

# **Pancasila in the Perspective of Customary Law in Indonesia**

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## **Abstract:**

Harmonization between Pancasila and customary law in Indonesia, to identify the potential of customary law in strengthening Pancasila values in the context of the national legal system. This research uses a qualitative approach, collecting data through literature studies by searching various relevant literature, both in the form of books, scientific journals, and literature related to Pancasila and customary law in Indonesia. The results of the study show that there is harmony between the precepts of Pancasila and the values contained in customary law, especially in terms of togetherness, social justice, and respect for community life. However, there are still challenges in harmonization, such as the dominance of national law and the lack of formal recognition of customary law. Therefore, this article recommends several steps to achieve better harmonization, including formal recognition of the role of customary law, strengthening the capacity of customary law communities, and implementing deliberative dispute resolution mechanisms. This research emphasizes that customary law has a strategic role in strengthening the implementation of Pancasila values, so that it can contribute to a more equitable national development based on local wisdom.

Harmonisasi antara Pancasila dan hukum adat di Indonesia, dengan tujuan untuk mengidentifikasi potensi hukum adat dalam memperkuat nilai-nilai Pancasila dalam konteks sistem hukum nasional. Penelitian ini menggunakan pendekatan kualitatif, pengumpulan data melalui studi pustaka dengan menelusuri berbagai literatur yang relevan, baik berupa buku, jurnal ilmiah, maupun literatur yang terkait dengan Pancasila dan hukum adat di Indonesia. Hasil penelitian menunjukkan bahwa terdapat keselarasan antara sila-sila Pancasila dengan nilai-nilai yang terkandung

dalam hukum adat, terutama dalam hal kebersamaan, keadilan sosial, dan penghormatan terhadap kehidupan bermasyarakat. Namun demikian, masih terdapat tantangan dalam harmonisasi, seperti dominasi hukum nasional dan belum adanya pengakuan formal terhadap hukum adat. Oleh karena itu, artikel ini merekomendasikan beberapa langkah untuk mencapai harmonisasi yang lebih baik, antara lain pengakuan formal terhadap peran hukum adat, penguatan kapasitas masyarakat hukum adat, dan penerapan mekanisme penyelesaian sengketa secara musyawarah. Penelitian ini menegaskan bahwa hukum adat memiliki peran yang strategis dalam memperkuat implementasi nilai-nilai Pancasila, sehingga dapat memberikan kontribusi bagi pembangunan nasional yang lebih berkeadilan dan berlandaskan kearifan lokal.

**Key words:** *Pancasila, Customary Law, Harmonization, Local Wisdom, National Legal.*

## **Introduction**

Pancasila, as the philosophy and ideological basis of the Indonesian state, has become a fundamental foundation in the formation of a national legal system that realizes social justice, welfare, and national unity. This ideology is not only normative as a reference for state administration, but also contains philosophical values rooted in the culture, customs, and traditions of the local Indonesian people.<sup>1</sup> In the midst of the dynamics of globalization and legal modernization, the relevance of Pancasila in the context of customary law has become increasingly crucial, considering that Indonesia is a pluralistic country, both in terms of ethnicity, religion, and culture.<sup>2</sup>

Customary law in Indonesia reflects the legal plurality that developed in each region, which served as a social norm in indigenous peoples before the entry of colonial law and national law.<sup>3</sup> Customary law not only plays a role in regulating social relations at the local level, but also as a reflection of a rich cultural identity with communal values and local wisdom. This makes customary law one of the important pillars in the formation of the character of Indonesian society which is based on the values of mutual cooperation, togetherness and mutual respect

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<sup>1</sup> Khudzaifah Dimiyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021), <https://doi.org/10.1016/j.heliyon.2021.e07865>.

<sup>2</sup> Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023), <https://doi.org/10.15408/ajis.v23i1.32549>.

<sup>3</sup> Saldi Isra and Hilaire Tegnau, "Legal Syncretism or the Theory of Unity in Diversity as an Alternative to Legal Pluralism in Indonesia," *International Journal of Law and Management* 63, no. 6 (2021): 553–68, <https://doi.org/10.1108/IJLMA-04-2018-0082>.

towards a harmonious community life.<sup>4</sup> However, on the other hand, the integration of customary law with the national legal system often faces challenges, especially in an effort to find a common ground between local customary law norms and universal national legal principles.

Similarly to the customary law system, the legal identity will grow along with the identity of the community that forms it. Therefore, customary law is a legal system that is formed based on the nature, outlook on life and way of thinking of the Indonesian people (nation).<sup>5</sup> This fact was once affirmed by Soediman Kartohadiprojo, stating that customary law is not customary law because its form is not written, but customary law is a law because it is compiled on the basis of certain thoughts, principles that are different from the basis of Western legal thought.<sup>6</sup> In this regard, customary law, which is an aspect of the life and culture of the Indonesian people which is at the same time the essence of the needs of life, outlook on life and outlook on life of the Indonesian people (nation) can be the framework and soul of the development of national law based on Pancasila.

