

Cosmological Rights Protection Model of The Polahi Indigenous Communities of Gorontalo Based on Pancasila and The State Law of The Republic of Indonesia Of 1945

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Abstract

This study examines how the cosmological rights of the Polahi indigenous community of Gorontalo (rights to land, territory, culture and natural resources) can be protected on the basis of Pancasila and the 1945 Constitution. It is socio-legal research that combines normative and empirical legal research. The normative component is primary and uses a statutory approach and a conceptual approach to analyse the constitutional and statutory provisions on customary law communities. The empirical component, observation and interviews in Tumba Hamlet, North Tamaila Village, Tolangohula District, Gorontalo Regency, supplements the normative analysis by showing how those provisions work for the community in practice. The materials were analysed qualitatively and the results are presented prescriptively. Three legal findings emerge. First, Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution recognise customary law communities only conditionally, so their protection depends on implementing regulation. Second, sectoral laws and ministerial regulations set different recognition mechanisms (a regional regulation under Article 67 of Law No. 41 of 1999 on Forestry, or a regional head decree under Minister of Home Affairs Regulation No. 52 of 2014), which leaves recognition fragmented. Third, no Gorontalo provincial regulation recognises the Polahi community, so it lacks legal standing to exercise its cosmological rights. The proposed protection model is a Gorontalo provincial regulation that recognises the Polahi community and its cosmological rights, implemented through Governor and Regent decrees that confirm the community and its customary territory, and guided by the values of Pancasila.

1. Introduction

The Indonesian nation has a variety of nationalities, so the number of local cultures is relatively abundant. Culture(Wiranata 2005) indeed it has existed since the State of Indonesia was not declared in its proclamation. The pluralism of the Indonesian nation with thousands of indigenous communities can develop as capital for economic, social and environmental development. The Indonesian state was founded by the Founding Fathers with the aim of protecting all of Indonesia's blood, advancing general welfare, making the nation's life intelligent and participating in implementing world order. On the one hand, Indonesia as an independent and sovereign country and in its position as the highest power organization has the authority to regulate customary law communities. On the other hand, customary law communities as social units that have their own legal system and government structure existed before the Indonesian state was founded.

Customary law communities also still exist, live, grow and develop after Indonesia's independence as an inseparable part of the territory of the Unitary State of the Republic of Indonesia. The relationship between the state and customary law communities has been the subject of study by customary law experts since the Dutch colonial era until the present. Constitutionally, the state's recognition and respect for customary law communities as stated in Article 18 paragraph (2) of the 1945 Constitution is declarative and anticipatory. In the concept of a unitary state and state life, it is not recognized that there are states within states. The Indonesian state was founded as an "eenheidstaat" (unity) state. Indonesia does not have a state (staat) within the "Staat" state environment. Customary law communities cannot exist independently outside the territory of the Republic of Indonesia because customary law communities are an inseparable part of the territory of the Unitary State of the Republic of Indonesia (NKRI). The state cannot simply ignore this.

The concept of customary law communities as social units that have their own legal system and government has been studied by customary law experts. Ter Haar explained that a customary law community is an orderly group of people who live in a certain area, have their own power, have their own wealth, whose members experience life in society as a normal thing according to nature and none of them has the thought of disbanding themselves. or escape from that bondage forever. The close relationship between the state and the existence of customary law communities philosophically means that the Indonesian state as the highest power organization in Indonesia is obliged to recognize it in the sense of protecting, safeguarding, fulfilling and respecting customary law communities.

In the preamble to the Constitution of the Republic of Indonesia (UUDNRI) paragraph IV, it has been emphasized that the Indonesian state aims to protect all

Indonesian people (including customary law communities). The affirmation of the state's objectives as outlined in this preamble philosophically means that the Indonesian state is obliged to recognize and respect customary law communities that existed, lived, grew and developed before and after the Indonesian state was founded. Paragraph IV of the Preamble to the UUDNRI also contains Pancasila as the basis of the Indonesian state and the philosophy (view of life) of the Indonesian nation. The philosophy of state recognition and respect for indigenous peoples is summarized in the second, third, fourth and fifth principles. Philosophically, if the Indonesian state recognizes and respects the existence of customary law communities, it means that the state is fulfilling the philosophical mandate of human values (the second principle of Pancasila), the value of togetherness (the third and fourth principles of Pancasila) and the value of justice (the fifth principle of Pancasila). Fair and civilized human values in Indonesia are maintained if the state remains trustworthy in recognizing, protecting and respecting the existence of customary law communities. Within the framework of universal human rights, human values (the second principle of Pancasila) are very vital because Indonesia as an independent and sovereign country is obliged to uphold human rights, including recognizing and respecting the existence of customary law communities in the atmosphere of state life. This is also reinforced by ILO convention Number 169 of 1989 which states that every country that is a signatory to the convention is always obliged to recognize and respect indigenous peoples and their rights. The Unitary State of the Republic of Indonesia (NKRI) will remain intact as an independent and sovereign state if the Indonesian state continues to maintain and develop the values of togetherness (the third and fourth principles of Pancasila).

Etymologically, cosmology comes from Greek (Suwito 2015), *kosmos*, namely the universe or world, and *logos*, which means science, can thus be called a science that studies the world of the universe. The general view of cosmology is defined as a science that studies the relationship between the creator as supreme, humans and nature as creations that live together in one large scope of the universe, which is sometimes called the macro *kosmos*. In English it is called *cosmos*, while in Indonesian the word *kosmos* is still used.

