

PANCASILA AND THE PRINCIPLE OF EQUILIBRIUM IN CUSTOMARY LAW: SAFEGUARDING THE COSMOLOGICAL RIGHTS OF INDIGENOUS PEOPLE

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Abstract

The principle of equilibrium is an ethical demand closely related to the communal mentality of customary law, encompassing moral, social, and legal values. Therefore, this research aimed to understand the application of equilibrium to the cosmological rights of indigenous and tribal people in implementing Pancasila values. Normative legal research was used with a statutory method to achieve a clear understanding of the issues discussed. The results showed that equilibrium served as a guide for creating a balance between rights and obligations realised concretely through legal and non-legal norms. Furthermore, the different rights owned by indigenous people were recognised and respected. In this context, the government needs to prioritise Pancasila values in development and pay attention to the cosmological rights of indigenous and tribal people. Customary law must address various legal issues faced by people in specific areas and uphold the fundamental rights.

Keywords: *customary law; cosmological rights; principle of equilibrium.*

Abstrak

Asas keseimbangan merupakan tuntutan etis yang berkaitan erat dengan mentalitas komunal hukum adat dalam konteks nilai moral, sosial, dan hukum. Oleh karena itu, penelitian ini bertujuan untuk memahami penerapan asas keseimbangan terhadap hak-hak kosmologis masyarakat hukum adat dalam mengimplementasikan nilai-nilai Pancasila. Penelitian hukum normatif digunakan dengan metode perundang-undangan untuk mencapai pemahaman yang jelas mengenai permasalahan yang dibahas. Hasil penelitian menunjukkan bahwa equilibrium menjadi pedoman untuk menciptakan keseimbangan antara hak dan kewajiban yang diwujudkan secara konkret melalui norma hukum dan non-hukum. Selain itu, berbagai hak yang dimiliki oleh masyarakat adat diakui dan dihormati. Dalam konteks ini, pemerintah perlu mengedepankan nilai-nilai Pancasila dalam pembangunan dan memperhatikan hak-hak kosmologis masyarakat hukum adat. Hukum adat harus menjawab berbagai persoalan hukum yang dihadapi oleh masyarakat di wilayah tertentu dan menjaga hak-hak kosmologisnya.

Kata Kunci: *asas equilibrium; hak kosmologi; hukum adat.*

Introduction

A principle is a fundamental truth that serves as the foundation of thought or opinion. In the context of legal norms, the concept is an accurate basis for creating written and unwritten legal norms. Principle is not explicitly formulated in regulations but is consistently recognised and used as the basis for legal provisions. The concept of “equilibrium” as defined in the General Indonesian Dictionary refers to a state of balance where harmony exists.¹

Some philosophers and jurists associate the idea of equilibrium with justice,^{2,3} which is described by drawing parallels with the life of a state. According to this perspective, the human soul consists of three parts, namely thoughts (*logistikon*), feelings and passions (*epithumatikon*), and a sense of good and evil (*thumoeidēs*). Justice is achieved when these parts are harmoniously united, with boundaries maintained in the respective forms.

The principle of equilibrium (*equilibrium*)⁴ is a limiting balance that challenges the theory of maximisation. This preserves cosmological institutions within the structured life of indigenous people, establishing rules accepted by residents in a specific area to govern the behaviour of communities as a social group. In the indigenous way of life, every individual is an integral part of the social unit. Customary law permeates every aspect of social life. People have accepted customs as a social system and believe that adhering to these customs ensures peace and happiness.⁵

The principle of equilibrium, as recognised internationally⁶, holds universal applicability. This principle emphasises the importance of maintaining decency, good faith, propriety, and appropriateness while exercising rights and fulfilling obligations. For indigenous people, adhering to this equilibrium is crucial for their survival, motivating them to make various efforts to sustain their way of life.^{7,8}

¹ Matthew SR Palmer, “A Perspective on Balance and the Role of Law,” *Victoria University of Wellington Law Review* 33, no. 3–4 (May 4, 2023): 425–46, <https://doi.org/10.26686/vuwlr.v33i3-4.5816>.

² Theo Huijibers, “Filsafat Hukum Dalam Lintasan Sejarah,” 1993; Niru Anita Sinaga, “Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian,” *Binamulia Hukum* 7, no. 2 (December 28, 2018): 107–20, <https://doi.org/10.37893/jbh.v7i2.20>.

³ Sinaga, “Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian,” December 28, 2018.

⁴ DIJK R. Van, “Pengantar Hukum Adat Indonesia,” 2006.

⁵ Natalya Novikova, “Customary Law Today,” in *The Siberian World* (London: Routledge, 2023), 123–38, <https://doi.org/10.4324/9780429354663-10>.

⁶ D G Atmadja, “Asas-Asas Hukum Dalam Sistem Hukum,” *Kertha Wicaksana* 12, no. 2 (2018): 145–55, <https://doi.org/10.22225/kw.12.2.2018.145-155>.

⁷ Kirsty Gover, *Legal Pluralism and Indigenous Legal Traditions*, *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, 2020).

⁸ Val Napoleon, “Thinking About Indigenous Legal Orders,” in *In*, 2013, 229–45, https://doi.org/10.1007/978-94-007-4710-4_11.