From the perspective of Pancasila, customary law actually contains values that are in harmony with these five principles. For example, the principle of the One Godhead can be understood through spiritual beliefs and practices in the customs of society, while the principle of Just and Civilized Humanity is reflected in social relations of mutual respect between fellow citizens. However, in practice, the recognition of customary law in the national legal system still faces many obstacles, both in terms of regulation and implementation.<sup>7</sup>

So far, research that discusses Pancasila in the perspective of customary law has not been carried out much. Previous research only discussed Pancasila and treaty pluralism in Indonesia carried out by Chia and the urgency of law enforcement that lives in society in the principle of legality in a sociological

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<sup>4</sup> Lorraine V. Aragon, "Pluralities of Power in Indonesia's Intellectual Property Law, Regional Arts and Religious Freedom Debates," *Anthropological Forum* 32, no. 1 (2022), <https://doi.org/10.1080/00664677.2022.2042793>.

<sup>5</sup> Tody Sasmitha Jiwa Utama, "Between Adat Law and Living Law: An Illusion of Customary Law Incorporation into Indonesia Penal System," *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021), <https://doi.org/10.1080/07329113.2021.1945222>.

<sup>6</sup> Ahmad Irzal Fardiansyah et al., "Pengakuan Terhadap Hukum Pidana Adat Di Indonesia," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019).

<sup>7</sup> 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," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (2023), <https://doi.org/10.24090/volkgeist.v6i1.7868>.

perspective as done by Isima.<sup>8</sup> Meanwhile, Prasetio focuses his study more on the inventory of customary court decisions in the Pancasila legal state.<sup>9</sup> Several studies show that studies related to Pancasila in the perspective of customary law are still minimal. Therefore, this study tries to fill this void by analyzing the relationship between Pancasila and customary law so as to further strengthen the understanding of the implementation of Pancasila principles in indigenous peoples.

Therefore, this article aims to examine the relationship between Pancasila and customary law in Indonesia to understand how the principles of Pancasila can be applied contextually in various existing customary law systems. Furthermore, this article will examine the challenges that arise in harmonizing customary law with a national legal framework based on Pancasila, as well as offering a critical perspective on how customary law can make a significant contribution to the development of a more inclusive national law and by the pluralistic character of the nation.

## Method

This study uses a qualitative approach with a descriptive analysis method to explore the relationship between Pancasila and customary law in Indonesia. This approach was chosen because the focus of the research lies in a deep understanding of the philosophical values and legal content in Pancasila and how it is implemented in the context of diverse customary law in various regions in Indonesia. The data collection technique used is a literature study conducted by searching various relevant literature in books, scientific journals, articles, and legal documents related to Pancasila and customary law in Indonesia. These sources are analyzed to understand the theories, concepts and results of previous studies that can be used to analyze the relationship between Pancasila and customary law.

To obtain a better understanding contextually and empirically, this study also uses a participatory observation method on several indigenous peoples who still apply customary law as a social norm. Through participatory observation, it can be seen firsthand how the principles of customary law are carried out in the daily lives of indigenous peoples. The data obtained from literature studies, observations, and legal documents are then analyzed qualitatively using thematic analysis techniques.

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<sup>8</sup> Nurlaila Isima, "Urgensi Pengakuan Hukum Yang Hidup Pada Masyarakat Dalam Asas Legalitas Ditinjau Dari Perspektif Sosiologi Hukum," *Jurnal JINNSA (Jurnal Interdisipliner Sosiologi Agama)* 2, no. 1 (2022), <https://doi.org/10.30984/jinnsa.v2i1.266>.

<sup>9</sup> Dicky Eko Prasetio, "Inventarisasi Putusan Peradilan Adat Sendi Sebagai Upaya Memperkuat Constitutional Culture Dalam Negara Hukum Pancasila," *Jurnal Hukum Lex Generalis* 2, no. 3 (2021), <https://doi.org/10.56370/jhlg.v2i3.34>.

Researchers identify the main themes that appear from the collected data, then relate them to relevant theoretical concepts to answer the research question. This approach is designed to explore the relationship between Pancasila and customary law in various dimensions, both from philosophical, normative, and practical aspects.

