary rules.

Natural resource management in law is included in the realm of agrarian law. The understanding of agrarian law as stated in Article 33 paragraph (3) of the 1945 NRI Constitution which authentically affirms that agrarian is every earth, water, and natural wealth contained therein. At first glance, the understanding of agrarian in the 1945 NRI Constitution is an agrarian understanding in a broad sense, while narrowly the term agrarian is often perceived in the sense of land or everything related to land.¹⁵ In the context of the 1945 NRI Constitution, the understanding of agrarian land as stated in Article 33 paragraph (3) of the 1945 NRI Constitution can be equated with natural resources. This can be proven by the modern interpretation of the term agrarian in the 1945 NRI Constitution which includes space and basements as part of agrarian.¹⁶

Interpreting the term natural resources with agrarian is actually more appropriate as stipulated in the 1945 NRI Constitution which identifies agrarian as natural resources. States have an obligation to facilitate and ensure proportional distribution of natural resource management.¹⁷ This is because natural resource management must be oriented

¹¹ Gerlov van Engelenhoven, “From Indigenous Customary Law to Diasporic Cultural Heritage: Reappropriations of Adat Throughout the History of Moluccan Postcolonial Migration,” *International Journal for the Semiotics of Law*, 2020, 1–27, <https://doi.org/doi.org/10.1007/s11196-020-09781->.

¹² Dewa Gede Sudika Mangku et al., “The Position Of Indigenous People In The Culture And Tourism Developments: Comparing Indonesia And East Timor Tourism Laws And Policies,” *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 136–61, <https://doi.org/10.19105/AL-LHKAM.V17I1.6060>.

¹³ Dicky Eko Prasetyo et al., “Strategi Pluralisme Hukum Peradilan Adat Sendi Dalam Era Modernisasi Hukum,” *Rechtsidee* 8, no. 1 (2021): 9.

¹⁴ Dwi Suryahartati et al., “The Local Customary Law: The Contribution of Adat Law in Preserving the Lubuk Larangan in Jambi,” *Jambe Law Journal* 4, no. 1 (2021): 43–68, <https://doi.org/10.22437/jlj.4.1.43-68>.

¹⁵ Wisnu Andriawan et al., “Land Procurement by Land Bank as a Form of Agrarian Reform Based on Law Number 11 Year 2021 Concerning Work Creation,” *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 4, no. 3 (2021): 3434–39.

¹⁶ Athari Farhani and Ibnu Sina Chandranegara, “Penguasaan Negara Terhadap Pemanfaatan Sumber Daya Alam Ruang Angkasa Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” *Jurnal Konstitusi* 16, no. 2 (2019): 235, <https://doi.org/10.31078/jk1622>.

¹⁷ Farhani and Chandranegara.

to realize the prosperity and welfare of the people. Natural resource management by indigenous peoples actually existed even before Indonesia became independent. This implies that the state's obligation to facilitate and ensure proportional distribution of natural resource management is not merely a state order to fully regulate natural resource management. Referring to the systematic interpretation of the provisions of Article 33 paragraph (3) and Article 18 B paragraph (2) of the 1945 NRI Constitution, it can be concluded that in regulating natural resource management, the state must pay attention to the peculiarities and customary provisions that have been in force and existed before the Indonesian state became independent.

The systematic interpretation as in Article 33 paragraph (3) and Article 18B paragraph (2) of the 1945 NRI Constitution above gets further provisions in Article 5 of the UUPA which confirms the existence of customary law recognized in national agrarian law. The recognition of customary law as stated in Article 5 of the UUPA has three implications, namely: first, the recognition of the existence of customary law in the UUPA confirms that customary law is recognized in line with the development of national agrarian law.¹⁸ Even so, the customary law provisions in Article 5 of the UUPA can be said to be still fairly weak because they only emphasize that customary law remains valid as long as it does not conflict with national interests. This implies that if national law remains superior to customary law.

Second, customary law in Article 5 of the UUPA is intended to be facilitative and not substantively oriented. This confirms that the provisions in Article 5 of the UUPA understandably still place customary law under national law.¹⁹ Third, Article 5 of the UUPA also does not specifically explain the potential conflict between customary law and national law so that if the conflict occurs it will cause problems which law applies if customary law and national law conflict? The problem of the legal vacuum in Article 5 of the UUPA related to the unregulated regulation if there is a conflict between customary law and national law implies that customary law even though it has been facilitated, but hierarchically remains weaker than state law.²⁰

¹⁸ Ni Luh Made Elida Rani I Gusti Ayu Ketut Artatik, I Gusti Ngurah Alit Saputra, "Penyelesaian Sengketa Tanah Waris Antara Ahli Waris Beralih Agama Dengan Beragama Hindu Di Desa Adat Padang Luwih Perspektif Pluralisme Hukum," *Vidya Wertha* 5, no. 1 (2022): 29–42.