Customary law plays a central role in resolving legal issues within a particular region, while safeguarding the cultural rights of indigenous peoples.

Indonesia's rich ethnic diversity has given rise to a multitude of local cultures, and indigenous people have been present in the country since its inception.⁹¹⁰ The multiplicity of customary law can be leveraged as an asset for economic, social, and environmental development. The Indonesian Constitution explicitly acknowledges and respects the unity of the people, customary laws, and traditional rights in line with the evolving societal developments. As a legal culture deeply ingrained in the people, customary law has been used for generations to govern life. According to Ter Haar, law consists of rules established through authoritative decisions. These rules are applied and enforced by widespread consensus and customary sanctions, rather than relying on a foundational, universally binding statute.¹¹ Shared interests and a sense of consciousness interconnect the lives of customary law communities. The formulation of legal culture is obtained from societal opinions rather than formal legislative processes.

The term “cosmology” is derived from the Greek words “kosmos,” meaning universe or world, and “logos,” which refers to science or research. Therefore, cosmology can be defined as the scientific research of the universe. In a broader sense, the term encompasses the understanding of the relationship between the supreme creator, human beings, and nature as living creations that coexist within the vast scope of the universe, often referred to as the macrocosm.¹²

Cosmology, often referred to as the philosophy of Nature or the universe, extends beyond physical reality and explores the nature of existence. The term deals with profound questions regarding the origin, structure, creation, eternity, space, and time of the universe. Cosmology is derived from two Greek roots: “kosmos,” which represents the order and structure of the universe, and “logos,” which signifies the act of knowing or studying. The term can be understood as the science that researches the universe as a rational and organised system.

In a broader context, cosmology serves as a philosophical field that explores the origin and arrangement of the universe. The term also elucidates the fundamental and implied meaning of the world. According to Anton Bakker, the notion of the world has two dimensions, namely 1) in terms of existence- the types of worlds with different aspects, and 2) in terms of comprehension- the essence of all other worlds. Cosmological inquiry centres on the world comprehensively

⁹ I.G.A.B. Wiranata, *Hukum Adat Indonesia: Perkembangannya Dari Masa Ke Masa* (Publisher, 2005).

¹⁰ I Nyoman Nurjaya, “Is The Constitutional And Legal Recognition Of Traditional Community Laws Within The Multicultural Country Of Indonesia A Genuine Or Pseudo Recognition?,” *Constitutional Review* 1, no. 2 (March 28, 2016): 49, <https://doi.org/10.31078/consrev123>.

¹¹ Elson R. E. Robert E., Kurnia, A., & Anshor, Z, “The Idea of Indonesia : Sejarah Pemikiran Dan Gagasan,” n.d., 543.

¹² Suwito Suwito, *Etika Lingkungan Dalam Kosmologi Sufi* (Publisher, 2015), <https://doi.org/10.29300/madania.v21i2.567>.

experienced by humans. Therefore, the inclusion of island communities as integral to the cosmos is essential, emphasising the significance of integrating the people into the research of archipelago cosmology.¹³

The realisation of a society's legal cosmology on an individual or communal level is connected to the worldview, philosophy of life, and social context. Satjipto Rahardjo emphasises that law cannot be isolated from the socio-cultural environment. This aligns with Von Savigny's perspective that law and society are interconnected, much like the soul and the body. Therefore, achieving harmony and equilibrium is crucial since the concept ensures a proportional interplay of all elements within the legal system.

When analysing customary law, the context of national legal development must be considered, as different regions have distinct situations and conditions. Customary law upholds traditional values and remains adaptable to changes. This shows the flexibility of customary law as an organic system. The Constitution acknowledges and respects laws within communities to guarantee legal certainty for customary law.¹⁴¹⁵

The Indonesian legal system officially acknowledges and respects the existence of customary law and constitutional rights.¹⁶ Consequently, the Constitution safeguards the unity of indigenous peoples and their traditional rights through specific provisions. These conditions include the following: 1) the customary law must be actively practised within society, 2) the law should be in line with the societal progress and changes, 3) the law must adhere to the fundamental principle of the Republic of Indonesia, and 4) the validity must be regulated by law. The constitution ensures the recognition and respect for customary law, provided the reality requirements conform to the ideal principle of the state and are legally validated.

Pancasila is closely related to the principle of equilibrium, particularly in the context of the customary law of indigenous people. The principle of Pancasila reflects the values of equilibrium in various aspects of life, balancing individual and collective interests, as well as rights and obligations.

In customary law, this equilibrium is evident in the efforts of indigenous communities to maintain harmony between humans, nature, and the Creator. Pancasila, specifically the second (Just and Civilised Humanity) and fifth principles

¹³ Zuhairansyah Arifin and Elva Zahuri, "Konsep Kosmologis Gender, Legalitas Dan Realitasnya Dalam sistem Pranata Sosial," *Marwah: Jurnal Perempuan, Agama Dan Jender* 12, no. 2 (November 2, 2013): 177, <https://doi.org/10.24014/marwah.v12i2.522>.

¹⁴ Ragawino B, *Pengantar Dan Asas-Asas Hukum Adat Indonesia*, 2008.