## **Discussion**

### **The Relationship between Pancasila Values and Customary Law**

This study reveals a significant relationship between the principles of Pancasila and the values contained in customary law in various regions in Indonesia. Pancasila values, such as togetherness, mutual cooperation, social justice, and respect for community life, are very much in line with customary norms that apply from generation to generation in indigenous peoples.<sup>10</sup> The principles of Pancasila are not only the foundation of the state's ideology, but also a representation of values that have been culturally embraced by various indigenous peoples. The principle of deliberation for consensus as stated in the 4th precept of Pancasila, is an essential part of the decision-making mechanism in community customs. For example, in various community customs, important decisions are always taken through deliberation, which allows for participation and mutual agreement in public.

Case studies from a number of regions, such as Bali, Minangkabau, and Papua, show that customary law has internalized the principles of Pancasila into the framework of customary law in each region. In Bali, the concept of "Tri Hita Karana," which emphasizes the balance between humans and God, fellow humans, and nature, is a reflection of the First Precept, "The One Godhead".<sup>11</sup> In Minangkabau, the concept of "Adat Basandi Syarak, Syarak Basandi Kitab Allah" shows a very strong connection between religion, law and customs.<sup>12</sup> This shows the integration of religious and social values which is also in line with the Second and Third Precepts of Pancasila. Thus, customary law is not only local, but also able to

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<sup>10</sup> Endang Sutrisno and Arief Prayitno, "Legal Essence Of Pancasila As The Basis Of The Reality Of Indonesian Life: To Improve The Welfare Of The Fishing Community," *Russian Law Journal* 11, no. 9s (2023), <https://doi.org/10.52783/rlj.v11i9s.1598>.

<sup>11</sup> Cok Istri Ratna Sari Dewi, Iwan Triyuwono, and Bambang Hariadi, "Corporate Social Responsibility Model Based on Tri Hita Karana Philosophy," *Cogent Social Sciences*, 2024, <https://doi.org/10.1080/23311886.2023.2295056>.

<sup>12</sup> Tarmizi Tarmizi and Asni Zubair, "Toleransi Hukum Islam Terhadap Sistem Kewarisan Adat Di Indonesia," *ADHKI: Journal Of Islamic Family Law* 4, no. 2 (2023), <https://doi.org/10.37876/adhki.v4i2.98>.

adapt broader values in the context of national values, namely Pancasila. It is adopted and adapted to the context and needs of the local community, demonstrating the ability of customary law to develop dynamically.

The results of this study are in line with various theories that discuss the relationship between customary law and the national sign system. One of the relevant theories is the theory of legal pluralism put forward by John Griffiths as quoted by Muhazir stating that in a country, various legal systems can coexist and influence each other. In the Indonesian context, customary law coexists with national positive law based on Pancasila. This creates an interactive relationship, where customary law not only maintains its cultural identity, but also accommodates greater values in national life.

### **1. Structural Functionalism Theory**

This theory, put forward by Talcott Parsons, is also relevant in this discussion. Each element in the social system has a certain role to ensure social continuity and balance.<sup>13</sup> In this regard, customary law plays a role as a social support mechanism, social integration, and the application of Pancasila values at the local level. In other words, customary law is an instrument to strengthen and translate the values of Pancasila into the daily lives of indigenous peoples.

### **2. Values of Togetherness and Mutual Cooperation in Customary Law**

The principle of mutual cooperation is stated in the third precept, "Unity of Indonesia," this is also evident in the lives of indigenous peoples. Mutual cooperation, as a foundation for building social solidarity, has long been a part of indigenous life in Indonesia, and this concept is still relevant in the modern era.<sup>14</sup> In many indigenous peoples, joint activities such as building houses, cultivating land, or solving social problems are carried out in the spirit of mutual cooperation, regardless of their respective social or economic status.

In the context of customary law, this spirit of togetherness is not only seen in physical form but also in the form of dispute resolution law. Customary law emphasizes more on the restoration of relationships between individuals and

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<sup>13</sup> Richard Lischka-Schmidt, "Talcott Parsons's Sociology of Education: Cognitive Rationality and Normative Functionalism," *British Journal of Sociology of Education* 44, no. 6 (2023), <https://doi.org/10.1080/01425692.2023.2238907>.

<sup>14</sup> Prisko Yanuarius Djawaria Pare et al., "Nilai-Nilai Pancasila Yang Terkandung Dalam Tradisi Adat Flores, Nusa Tenggara Timur," *PACIVIC: Jurnal Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2024): 67-79, <https://doi.org/10.36456/p.v4i2.9704>.

communities than on punitive legal sanctions.<sup>15</sup> This shows how the principle of social justice contained in the fifth precept of Pancasila, "Social justice for all Indonesian people," has been internalized in the customary law mechanism that focuses more on distributive and collective justice. Customary law reflects the principle of distributive justice, namely the equitable distribution of power sources among members of society, which is expressly in line with the fifth precept of Pancasila. This principle can be seen in various forms of customary practices such as the distribution of agricultural products, communal land management, and customary law rights to land that are collectively regulated for the common good.