¹⁹ Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (January 1, 2021): 1–36, <https://doi.org/10.35673/ajmpi.v6i1.1129>. the primary and secondary legal materials used are inventoried in order to obtain proper legal review; and provides a conceptual analysis of the legal issues discussed. The results of the study stated that as a novelty concept; The concept of typical Indonesian legal pluralism provides equality for the enactment of state law, transnational law and customary law so that they can run together based on the 1945 Constitution of the Republic of Indonesia in the era of legal modernization. Then, the concept of typical Indonesian legal pluralism can be used as a strategy to integrate customary justice into the national legal system through aspects of legal development. Thus, this research is expected to be useful theoretically; namely as a scientific development of customary law, and practical benefits; namely as a reference for drafting regulations on customary villages by local governments. Therefore, researchers recommend that the Indigenous Peoples Bill be a priority in the 2021 National Legislation Program (Prolegnas)

²⁰ Dicky Eko Prasetyo, "Inventarisasi Putusan Peradilan Adat Sendi Sebagai Upaya Memperkuat Constitutional Culture Dalam Negara Hukum Pancasila," *Jurnal Hukum Lex Generalis* 2, no. 3 (2021): 249–73.

Referring to the three implications of customary law regulation in Article 5 of the UUPA, it can be concluded that UUPA still places customary law under national law even though there have been efforts to facilitate the enforceability of customary law. In the context of natural resource management, the legal vacuum contained in Article 5 of the UUPA related to the unregulated regulation if there is a conflict between customary law and national law in practice creates problems when customary law is actually faced with national law in natural resource management. The main problem of customary disputes that occur related to natural resource management is when the substance of customary law is confronted with the substance of national law. Parties who carry out natural resource management feel that they are in accordance with the laws and procedures as in the provisions of national law so that they feel that they do not violate customary law.²¹ On the other hand, indigenous peoples feel that customary law must be enforced regarding natural resource management, especially when natural resources are in the territory of customary law communities.

Legal problems related to natural resource management that cause disputes are caused by the absence of legal arrangements related to customary law arrangements, especially customary disputes in general. This is because the Indigenous Peoples Bill (MHA), which has been fought for a long time, has not met with certainty of its passage.²² The MHA Bill has actually facilitated a potential conflict between customary law and national law in the field of natural resources. In the MHA Bill, if the management of natural resources contained in the territory of indigenous peoples is contrary to the substance of national law, then the customary law shall prevail.²³ However, if a dispute related to natural resource management occurs in an area not a customary law community, national law shall prevail. The existence of provisions as in the MHA Bill if passed will guarantee legal certainty. However, with the MHA Bill not yet passed, natural resource disputes, especially those in indigenous peoples' territories, will always reduce customary law to national legal provisions. This is what makes indigenous peoples often experience criminalization.

Based on the results of the analysis above, the problem of customary disputes related to natural resource management, especially those that occur in indigenous peoples' territories, makes the position of customary law weaker than national law. This happened because the MHA Bill had not been passed which made there was no guarantee of legal certainty that confirmed the position of customary law when compared to national law. In addition, the provisions in the UUPA also merely facilitate the enforceability of

²¹ Marthen B. Salinding, "Prinsip Hukum Pertambangan Mineral Dan Batubara Yang Berpihak Kepada Masyarakat Hukum Adat," *Jurnal Konstitusi* 16, no. 1 (2019): 148, <https://doi.org/10.31078/jk1618>.

²² WALHI, "Urgensi Pengesahan RUU Masyarakat Adat" (Wahana Lingkungan Hidup Indonesia, 2019).

²³ Jasardi Gunawan, "Studi Rekognisi Masyarakat Adat Di Amerika Dan Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 2 (2021): 220–31, <https://doi.org/10.36312/jisip.v5i2.1953>.

customary law and do not explain the position of customary law when it conflicts with national law.