¹⁵ Yanis Maladi, "Eksistensi Hukum Adat Dalam Konstitusi Negara Pasca Amandemen," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 22, no. 3 (February 22, 2012): 450, <https://doi.org/10.22146/jmh.16235>.

¹⁶ Wiratraman Herlambang, "Hak-Hak Konstitusional Warga Negara Setelah Amandemen UUD 1945: Konsep, Pengaturan Dan Dinamika Implementasi," *Hukum Panta Rei* (2007) 1(1) 1-18 1, no. 1 (2007): 1-18.

(Social Justice for All the People of Indonesia), emphasise the importance of justice and equilibrium in societal, national, and state life.¹⁷

The principle of equilibrium in customary law is consistent with the spirit of Pancasila. In this context, every customary norm and rule aims to maintain harmony and collective well-being, without unfairly favouring any party.¹⁸ This is also consistent with Pancasila's emphasis on respecting the traditional rights of indigenous people as well as the sustainability of cultural values. Therefore, Pancasila provides the philosophical foundation for the application of equilibrium in customary law. These practices preserve cultural heritage and promote justice, equality, and social sustainability.

The implementation of the constitutional mandate still faces significant challenges and gaps, specifically concerning the protection of Indigenous Peoples' existence, interests, and rights.¹⁹ The laws and regulations related to Indigenous Peoples cannot provide sufficient and definitive protection for the cosmological rights of indigenous communities. The legislative material needs to explicitly safeguard various aspects, including customary territories, traditions, institutions, and rights of origin relating to land, natural resources, the practice of customary law, and cultural beliefs. Indigenous communities are distanced from the ideals of Indonesian independence without proper recognition and protection.

The process of enacting laws to recognise indigenous people has been challenging, requiring adequate and coordinated regulations that avoid overlapping and sectoral methods. Therefore, government agencies need to maximise coordination efforts. The recognition and protection of indigenous people in the legal context often depend on state acknowledgement, obtained through recognition from regional governments.²⁰ In the absence of recognition, indigenous communities lack standing and are not considered legal subjects deserving of protection.

For example, Law No. 41/1999 on Forestry requires confirmation of the existence of customary law communities through Regional Regulations. Similarly, Minister of Home Affairs Regulation No. 52/2014 outlines the procedures for recognising and protecting customary law communities through the decree of the Regional Head (Regent/Mayor, or Governor). Minister of Agrarian Affairs and Spatial Planning Regulation No. 10 of 2016 sets procedures for determining

¹⁷ Emy Handayani and Suparno Suparno, "The Role of Customary Law in the Governance of Sustainable Agrarian Culture in Local Communities," *Corporate Law and Governance Review* 5, no. 1 (February 23, 2023): 29–37, <https://doi.org/10.22495/clgrv5i1p3>.

¹⁸ Rangga Jayanuarto et al., "Psychological Analysis of Customary Law as the Spirit for Indigenous People of Bengkulu City Indonesia," *Indian Journal of Public Health Research & Development* 10, no. 9 (2019): 902, <https://doi.org/10.5958/0976-5506.2019.02553.1>.

¹⁹ Arifin Z., Ag. M., Zahuri, E., "Konsep Kosmologis Gender, Legalitas Dan Realitasnya Dalam sistem Pranata Sosial," *Marwah: Jurnal Perempuan, Agama Dan Jender* 12 (02) (2013): 177–90, <https://doi.org/10.24014/MARWAH.V12I2.522>.

²⁰ Syahuri Taufiqurrohman, *Tafsir Konstitusi Berbagai Aspek Hukum*, 2011.

communal rights to indigenous people's land and communities in specific areas, relying on the determination of the Regional Head. In this context, Indonesia lacks an effective conflict resolution mechanism that ensures legal certainty and justice for indigenous people. Most conflict resolution options are available through judicial channels. This route poses a high risk for indigenous communities due to potential clashes with the legal status and ownership rights over ancestral lands. Numerous cases have shown that indigenous people often lose in disputes resolved through the judiciary. This can erode internal problem-solving mechanisms and marginalise the role of customary law and institutions in community-level conflict resolution. Therefore, customary laws and institutions are gradually being forgotten.²¹

As a minority group, indigenous people face marginalisation in accessing cosmological rights, including social, political, economic, legal, and cultural aspects. Specific affirmative actions are necessary to address these issues. The relationship between the Central and Regional Governments contributes to the problem. The provision of communal rights is also a significant challenge, particularly in regions such as Papua. Communal rights are limited to clans and cannot be applied to tribes. Consequently, achieving the fulfilment of indigenous people's rights requires appropriate methods, such as harmonisation and synchronisation between customary and national laws.²²

The weak recognition of indigenous people as legal subjects with special rights has led to widespread violations. Development laws and policies in Indonesia must place special emphasis on the rights of indigenous and tribal people due to these challenges. The government is expected to promptly issue implementable policies for the recognition and protection of these groups.