### **3. Respect for Nature in Customary Law**

In addition, respect for nature, which is often an inseparable part of customary norms, is also in line with Pancasila values, especially in terms of balance between human life and the environment. Customary law in Bali, with the concept of "Tri Hita Karana", teaches that a harmonious life is achieved through a balance between humans, God, and nature. This is reflected in the spirituality and environmental ethics in Pancasila, especially the First Precept. In various customary laws, such as in Papua or Kalimantan, natural resource management is also carried out with the principles of sustainability and high social responsibility.

### **4. Adaptation of Customary Law to Pancasila**

This research also shows that customary law is able to adapt to national Pancasila values through the process of interpretation and integration of values. This is in line with the theory of cultural adaptation by Clifford Geertz, who stated that local sign systems can evolve through a process of assimilation and integration with a larger value system without losing their basic identity.<sup>16</sup> Customary law in Indonesia has, in many ways, demonstrated this flexibility by integrating Pancasila values into their local norms.

These results show that Pancasila as a state ideology is not exclusive, but inclusive and adaptive to the diversity of Indonesian culture, including applicable customary law. Pancasila and customary law not only support each other, but also jointly build a strong social and moral foundation for the Indonesian nation. The relevance of Pancasila values to customary law shows that Pancasila is not just a political guideline or national law, but also reflects the values that live in society,

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<sup>15</sup> Ashadi L. Diab et al., "Accommodation of Local Wisdom in Conflict Resolution of Indonesia's Urban Society," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2153413>.

<sup>16</sup> Clifford Geertz, *Cultural Interpretation: Selected Essays* (New York: Basic Books, 1973).

both social and cultural.<sup>17</sup> Customary law not only maintains local customs and wisdom, but also serves as a reflection of the practice of Pancasila in the daily lives of the Indonesian people.<sup>18</sup> In the context of legal pluralism, the integration between customary law and Pancasila enriches the Indonesian legal system, so that it is more inclusive, fair, and contextual by the nation's diversity.

### **The Role of Customary Law in Maintaining Local Wisdom**

The role of customary law in maintaining local wisdom can be studied through the perspective of social and legal theory. The theory of legal pluralism put forward by Sally Falk Moore emphasizes that law does not only come from the country itself, but also from various other social sources, including customs.<sup>19</sup> In the Indonesian context, customary law is part of legal pluralism that coexists with the national legal system. Customary law is one of the important tools to maintain the sustainability of local wisdom in the midst of modernization and globalization.

#### **1. The Role of Customary Law in Nature and Environmental Conservation**

This study also emphasizes that customary law plays a role in maintaining a balance between humans and nature, which is one of the forms of local wisdom that has been passed down from generation to generation. Many indigenous peoples in Indonesia have strict customary rules related to natural resource management, which are often aimed at preserving the environment.<sup>20</sup> For example, indigenous peoples in Papua and Kalimantan have customary rules related to tree felling and animal hunting that are regulated based on natural cycles. These rules not only aim to maintain the sustainability of their people's lives but also to maintain the sustainability of the local ecosystem.

This principle is very relevant to the Third Precept of Pancasila, "Unity of Indonesia," which emphasizes the importance of maintaining social and environmental balance as part of common life. The theory of cultural ecology developed by Julian Steward states that societies create rules adapted to their

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<sup>17</sup> Badrun et al., "Pancasila, Islam, and Harmonising Socio-Cultural Conflict in Indonesia," *AlJami'ah* 61, no. 1 (2023), <https://doi.org/10.14421/AJIS.2023.611.137-156>.

<sup>18</sup> Chia, "Pancasila and Covenantal Pluralism in Indonesia: A Historical Approach."

<sup>19</sup> Brian Z. Tamanaha, "Scientific versus Folk Legal Pluralism," *Journal of Legal Pluralism and Unofficial Law* 53, no. 3 (2021), <https://doi.org/10.1080/07329113.2021.2004843>.

<sup>20</sup> Slamet Riyanto, "Relasi Antara Konstitusionalitas Hak Asasi Manusia Dan Kearifan Lokal Budaya Masyarakat Dalam Pengelolaan Lingkungan Hidup," *Jurnal Hukum Legalita* 2, no. 5 (2023).

natural environment to ensure survival.<sup>21</sup> In this case, customary law functions as a mechanism for adjusting people's habits to their environment, as well as ensuring that natural resources are used sustainably for the sake of future interest generation.