2.2. Legal Efforts for Settlement of Indigenous Disputes on Natural Resources to Realize Justice: A Progressive Legal Review

Problems related to customary dispute resolution in natural resource management are caused because there is no specific arrangement that confirms the position of customary law when it comes to national law in a dispute. The only regulation referred to when there is a conflict between customary law and national law related to natural resource management is Article 5 of the UUPA. Article 5 of the UUPA is actually only concerned with facilitating the enforceability of customary law and does not affirm the existence of customary law when dealing with national law.²⁴ National law with lexical reference to Article 5 of the UUPA is actually superior to customary law. It is this superiority of national law to customary law that causes disputes in natural resource management, especially when customary law conflicts with national law.²⁵

The existence of problems related to the settlement of customary disputes in natural resource management in addition to causing legal uncertainty also causes practices that are unfair and tend to discriminate against indigenous peoples. Indigenous peoples often experience criminalization as a result of conflicts between customary law and national law. The criminalization of indigenous peoples is actually dilemmatic, because indigenous peoples actually try to enforce the substance of customary law that is believed to exist.²⁶ However, this then becomes “disastrous” when there is a national law that substantively conflicts with customary law. The injustice experienced by indigenous peoples is actually contrary to the mandate of the constitution that one of the goals of the state is to protect all levels of Indonesian society, including indigenous peoples. Discrimination and criminalization experienced by indigenous peoples require certain legal remedies so that justice for indigenous peoples can be given proportionately.²⁷

Efforts to provide justice for communities when there are customary disputes related to natural resources can be done by referring to a progressive legal perspective. The progressive legal perspective is actually a masterpiece of Indonesia’s “Begawan Hukum”, Satjipto Rahardjo, who emphasizes that justice and humanity are the highest essence of law.²⁸ A good law in a progressive legal perspective is one that guarantees justice and

²⁴ Retno Sulistyarningsih, “Reforma Agraria Di Indonesia,” *Perspektif* 26, no. 1 (2021): 57, <https://doi.org/10.30742/perspektif.v26i1.753>.

²⁵ Adriaan Bedner and Yance Arizona, “Adat in Indonesian Land Law: A Promise for the Future or a Dead End?,” *The Asia Pacific Journal of Anthropology* 20, no. 5 (October 20, 2019): 416–34, <https://doi.org/10.1080/14442213.2019.1670246>.

²⁶ Muhammad Luthfi et al., “Efforts to Protect Adat’s Communities in the Settlement of Environmental Criminal Cases in Indonesia,” in *Proceedings of the 2nd International Conference on Law Reform*, vol. 590, 2021, 159–62.

²⁷ Suci Flambonita, “The Concept of Legal Pluralism in Indonesia in the New Social Movement,” *Jurnal Analisa Sosiologi* 10, no. 3 (2021): 361–73, <https://doi.org/10.20961/jas.v10i0.45939>.

²⁸ Rikson Sitorus Markus Marselinus Soge, “Kajian Hukum Progresif Terhadap Fungsi Pemasyarakatan Dalam Rancangan Undang-Undang Pemasyarakatan,” *Legacy: Jurnal Hukum Dan Perundang-Undangan* 2, no. 2 (2022): 5–24.

humanity simultaneously. Justice and humanity are the soul of the law and must guide the law in order to serve humans optimally and optimally.

Referring to the perspective of progressive law, discrimination and criminalization of indigenous peoples when customary disputes occur in natural resource management which makes customary norms inferior to national law. In these conditions, progressive law offers an assumption that in times of crisis the law must move progressively and responsively beyond the limits of a legal remedy.²⁹ Satjipto Rahardjo even appealed that any effort, as long as it is good and justified, must be made to save the law which is in crisis conditions.³⁰ To leave the law in crisis is to slowly create injustice to society. In cases of discrimination and criminalization against indigenous peoples when customary disputes occur in natural resource management, this can normally be addressed when the MHA Bill has been passed into law. The passage of the MHA Bill as a law can strengthen the position of customary norms that can be applied in resolving disputes related to natural resource management. However, like other political processes, the passage of the MHA Bill even until 2023 has not reached a meeting point when it can be passed as law.

Waiting for the passage of the MHA Bill to address the problems of customary disputes in natural resource management is to allow injustices to occur formally and culturally.³¹ With the unclear status of the MHA Bill, referring to a progressive legal perspective, certain efforts and steps need to be taken, especially steps that are out of the box to bring justice to indigenous peoples. With the MHA Bill yet to be passed, there are actually several efforts that can be made to protect indigenous peoples from potential discrimination and criminalization related to natural resource management, namely first, the issuance of a Government Regulation in Lieu of Law (Perppu) on MHA. Issuing the MHA Perppu is one of the solutive orientations that can be done to ensure justice for indigenous peoples. Even so, formulating the MHA Perppu does not mean that it has no risks. If the MHA Perppu is rejected by the DPR, this could lead to instability related to the legal politics of regulation regarding indigenous peoples.