Customary law is considered a living law because the concept evolves in response to the changing dynamics of society. However, the functions and roles are gradually diminishing due to the lack of attention and preservation efforts for indigenous people. Interpreting Article 18B paragraph (2) of the 1945 Constitution, as suggested by Jimly Asshiddiqie, includes recognizing several key points, namely 1) the acknowledgment of the existence of customary law communities and traditional rights, 2) the recognition of specific customary law community units, 3) the requirement for the communities to be alive and thriving within a particular environment, 4) the acknowledgment and respect given should be consistent with the level of development of the country's existence, adhering to appropriate humanity criteria, and 5) this recognition and respect should not undermine Indonesia's identity as a unitary state. The constitutional provision acknowledges

²¹ Ahmad Dhiaulhaq and John F McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (January 1, 2020): 34–54, <https://doi.org/10.1080/14442213.2019.1670243>.

²² Sartika Intaning Pradhani, "Traditional Rights of Indigenous People in Indonesia: Legal Recognition and Court Interpretation," *Jambe Law Journal* 1, no. 2 (July 12, 2019): 177–205, <https://doi.org/10.22437/jlj.1.2.177-205>.

and respects customary law communities (*adatrechtgemeenschappen*) as fundamental concepts and cornerstones.

The principle of equilibrium, as emphasised by Anita Sinaga,²³ encompasses a combination of several components necessary to achieve a state of harmony and equity. This includes elements of justice, which are proportionately integrated. Ignoring or disrupting any of the components can lead to injustice. Therefore, equilibrium plays a crucial role in respecting the significance of customary law, providing a clear understanding of unique cultural identity. This acknowledgement can be achieved by comprehending the way of life and worldview of the people, recognising customary law as an integral aspect of the country's life and culture. The recognition shows the essence and values of the country, as reflected in the existence and practice of customary law.

Methods

This research adopted a normative legal method, analysing principles found in both written and unwritten positive law.²⁴ The written law referred to relevant laws and regulations, such as Law No. 41/1999 on Forestry and Minister of Home Affairs Regulation No. 52/2014, which are crucial for recognising and protecting the rights of indigenous people. A statutory method was used, supported by observations and interviews, which were analysed prescriptively to achieve a clear understanding of the issues.²⁵ The data sources consisted of primary (legislation, official records, and judicial decisions) and secondary legal materials (books, research findings, and journals). This research analysed these materials qualitatively to explore the reflection of equilibrium in the protection of indigenous people's cosmological rights, as a form of just law.

Equilibrium, deeply rooted in the Pancasila philosophy, played a central role in the research of indigenous legal systems.²⁶ This principle reports the importance of justice in harmonising the interests of people, communities, and the environment. Furthermore, laws and regulations were synchronised with customs to uncover legal solutions, respecting national law and the unique cultural identity of indigenous communities.

Result and Discussion

Cosmological Rights of Indigenous People in Indonesia

The Indonesian Constitution acknowledges and safeguards the rights of indigenous peoples, closely tied to the principles of modern statehood, democracy, human rights, and the rule of law. The constitution serves as a reflection of social

²³ Anita Sinaga N, "Perjanjian Pengadaan Barang/Jasa Pemerintah Kaitannya Dengan Asas Keseimbangan Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 09 (02) (2019).

²⁴ Z Ali, "Metode Penelitian Hukum," 2021.

²⁵ W Surakhmad, "Pengantar Penelitian Ilmiah Dasar," 1982.

²⁶ Brendan Tobin, *Indigenous People, Customary Law and Human Rights* (Why Living Law Matters (Routledge), 2014).

relationships within the state, representing the aspirations, rights to be fulfilled, and the government's obligations. This anthropological document encapsulates the country's cosmology and establishment.²⁷

Indigenous People are an integral part of Indonesia. The assertion of the fundamental belief was supported by the historical reality of Indigenous People's presence, which preceded the founding of the Republic of Indonesia (NKRI) on August 17, 1945. Additionally, the formation of the Republic of Indonesia was initiated through the unification of various indigenous communities across the archipelago. These communities played a significant role in shaping the state's territorial and governmental elements.²⁸

As an integral part of the Indonesian nation, Indigenous Peoples possess rights and responsibilities similar to those of other citizens of the country. The Preamble of the 1945 Constitution explicitly outlines the mission to safeguard the entire Indonesian nation and promote the well-being of its people, while contributing to global peace. Customary Law Communities are an inseparable part of the broader state, representing the essence and heritage of the country.²⁹ Therefore, the state must protect and preserve these communities. The commitment to safeguarding customary law communities is reinforced by Article 18 B, paragraph (2) of the 1945 Constitution. This article acknowledges and respects the unity of the communities and traditional rights, provided harmony is maintained with societal progress and the principle of the Unitary State of the Republic of Indonesia. Furthermore, Article 28 I paragraph (3) emphasises the respect for the cultural identity and rights of traditional communities in the evolving times and civilisation.

The Constitution mandates that the executive, judicial, and legislative branches at both the central and regional levels ensure the protection of Indigenous Peoples' existence and rights. Special emphasis is placed on safeguarding the Cosmological Rights of Indigenous People, which include the areas of residence. These cosmological rights are closely interconnected with economic, social, cultural, and political rights concerning ancestral origins and the management of customary land.

A diverse range of rights must be acknowledged and respected in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).³⁰

²⁷ Trisno Raharjo, "Mediasi Pidana Dalam Ketentuan Hukum Pidana Adat," *Jurnal Hukum Ins Quia Iustum* 17, no. 3 (2010): 492–519.