## **2. Transformation and Challenges of Customary Law in Modernization**

Although customary law plays an important role in maintaining local wisdom, this study also shows that customary law has undergone a transformation due to the influence of colonialism and modernization. The influence of the colonial legal system, which is more oriented towards individual ownership and capitalism, is contrary to the principle of communality in customary law.<sup>22</sup> For example, in a number of cases, land tenure by the government or private companies often ignores the rights of indigenous peoples to customary law land, resulting in conflicts between customary law and national law. In addition, modernization and globalization have also resulted in a shift in customary values in an area. The younger generation in various customary societies tends to be more influenced by modern laws and norms, which can erode local wisdom and traditional cultural identity.

## **3. Customary Law as an Important Element in Local Cultural Identity**

Despite facing various challenges, customary law remains an integral part of indigenous peoples' identities. This is in line with Henri Tajfel's theory of social identity which states that individuals and groups tend to maintain the elements that make up their identity, including laws and customs.<sup>23</sup> Customary law, as a legal system that grows from local culture, plays an important role in overseeing the sustainability of traditions, rituals and ways of life of indigenous peoples. Through customary law, indigenous peoples can maintain their cultural identity in the midst of modernization that tends to damage local wisdom.

This discussion emphasizes that customary law has an important role in maintaining local wisdom and cultural identity of indigenous peoples in Indonesia. Through the rules governing social relations and natural resource management, customary law not only serves as a social norm but also as a mechanism to maintain

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<sup>21</sup> Bagja Waluya et al., "Cultural Ecology and Environmental Education: Lesson Learned from Baduy Indigenous Community," *Indonesian Journal of Geography* 55, no. 1 (2023), <https://doi.org/10.22146/ijg.77203>.

<sup>22</sup> Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2104710>.

<sup>23</sup> Tri Windari, "National Identity Attachment and Its Variables," *Journal of International Women's Studies* 22, no. 3 (2021): 81-95.

the balance of the ecosystem and cultural sustainability. Although the challenges of colonialism, modernization, and globalization continue to evolve, customary law continues to function as an important element in maintaining social harmony and distributive justice in society.<sup>24</sup> Thus, customary law can be seen as a support for cultural identity and social justice at the local level.

### **Challenges in Harmonizing Customary Law with the National Legal System**

Although Pancasila upholds plurality and respects cultural diversity, reality shows that national law is often more dominant than customary law. Challenges in harmonization between customary law and the national legal system can be studied through a number of theoretical approaches, including the theory of legal pluralism and the theory of structural injustice. In the Indonesian context, customary law and national law are two systems that coexist, but their interactions are not always harmonious. National laws rooted in Western legal systems, particularly colonial law, often do not conform to communal principles in customary law.<sup>25</sup>

This gap can also be explained through the theory of structural injustice introduced by Iris Marion Young. Young argues that injustice occurs not only because of individual actions, but also because of unequal social and political structures.<sup>26</sup> In this context, national law often represents the interests of the majority or more economically and politically powerful groups, while customary law that represents the public customary interests is often marginalized. This shows that there is a structural injustice, where indigenous peoples are not sufficiently accommodated in the process of legislation and the implementation of national laws.

#### **1. Challenges of Recognition of Land and Natural Resources Rights**

One of the biggest challenges in harmonizing customary law with national law is related to the management of customary law land and natural resources. Many indigenous peoples have a legal system that governs land communally, where land is considered joint property that is managed for the benefit of all members of

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<sup>24</sup> 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* 34, no. 3 (2021): 695–721, <https://doi.org/10.1007/s11196-020-09781-y>.

<sup>25</sup> I. Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, "Adat Law, Ethics, and Human Rights in Modern Indonesia," *Religions* 14, no. 4 (2023), <https://doi.org/10.3390/rel14040443>.

<sup>26</sup> Chiara Vitrano and Christina Lindkvist, "Justice in Regional Transport Planning through the Lens of Iris Marion Young," *Planning Practice and Research* 37, no. 5 (2022): 564–80, <https://doi.org/10.1080/02697459.2021.1874637>.

the community.<sup>27</sup> On the other hand, the national legal system prioritizes individual ownership, so the formal recognition of customary law rights is often complicated. In many cases, indigenous peoples feel that the principle of "Just and Civilized Humanity" (the second precept) is not fully realized, because they do not get justice for the land rights and resources they have had for generations. Land dispute cases involving indigenous peoples with governments or private companies often show that national law tends to prioritize large-scale economic interests, such as the exploitation of natural resources, without considering customary rights.