Second, the next step that can be taken is to issue a Government Regulation (PP) related to customary dispute resolution of natural resource management. The PP is actually based on the provisions of Article 5 of the UUPA so that the PP is a follow-up to the regulation of Article 5 of the UUPA. Even so, this PP also has the potential to cause problems, especially when there is no strong “cantolan” in the form of a law. This PP has the potential to be lip service and difficult to implement because there is

²⁹ Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, “Membangun Moralitas Dan Hukum Sebagai Integrative Mechanism Di Masyarakat Dalam Perspektif Hukum Progresif,” *Mimbar Keadilan* 14, no. 2 (2021): 128–38.

³⁰ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Buku Kompas, 2010). 54

³¹ Heryanti Heryanti, “Pengakuan Eksistensi Hak Ulayat Laut Masyarakat Hukum Adat Berdasar Nilai-Nilai Kearifan Lokal,” *Halu Oleo Law Review* 3, no. 2 (2019): 196, <https://doi.org/10.33561/holrev.v3i2.8650>.

no provision in the law that directly mandates it. Third, the step that can be taken is to carry out a Circular by involving relevant ministries and institutions. The Circular Letter will contain guidelines and appeals for relevant ministries and institutions to establish mutualistic relationships with indigenous peoples, especially indigenous peoples around their areas used for natural resource management. The Circular Letter in this context is more of an appeal to involve indigenous peoples in mitigating disputes, especially in relation to natural resource management.³²

Of the three solutions above, realistically, the first solution, namely the issuance of Perppu MHA, is the most powerful and best solution. This is based on at least three arguments, namely: first, the formulation of the MHA Perppu actually confirms the existence of legal products equivalent to laws governing natural resource disputes related to indigenous peoples. This Perppu legal product is hierarchically strong and can be a *lex specialis* provision for the UUPA.³³ Second, regulation through the MHA Perppu can be carried out ideally and optimally, namely by applying the conception of legal pluralism. Legal pluralism is actually a concept to apply more than one legal system under certain conditions and cases.³⁴ In the case of conflicts between customary law and positive law that cause natural resource disputes, legal pluralism can be present as a solution to strengthen the position of customary law. This means that customary law can be enforced and override national law when customary disputes over natural resource management occur in indigenous peoples' territories. The implementation of legal pluralism can only be optimal if it is regulated through legal products that are parallel to the law, in this case Perppu.

Third, with the formulation of the MHA Perppu, the potential for rapid passage of the MHA Bill can potentially be carried out. This is because if the MHA Perppu is passed and then the House of Representatives approves the MHA Bill as law, then the passage of the MHA Bill can be carried out faster. This is as is known until 2023, the signs of the passage of the MHA Bill are still unclear and this has the potential to further cause injustice for indigenous peoples. Therefore, legal efforts to resolve customary natural resource disputes to realize justice in a progressive legal perspective require regulation through the establishment of Perppu to facilitate the position of customary law in resolving customary disputes in the field of natural resource management. In the Perppu, it is expected that there will be an affirmation regarding the implementation

³² Cholida Hanum, "Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia," *Humani* 10, no. 2 (2020): 139.

³³ Ibnu Sina Chandranegara, "Pengujian Perppu Terkait Sengketa Kewenangan Konstitusional Antar-Lembaga Negara," *Yudisial* 5, no. 1 (2012): 1–16.

³⁴ R. Rudy et al., "Forest Cover Change and Legal Pluralism in Forest Management: A Review and Evidence from West Sumatra, Indonesia," *Indonesian Journal of Science and Technology* 6, no. 2 (2021): 299–314, <https://doi.org/10.17509/ijost.v6i2.34190>.

of the conception of legal pluralism so that customary law has an equal position with national law in customary disputes over natural resource management.

3. CONCLUSION

The problem of customary disputes related to natural resource management, especially those that occur in indigenous peoples' territories, makes the position of customary law weaker than national law. This happened because the MHA Bill had not been passed which made there was no guarantee of legal certainty that confirmed the position of customary law when compared to national law. In addition, the provisions in the UUPA also merely facilitate the enforceability of customary law and do not explain the position of customary law when it conflicts with national law. Legal efforts to resolve customary natural resource disputes to realize justice in a progressive legal perspective require regulation through the establishment of Perppu to facilitate the position of customary law in resolving customary disputes in the field of natural resource management. In the Perppu, it is expected that there will be an affirmation regarding the implementation of the conception of legal pluralism so that customary law has an equal position with national law in customary disputes over natural resource management.

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