²⁸ Stivani Marantika Poro, Ali Imron, and Wika Yudha Shanty, "Perlindungan Hukum Hak Tradisional Masyarakat Hukum Adat Terhadap Tindakan Individualisasi Tanah Ulayat Untuk Tujuan Komersial," *Bhirawa Law Journal* 2, no. 1 (May 31, 2021): 73–78, <https://doi.org/10.26905/blj.v2i1.5857>.

²⁹ Tania Murray Li, "Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot," *Comparative Studies in Society and History* 42, no. 1 (January 2000): S0010417500002632, <https://doi.org/10.1017/S0010417500002632>.

³⁰ Roxanne T Ornelas, "Implementing the Policy of the U.N. Declaration on the Rights of Indigenous People," *International Indigenous Policy Journal* 5, no. 1 (January 7, 2014), <https://doi.org/10.18584/iipj.2014.5.1.4>.

These rights include the following 1) The right to self-determination, which grants the freedom to determine and pursue different ways of life, make decisions about plans and interests, as well as use lands, territories, and resources for development, 2) The right to determine the relationship of governing institutions with the central government or state, 3) The right to land, territories, and natural resources, acknowledging historical ties and access, 4) The right to participate in decision-making processes and have access to information, 5) The right to preserve and practice cultural traditions and heritage, and 6) The right to justice, ensuring fair treatment and protection of rights under law. These rights are crucial for the well-being and empowerment of Indigenous People, acknowledging unique cultural identities and contributions to society.³¹

The comprehensive set of rights mentioned earlier is included within the concept of cosmological rights of indigenous people. These rights are obtained from the belief that indigenous communities, the natural environment, and the supernatural realm are connected within the broader framework of the cosmos. These cosmological rights are regarded as living, spiritual, and orderly principles.

Preserving and safeguarding the cosmological rights of indigenous people, as reported by Arliman³², holds significant importance. This serves as a cornerstone for the identity and acts as a unifying ideology that deeply binds indigenous communities. Cosmological rights can shape our perspective on nature and history distinctively.

Koentjaraningrat classifies indigenous customs into four levels, serving different functions within the society.³³ The first level includes abstract cultural values, which are broad and conceptual. The second level consists of norms, where cultural values are connected to specific roles. Furthermore, the third level comprises the legal system, which includes customary and written laws. The fourth level includes particular rules that regulate clear and limited activities within the communities. These rules are more concrete and closely related to the legal system.

Legal culture is predominantly unwritten, regarding customary law as a habit. A significant feature is the consideration and emphasis on maintaining psychological well-being within the communities. Therefore, adherence to law is driven by a sense of justice and the acknowledgement of the necessity.³⁴

³¹ Ana Filipa Vrdoljak, "Indigenous People, World Heritage, and Human Rights," *International Journal of Cultural Property* 25, no. 3 (2018): 245–81.

³² Arliman L., "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia," *Jurnal Selat* 05 (02) (2018): 177–90.

³³ Imam Subchi, "Antropologi Al-Qur'an: Integrasi Keilmuan Kisah-Kisah Al-Qur'an Dan Pokok-Pokok Antropologi Koentjaraningrat," *Ilmu Ushuluddin* 6, no. 1 (2019): 33–54.

³⁴ Edward J Ryan and By Donald E Willmott, "The National Status of the Chinese in Indonesia, 1900–1958. Revised Edition. By Donald E. Willmott. Monograph Series, Modern Indonesia Project. Ithaca, New York: Southeast Asia Program, Department of Far Eastern Studies, Cornell University, 1961. Xi, 139.," *J Asian Stud* 21, no. 3 (1962): 414–16.

The cosmological rights of equilibrium play a crucial role in the survival and regeneration process.³⁵ This principle necessitates two fundamental elements, namely 1) a comprehensive legal framework addressing the diverse legal requirements in line with cultural patterns, and 2) an effective leadership capable of appropriately implementing the legal framework. Pancasila has a deep connection with Equilibrium because each principle reflects the foundation of social, legal, and cultural life in Indonesia.³⁶³⁷

First Principle: Belief in One Almighty God

The Principle of Equilibrium in indigenous communities often includes maintaining harmonious relationships between humans, nature, and the Creator. Indigenous people typically have belief systems that emphasise spiritual equilibrium, where every action must be consistent with divine will and the surrounding environment. The first principle of Pancasila reflects the relationship since every human activity must be based on religious values and respect for divine power. In this context, equilibrium maintains harmony between spiritual values and worldly practices.

Second Principle: Just and Civilised Humanity

Equilibrium relates to the efforts of maintaining fair and civilised relationships among people within the communities.³⁸ The second principle of Pancasila emphasises the importance of treating people with justice and civilised humanity. In indigenous communities, this is reflected in customary rules that equitably govern rights and obligations. The principle also includes recognising and respecting the dignity of people, which forms the basis of social equilibrium.