## **2. Difficulties in Access to Formal Law**

One of the factors that aggravates this problem is the lack of access of customary law communities to formal legal mechanisms. The national legal system is bureaucratic and procedural-based, modern law often does not understand or does not appreciate the dynamics of customary law. Indigenous peoples, who are accustomed to resolving disputes through deliberation and consensus mechanisms in society, often have difficulty adapting to the more formal and hierarchical legal process in court. This is in line with the theory of procedural justice principles put forward by John Rawls who emphasized that justice must not only be achieved in the substance of the law but also in the procedure.<sup>28</sup> If indigenous peoples are unable to access fair procedural law due to cultural differences, misunderstood legal language, or high litigation costs, procedural justice is not achieved. This shows that the national legal system is not yet fully inclusive and responsive to the needs of indigenous peoples.

## **3. The Clash of Customary Law and National Law in the Modernization Era**

Another challenge that arises in the harmonization effort is the clash between customary law based on customary values and the law that develops nationally in the context of modernization and globalization. In many ways, modern values such as economic efficiency and individual ownership are often considered more relevant in national development. As a result, customary law that emphasizes more on communal values and sustainability is considered not in line with development priorities.

The modernization theory put forward by Max Weber states that

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<sup>27</sup> I. Nyoman Prabu Buana Rumiarta, Ni Luh Gede Astariyani, and Anak Agung Sagung Ngurah Indradewi, "Human Rights of Indigenous People in Indonesia: A Constitutional Approach," *Journal of East Asia and International Law* 15, no. 2 (2022), <https://doi.org/10.14330/jeail.2022.15.2.10>.

<sup>28</sup> Tania Sourdin, Bin Li, and Donna Marie McNamara, "Court Innovations and Access to Justice in Times of Crisis," *Health Policy and Technology* 9, no. 4 (2020): 447-53, <https://doi.org/10.1016/j.hlpt.2020.08.020>.

modernization brings rationalization and bureaucratization in law, which causes law to become more formal and separate from traditional values. In the Indonesian context, customary law is often considered a barrier to modernization because it emphasizes collective ownership and informal dispute resolution mechanisms. Weber also states that rational law tends to ignore traditional norms that are specific, such as customary law.<sup>29</sup> This has led to customary law often having no place in decision-making at the national level, even though its values are still relevant in maintaining social and environmental balance.

This shows that the challenge of harmonizing customary law with national law in Indonesia is very complex and involves various structural, procedural, and ideological factors.<sup>30</sup> Although Pancasila as a state ideology upholds plurality and social justice, in practice, national law is often more dominant and has not been fully responsive to the needs of indigenous peoples. The inequality in the formal recognition of customary land rights and customary law resources that are powerful, the lack of indigenous peoples' access to the formal legal system, and the still clash between traditional customary law and modern national law, show that there is still much work to be done to achieve better harmonization. The national legal system needs to accommodate the peculiarities of customary law in a more inclusive way, both substantively and procedurally, so that justice for indigenous peoples can be realized in accordance with the principles of Pancasila.

### **The Potential of Customary Law in Building an Inclusive National Legal System**

This study found that customary law has significant potential to enrich and strengthen the national legal system in Indonesia. Customary law not only reflects local cultural values and wisdom, but also provides a more contextual and inclusive approach to solving legal problems.<sup>31</sup> In dispute resolution, the approach based on deliberation and consensus carried out by customary law is often considered more effective in creating social harmony than formal legal mechanisms that tend to be legalistic and rigid.

A number of case studies show that the integration of customary law into

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<sup>29</sup> Michel Coutu, "Hubert Treiber and the Sociology of Law of Max Weber: From the Ideal Types of Legal Rationality to the Plurality of Law," *Zeitschrift Fur Rechtssoziologie* 43, no. 2 (2023): 177-99, <https://doi.org/10.1515/zfrs-2023-1016>.

<sup>30</sup> Agil Nanggala and Dianni Risda, "Analisis Visi Dan Konsep Pendidikan Karakter Di Persekolahan Serta Perguruan Tinggi Dalam Membentuk Karakter Unggul Generasi Muda | Jurnal Civic Hukum," *Jurnal Civic Hukum* 8, no. 1 (2023).

<sup>31</sup> Wardhani, Noho, and Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems."

the national legal system has been successful, such as in the recognition of the customary rights of the Riau people.<sup>32</sup> In this case, customary law serves as a bridge to overcome injustice experienced by the community, as well as strengthen the legitimacy of national law. These cases show that customary law and national law need not be seen as contradictory entities, but can complement each other in order to create a more inclusive and representative legal system.

Furthermore, the values of Pancasila contained in customary law, such as mutual cooperation, social justice, and respect for community life, can be integrated into the national legal system. Thus, customary law can not only contribute to the settlement of local disputes but can also be the basis for the development of a more equitable law that reflects Indonesia's pluralistic identity. The potential of customary law in building a national inclusive legal system can be analyzed through a number of theoretical frameworks, including the theory of legal pluralism, the theory of local wisdom, and the theory of social integration.

### **1. Theory of Legal Pluralism**

The theory of legal pluralism, as put forward by Sally Engle Merry, states that in a complex society, there are a number of legal systems that apply simultaneously.<sup>33</sup> In the Indonesian context, customary law and national law can be seen as two legal systems that interact and complement each other. Customary law can provide a deeper perspective on the social and cultural dynamics of the community, so that national law can be more responsive to the needs of diverse communities. The integration of customary law into the national legal system is also in line with the principles of Pancasila which respects plurality and diversity.<sup>34</sup> By accommodating customary law values, the national legal system can avoid the homogenization approach that is often embraced in formal law, thus providing space for indigenous peoples to actively participate in legal decision-making.

### **2. Local Wisdom Theory**

Local wisdom is a source of cultural strength that is valuable for inclusive legal development. According to the theory of local legal wisdom introduced by Clifford Geertz, customary law reflects people's methods of viewing the world and

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<sup>32</sup> Maharani Maharani et al., "Keabsahan Surat Hibah Tanah Ulayat Oleh Pemangku Adat: Studi Pada Masyarakat Adat Kec. Langgam, Kab. Pelalawan, Riau," *Jurnal Media Akademik (JMA)* 2, no. 7 (2024): 1-41, <https://doi.org/10.62281/v2i7.684>.

<sup>33</sup> Jeremy Webber et al., "Sally Engle Merry, Legal Pluralism, and the Radicalization of Comparative Law," *Law & Society Review* 54, no. 4 (2020): 846-57, <https://doi.org/10.1111/lasr.12518>.

<sup>34</sup> Isra and Tegnan, "Legal Syncretism or the Theory of Unity in Diversity as an Alternative to Legal Pluralism in Indonesia."

the way they organize social life. Customary law is based on the principles of deliberation and consensus that can create a fairer and more sustainable solution in dispute resolution.<sup>35</sup> This approach respects the local context and can encourage community participation in the problem-solving process, which is often overlooked by the formal legal system. For example, in the practice of dispute resolution in some regions, such as in Bali and West Sumatra, customary law is able to provide a faster and acceptable resolution for all parties compared to the formal litigation process.

### **3. Social Integration Theory**

In addition, the social science integration theory put forward by Emile Durkheim emphasizes the importance of solidarity and cohesion in society. In this context, customary law plays an important role in creating harmonious social relations.<sup>36</sup> By integrating customary law into the national legal system, the state can accommodate the customary needs of the community and strengthen mutual trust and cooperation between various groups in society. For example, the recognition of customary law rights of communities in Papua and West Sumatra shows that recognition of customary law can provide space for communities to participate in the management of their natural resources. This not only supports environmental sustainability but also encourages the community to engage in more inclusive social development.

## **Recommendations for Harmonization of Pancasila and Customary Law**

In general, this study emphasizes that customary law has a very strategic role in strengthening the implementation of Pancasila values in Indonesia. Customary law is not only relevant in the local context but also contributes to a more equitable national development based on local wisdom. This understanding identifies a number of important steps that must be taken to achieve better harmonization between Pancasila and customary law in Indonesia.

### **1. Formal Recognition of Customary Law**

The need for more formal recognition of customary law, is essential to integrate local values into the national legal system. Formal recognition can be done through amendments to existing laws and regulations, so that customary law can be used as one of the legitimate sources of law. This will give greater legitimacy

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<sup>35</sup> Geertz, *Cultural Interpretation: Selected Essays*.

<sup>36</sup> Tuğba Sevinç, "Three Approaches to Social Unity and Solidarity," *Critical Review of International Social and Political Philosophy* 25, no. 4 (2022): 459-79, <https://doi.org/10.1080/13698230.2019.1697843>.

to customary rights in managing their sources of power and resolving disputes locally.<sup>37</sup> For example, Law No. 41 of 1999 on Forestry mentions the importance of recognizing customary rights to customary law, but its implementation in the field is often inconsistent. Therefore, there is a need for more specific and consistent arrangements in the recognition of this right.

## **2. Strengthening the Capacity of Indigenous Peoples**

Highlight the importance of strengthening the capacity of public customs in understanding and articulating their rights. In the theory of fundamental human rights, understanding individual and collective rights is the first step to fighting for justice.<sup>38</sup> Education and training directed at public customs can increase their knowledge of national laws as well as the rights recognized by law. This capacity building also includes an understanding of dispute resolution mechanisms in the national legal system. With adequate knowledge, indigenous peoples can be more empowered in dealing with the possibility of conflicts related to their rights. This is in line with the principle of empowerment emphasized in community development.