Third Principle: The Unity of Indonesia

The Principle of Equilibrium is related to efforts of maintaining unity and solidarity within indigenous communities. In this context, maintaining equilibrium between various groups and interests is crucial to ensure strong unity.³⁹ The third principle of Pancasila emphasises the importance of unity as the foundation of the

³⁵ Z., Ag, M., Zahuri, E., "Konsep Kosmologis Gender, Legalitas Dan Realitasnya Dalam sistem Pranata Sosial."

³⁶ Robert M Fitch and Sheila Anne Webb, "Cultural Immersion in Indonesia Through Pancasila: State Ideology," *Journal of Educational Thought / Revue de La Pensée Educative* 23, no. 1 (May 16, 2018): 44–51, <https://doi.org/10.55016/ojs/jet.v23i1.44257>.

³⁷ Siti Zahra Maulida, Murphy Xavier, and McCarty Elliot, "The Essence of Pancasila as the Foundation and Ideology of the State: The Values of Pancasila," *International Journal of Educational Narratives* 1, no. 2 (July 11, 2023): 84–92, <https://doi.org/10.55849/ijen.v1i2.303>.

³⁸ Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 30, 2023): 89–102, <https://doi.org/10.24090/volksgeist.v6i1.7867>.

³⁹ Iskandarsyah Siregar, "Harmonizing Modern and Indigenous Democracy: An Exploration of Traditional Democratic Values in Ethnic Communities of Indonesia," *Lakhomi Journal Scientific Journal of Culture* 4, no. 2 (June 30, 2023): 91–101, <https://doi.org/10.33258/lakhomi.v4i2.968>.

Indonesian country. In indigenous communities, this unity is realised through customary practices that promote cooperation, mutual assistance, and togetherness. Equilibrium ensures that conflicts of interest disrupting community unity are resolved through fair and equitable customary mechanisms.

Fourth Principle: Democracy Guided by the Inner Wisdom in Unanimity

In indigenous communities, decision-making is often carried out through deliberations aimed at achieving a balanced and fair consensus. The fourth principle of Pancasila emphasises the importance of democratic processes and deliberations guided by wisdom. The Principle of equilibrium refers to the importance of listening to all voices and ensuring that every decision is made with consideration of different interests.⁴⁰

Fifth Principle: Social Justice for All the People of Indonesia

The Principle of equilibrium in indigenous communities is related to achieving social justice. Therefore, equilibrium must be maintained between rights and obligations, as well as individual and collective interests. The fifth principle of Pancasila emphasises the importance of social justice as the foundation of national life. In the context of customary law, every individual in indigenous communities has the same rights to justice, as well as the responsibility to maintain equilibrium within the surrounding environment.

Pancasila provides a strong philosophical framework for the application of equilibrium. Each principle supports the creation of harmony, justice, and equilibrium in customary law, thereby sustaining the well-being of indigenous people as they face modern challenges. Indigenous communities are expected to maintain traditions and remain within a framework that respects diversity and justice.

The Embodiment of Equilibrium towards the Cosmological Rights of Indigenous People as a Form of Just Law

Customary law can be categorised into two main types, namely universal and particular. Universal legal principles have a broad and general nature, applied to all fields of law. Meanwhile, a distinct legal principle is more specific and can only be used in certain specific fields of law. Although some principles are universally applicable across all fields of law, others are limited to particular areas of legal practice, as noted in the General Indonesian Dictionary by WJS. Poerwadarminta,⁴¹ principle is a fundamental truth serving as the foundation of thinking or opinion. In the context of legal norms, principles can be understood as a written or unwritten truth that is necessary for the creation of legal norms. The concept may not be explicitly stated in the regulations, but is consistently recognised as the underlying basis for legal provisions.

⁴⁰ Abdus Sair, "Etika Masyarakat Pandhalungan Dalam Merajut Kebhinekaan (Agama)," *Jurnal Sosiologi Pendidikan Humanis* 4, no. 1 (2019): 47.

⁴¹ WJS. Poerwadarminta, "Kamus Umum Bahasa Indonesia," 1976.

Equilibrium falls under a universal category applied in various fields of law simultaneously. In the General Indonesian Dictionary,⁴² the concept is defined as a state of balance. Additionally, equilibrium refers to a state of harmony characterised by an absence of inclination towards any particular side or element, while simultaneously considering the proportionality of all surrounding components.

The implementation of equilibrium regarding cosmological rights of indigenous people involves combining several components to create harmony and elements of justice. These components are balanced proportionally, and any neglect or disturbance can lead to injustice. Imam Ali, as quoted by Sukarno Aburaera, stated, “Justice is significant in maintaining the equilibrium of society and receiving public attention. The application can ensure people's health and bring peace of mind. In contrast, oppression, injustice, and discrimination cannot bring peace and happiness”.⁴³

Customary law resembles a living organism, embodying the core principle of indigenous communities and progressing in line with societal changes. Therefore, customary law thrives and evolves within indigenous communities, as the concept is inextricably linked to their existence and dynamics. Hazairin states that customary law communities are self-sustained units, possessing integral components such as legal, ruling, and environmental unity founded on shared rights to land and water. The patrilineal, matrilineal, or bilateral form of family law influences the system of governance, and all members enjoy equal rights and responsibilities within the communities.⁴⁴

Humans strive to fulfil the necessities of life by utilising the available resources. Therefore, social control systems are established through the implementation of customary norms and laws, which are products of the communities. In traditional Indonesian society, these groups are referred to as indigenous people, and the regulations governing the communities are known as customary law.