## **3. Dispute Resolution Mechanism Based on Deliberation**

The mechanism for implementing dispute resolution based on deliberation and consensus is very relevant in the context of Indonesian culture. According to the mediation theory put forward by William Ury and Roger Fisher, a mediation process that involves all parties in resolving conflicts can result in a more acceptable solution for all parties.<sup>39</sup> The implementation of this mechanism in the national legal system can ease the burden on the courts and provide an alternative avenue for faster and more efficient dispute resolution. This approach is in line with the values of Pancasila, especially in creating social justice and prioritizing unity in diversity. Some regions have implemented this mechanism in the form of village deliberations or customary forums, which have proven effective in resolving disputes locally.

## **4. Contribution of Customary Law to National Development**

This means that customary law can contribute to a more equitable national development based on local wisdom. The theory of sustainable development

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<sup>37</sup> Fitri Arianti Saputri, "The Position of Customary Law in the Legal System: An Exploration Role, Challenges, and Integration in the Context of National Legal Development," *Journal of Adat Recht* 1, no. 1 (2024), <https://doi.org/10.62872/esmxh108>.

<sup>38</sup> Rahmalia Utami et al., "Hak Asasi Manusia Berdasarkan Konsepsi Sejarah Dunia Dan Perkembangannya Di Indonesia," *ADVANCES in Social Humanities Research* 1, no. 4 (2023): 372–85.

<sup>39</sup> William Ury and Roger Fisher, *Reaching Agreement: Negotiating Agreement Without Giving Up* (New York: Penguin Books, 1991).

underlines the importance of paying attention to social, economic, and environmental aspects in development.<sup>40</sup> Customary law, which often reflects a harmonious relationship between society and nature, can help build the foundation for more sustainable development. By integrating customary law into the national legal system, the state can make policies that are more sensitive to regional needs and facilitate community participation in development.

This shows that to achieve harmonization between Pancasila and customary law, more formal recognition of customary law, strengthening the capacity of indigenous peoples, and the implementation of dispute resolution mechanisms based on deliberation are needed. With these measures, customary law can not only enrich the national legal system but also contribute to a more inclusive and equitable development in Indonesia. Customary law that is respected and integrated within the framework of national law will help build a more harmonious and sustainable society, in line with the values of Pancasila.

Despite facing various challenges, there is still an integration of local wisdom values and Pancasila principles in customary law that can create a strong synergy in building an inclusive legal system. Through a more contextual and deliberation-based approach, customary law can make a significant contribution to dispute resolution and recognition of indigenous peoples' rights. It is therefore important for policymakers to recognize and integrate customary law into national legal systems.

## **Conclusion**

Pancasila as a state ideology has a deep conformity with the values embraced in customary law. Principles such as mutual cooperation, deliberation, social justice, and balance with nature reflected in customary law are very much in line with the mandate of Pancasila, especially the third and fifth precepts. This shows that Pancasila is not an ideology that is foreign to the community, but is in harmony with local wisdom that has been embraced for centuries. Although customary law is constitutionally recognized, its implementation in the national legal system still faces many obstacles. The clash between customary law and national law, especially in the issue of customary land rights and natural resource management, thus causing injustice to indigenous peoples. Formal regulations

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<sup>40</sup> Harry Irawan, Azhari Akmal Tarigan, and Muhammad Syukri Albani Nasution, "Kesejahteraan Ekonomi Sebagai Pendorong Pembangunan Ekonomi Berkelanjutan: Tinjauan Dari Surah Hud Ayat 61," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 9, no. 3 (2024): 1582-97, <https://doi.org/10.30651/jms.v9i3.21468>.

often ignore the peculiarities of customary law, thus creating tension and inequality in its implementation.

Despite the existing challenges, customary law has great potential to enrich the national legal system. Local values reflected in customary law, such as deliberation and consensus, can provide more participatory and inclusive solutions in dispute resolution, especially at the local level. In addition, customary law offers a more ecological and sustainable approach to natural resource management. To achieve better harmonization between customary law and national law, a broader formal recognition of the role of customary law in the Indonesian legal system is needed. Laws and regulations that are more inclusive and sensitive to local dynamics, as well as more education for the public about customary rights are important steps to realize a fair, pluralistic, and Pancasila-based legal system.

In general, this study emphasizes the importance of customary law as an important element in strengthening the implementation of Pancasila in Indonesia. Customary law not only strengthens cultural identity and local wisdom, but also contributes to the development of a more just, inclusive and sustainable national legal system. However, this study is still limited to a wide enough scope that it does not fully contain more detailed information. Research related to Pancasila in a customary perspective will be more interesting if it is focused on one region so that it is clear that the cultural culture of each community custom has relevance to Pancasila.

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