Certain philosophers and jurists draw a connection between the concept of equilibrium and the concept of justice. Plato, as cited by Theo Huijbers, shows justice within the human soul by establishing a consistency with the functioning of a country. According to Plato, the human soul consists of rational (*logistikón*), spirited and emotional (*epithumatikón*), and appetitive parts desiring good and evil (*thumoeidés*). The soul achieves a proper order when these three parts are

⁴² Niru Anita Sinaga, “Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian,” *Binamulia Hukum* 7, no. 2 (December 28, 2018): 107–20, <https://doi.org/10.37893/jbh.v7i2.20>.

⁴³ Dick Timmer, “The Sufficiency Theory of Justice and the Allocation of Health Resources,” *Bioethics* 38, no. 9 (November 30, 2024): 796–802, <https://doi.org/10.1111/bioe.13338>.

⁴⁴ I Gusti Agung Mas Rwa Jayantiari et al., “The Rights of Customary Law Communities to Resources: The Relationship of Coexistence of State Law and Customary Law,” *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 28, 2025): 187–98, <https://doi.org/10.29303/ius.v13i1.1329>.

harmoniously unified. Justice is established through maintaining a balanced boundary between these three parts of the soul in the respective form.

According to Roscoe Pound, a renowned American legal expert, the function of law facilitates social compromise and manages societal changes by addressing conflicts of interest.⁴⁵ These conflicts encompass individual interests, social interests stemming from the general conditions of social life, and public interests, particularly those related to welfare. The law establishes social order and ensures the harmonious coexistence of diverse interests within society through a balancing act.

Social circumstances show that customary law communities are self-sufficient units within society, characterised by legal, ruling, and environmental unity. The matrilineal, or bilateral, type of family law influences the governance system, primarily centred around agriculture, animal husbandry, fishing, and the gathering of forest and water resources.⁴⁶ The members share equal rights and obligations, enhancing a sense of togetherness and cooperation. The adage “where there is a society, there is the law” (*ubi societas ubi ius*) shows that every society naturally develops rules to regulate communal life. In the context of customary law communities and alliances,⁴⁷ Soepomo and M.S. Kaban categorise legal alliances based on ancestry (genealogical), regional environment (territorial), and genealogical and territorial classifications.

In John Rawls's perspective, justice is perceived as fairness and is considered the primary policy for social institutions, representing the essence of sound thought systems.⁴⁸ Therefore, an unjust or untrue theory or idea must be rejected or revised. Legal rules and institutions should also be reformed or abolished when deemed unjust.

The concept includes 1) the principle of justice, such as equal liberty, where people enjoy the same level of personal freedom as others, 2) the principle of equal opportunity to address economic inequalities by providing fair and equal chances, and 3) the principle of fair distribution to manage economic injustices in society. The emphasis on justice in the management controlled by indigenous people is on the recognition and protection of cosmological rights.

⁴⁵ A. Javier Treviño, *Social Control Through Law* (Routledge, 2017), <https://doi.org/10.4324/9781315129495>.

⁴⁶ Jaja Ahmad Jayus, “Urgency of Legal Indigenous Communities’ Position in Indonesian Constitutional System,” *Jurnal Media Hukum* 27, no. 1 (2020), <https://doi.org/10.18196/jmh.20200144>.

⁴⁷ Juan Ramos López, Jim Rivelino Paucca Gomez, and Félix Rojas Orellana, “Legal Pluralism and Customary Law in Andean Communities: The Case of the Casaorcco Community, Ayacucho, 2020,” *Edelweiss Applied Science and Technology* 9, no. 3 (March 8, 2025): 651–59, <https://doi.org/10.55214/25768484.v9i3.5278>.

⁴⁸ Ville Päivänsalo, *Balancing Reasonable Justice* (Routledge, 2016), <https://doi.org/10.4324/9781315568638>.

Considering the issue, the government must allow indigenous people to participate in the development process, preventing marginalisation.⁴⁹ Customary law communities should also be actively part of the development process. Therefore, the government must respond positively to the active participation of these people as policymakers as well as in political and legal decisions. Indigenous people should be afforded the autonomy to express their creativity and realise their potential, ensuring a balanced approach to development. Furthermore, development policies must be integrated, with the recognition of customary laws as an essential component of the national legal system.

Customary law communities comprise social, economic, cultural, and political institutions that have existed for generations. These communities have laws, evident in rules or norms, that reflect their values and unique perspectives on life. The traditional values cherished by indigenous communities are crucial assets that the government can leverage to support governance and development.⁵⁰ The government is encouraged to harness the preserved customary values of indigenous people in the governance and development processes of the regions. This is consistent with the principle of social justice applicable to all Indonesian people in various aspects of life. The term “all Indonesian people” refers to every individual who holds citizenship, residing within the territory of the Republic of Indonesia or abroad. Therefore, social justice for all Indonesian citizens means that each individual is entitled to equitable treatment in all aspects of life, including legal matters, politics, society, the economy, and culture. In line with the provisions of the 1945 Constitution, social justice also includes the notions of fairness and prosperity.

The cosmological rights of indigenous people should include active participation in managing natural resources to achieve social justice.⁵¹ There is an opportunity to enhance development driven by aspirations by allowing indigenous people to take part in regional government administration. The shaping of regional development necessitates appropriate consideration of unique customary values. In this context, a well-crafted law should go beyond procedural justice and strive to be competent and just, acknowledging the desires of the communities and pursuing substantive justice. The responsive nature of law implies that a legal system should serve the social needs and interests prevalent in society. The incorporation of living and preserved values of customary communities into state law becomes essential for adapting these values to regional autonomy.

⁴⁹ Zaka Firma Aditya, “Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 37, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

⁵⁰ Najib K. Mulyati Faruk S, “Environmental Governance Dan Kosmologi Lokal Masyarakat Melayu Jambi Terhadap Hutan Adat Desa Senamat Ulu,” n.d.

⁵¹ Tegan Brock, Maureen G Reed, and Katherine J Stewart, “Indigenous Community Participation in Resource Development Decision-Making: Practitioner Perceptions of Legal and Voluntary Arrangements,” *J Environ Manage*, n.d., 283.

The concept of equilibrium recognises the equal significance of the communities in daily life. In character or soul, equanimity refers to the absence of psychological turmoil and the presence of harmony between emotional and volitional impulses. According to Herlien Budiono,⁵² equilibrium is constrained by will, which arises from favourable considerations or circumstances, as well as the belief in realising the desired outcome. For instance, a promise between parties is only binding when there is an equilibrium between individual and public interests. An imbalance occurs when conditions are unfeasible and unreasonable, leading to a deviation from the expected outcome. Therefore, the fulfilment of promises depends on maintaining equilibrium between individual and public interests.

In customary law communities, the concept of equilibrium is rooted in a principle that includes ethical, social, and legal values. This notion is closely connected to the customary law mentality of communality.⁵³ The discourse surrounding communal values implies the presence of elements such as fairness, togetherness, brotherhood, harmony, harmonisation, and protection. This principle aims to preserve and ensure the equitable and proper implementation of rights and obligations within the communal structure of indigenous peoples.

The ensuing rights and obligations of people in a contract must be interpreted within the communal spirit. Therefore, the realisation of equilibrium in indigenous communities lies in the selection of urgent, relevant, appropriate, and reasonable principles that support collective interests. Equilibrium ensures a balance between rights and obligations, as manifested through both legal and non-legal norms, within the unity of the indigenous people.⁵⁴

The government must prioritise the principle of justice in the development initiatives by considering the cosmological rights of indigenous people. As reported by John Rawls, justice recognises and acknowledges the cosmological rights of indigenous people. Efforts to realise the value of social justice for all Indonesian people can be effectively actualised. The objective of law is to establish equilibrium of interests, as discussed by Firma et al.,⁵⁵ leading to legal certainty and proportional justice within customary law societies. This function also extends to ensure an orderly life, and the achievement can be realised through appropriate legislation. In

⁵² Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan: Buku Kesatu* (Bandung: PT. Citra Aditya Bakti, 2016).

⁵³ Ida Susanti and Tanius Sebastian, *Supremacy of Ethic: National Law, Customary Law and Islamic Law Collided* (Paris, France: Atlantis Press, 2017).

⁵⁴ Alejandro Fuentes, "Protection of Indigenous Peoples' Traditional Lands and Exploitation of Natural Resources: The Inter-American Court of Human Rights' Safeguards," *International Journal on Minority and Group Rights* 24, no. 3 (August 8, 2017): 229–53, <https://doi.org/10.1163/15718115-02403006>.

⁵⁵ Firma Z., Pusat, A., Dan, P., Perkara, P., Konstitusi, M., Indonesia, R., Medan, J., Nomor, M. B., Pusat, J., Yulistiyaputri, R., & Penelitian, P., "Romantisme Sistem Hukum Di Indonesia : Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 08 (01) (2019): 37–54, <https://doi.org/https://doi.org/10.33331/RECHTSVINDING.V8I1.305>.

Indonesia, the legal order must be founded on the values of Pancasila and the 1945 Constitution, serving as the primary source of law. The Preamble and Body of the 1945 Constitution comprise general and specific legal principles that guide the legal framework.

Conclusions

In conclusion, this research discusses the concept of equilibrium in relation to the cosmological rights of indigenous and tribal peoples to realise the fundamental values of Pancasila. Equilibrium plays a crucial role in maintaining harmony and justice within indigenous communities by balancing relationships with others, nature, and the spiritual realm. This demonstrates that social, cultural, and legal aspects are addressed in an integrated manner to prevent marginalisation or systemic oversight. Cosmological rights are founded on the conviction that the physical, natural, and metaphysical worlds are inherently connected. Therefore, rights and responsibilities are exercised to preserve congruence between individual, communal, and ecological interests. Based on the philosophical basis of Pancasila, this normative ideal supports the legitimacy of customary law within the national legal framework, thereby reinforcing justice among indigenous peoples and their relationship with the country. The acknowledgement and safeguarding of rights are critical to maintaining indigenous identity, advancing legal pluralism, and ensuring constitutional adherence to cultural diversity and social justice.

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