The meaning and scope of cosmology or often called philosophy of Nature (philosophy of the universe) (Arifin et al. 2013) specifically studying the nature behind the physical realm or behind the realm of reality. Cosmology grapples with questions regarding the origin and structure of the universe, creation, eternity, time, space and so on. The term cosmology comes from two Greek roots, namely *kosmos* which means the order of the world or order of the universe and *logos* which means to have or study so cosmology is the science of the universe as a rational and orderly system. In general terms, cosmology is a philosophy that discusses the origins and structure of the universe,

apart from that, cosmology can also explain the meaning of the world which underlies all other meanings of "world" which are always implied implicitly. Anton Bakker explains that the meaning of basic and world includes two aspects, namely: a. The world according to its existence (breadth or scope), which contains all kinds of worlds with all their parts and aspects. b. The world according to its comprehension (density or meaning) which contains the essence of all other worlds that make that world a world. The world in cosmological research is the world as far as we experience it as a whole, humans and island communities are also part of the natural cosmos, so it is necessary to involve humans and island communities in the object of archipelagic cosmology research itself.

The actualization of the legal cosmology of an individual or social community in a society is always in line with the outlook on life, philosophy of life and social context. Satjipto Rahardjo said that law cannot be separated from its socio-cultural context. This view strengthens Von Savigny's previous view which said that the relationship between law and society is like body and soul, law is the soul of society. So it requires a balance in this matter which is expected to have harmony, harmony and not be biased because with balance it is hoped that there will be a proportionality of each component that surrounds it.

An order in indigenous communities that is quite important and is the main instrument in the process of protecting their cosmological rights is maintaining the survival of their group. Two important things are needed for this to happen, first, a legal framework that is comprehensive and capable of serving various aspects of the needs of indigenous peoples for laws that are included in cultural patterns, and second, namely leadership that is able to implement this legal framework appropriately. The need to maintain the survival of their group (indigenous communities), which is known as safeguarding the cosmological rights of indigenous communities, will encourage these groups to make various efforts to continue their lives. One concrete example of the existence of the Polahi indigenous community is the one found in Tumba Hamlet, North Tamaila Village, Tolangohula District, Gorontalo Regency, Gorontalo Province.

Polahi is one of the isolated communities that still lives in the interior of the forest on the island of Sulawesi, especially in Gorontalo Province. Initially they were rattan and resin seekers during colonialism who then chose and settled in the forest and then did not return to their hometown again until after Gorontalo became independent. in 1942. Polahi in the Gorontalo language means runaway people. The Polahi community, which has reproduced in the interior of the forest, lives far from the civilization of modern capitalism or neoliberalism. The Polahi people are one of the main groups of people in this country who were victims of Dutch colonialism, so they fled and lived nomadic lives in the forest to escape the Dutch colonialism and the Japanese alliance. This oppression

also continued during the New Order era, both in the economic, political, legal and other social and cultural fields. This condition is ironic because in reality the Polahi community is an element in the structure of the Indonesian nation-state. This unfair treatment can be seen very clearly from the one-sided categorization and definition of society

Polahi as an isolated traditional community, shifting cultivators, vulnerable communities, primitive communities and so on, which resulted in the accelerated destruction of their systems and patterns of life, economically, politically, legally and socially and culturally which basically did not receive recognition in the regional regulations of Gorontalo province so that This situation seems to violate the essence of Pancasila and the Preamble to the Indonesian Constitution (Preamble to the 1945 Constitution of the Republic of Indonesia) which confirms that the state forms the Indonesian government which protects the entire Indonesian nation and all of Indonesia's bloodshed to advance general welfare and educate the life of the nation. This means that the Polahi indigenous people also have the opportunity and are entitled to receive protection and services from the state as they should. Referring to the scope of the Polahi indigenous community as found in Tumba Hamlet, North Tamaila Village, Tolangohula District, Gorontalo Regency, the Polahi community also has the same opportunity to be given their rights as Indonesian citizens, especially regarding the protection of the cosmological rights of the Polahi community. Because in the constitutional mandate that nThe country recognizes the existence of customary and constitutional law (Herlambang Perdana and Wiratraman 2007) their rights in the Indonesian legal system, then:

- The constitution guarantees the unity of indigenous peoples and their traditional rights
- Constitutional guarantees as long as customary law is still alive
- In accordance with societal developments
- In accordance with the principles of the Unitary State of the Republic of Indonesia
- Regulated in law.

Thus, the constitution provides a guarantee of recognition and respect for customary law if it meets the following requirements:

1. Reality conditions, namely that customary law is still alive and in accordance with societal developments
2. Ideality requirements, namely in accordance with the principles of the unitary state of the Republic of Indonesia, and validity is regulated by law

The mandate of the constitution at the level of implementation is still far from expectations. There is a huge gap. It needs to be honestly acknowledged that the Polahi Customary Law Community has not received adequate protection for its existence,

interests and rights, thereby affecting its cosmological rights.(Arifin et al. 2013) Juridical facts show that there are already around 18 pieces of legislation as implementing regulations related to and regulating Customary Law Communities, such as the Law on Villages, Regional Government, Agrarian Affairs, Forestry, Special Autonomy for Papua, Aceh, Environment, Mining, Minerals and Coal, Management of Coastal Areas and Small Islands, Spatial Planning, and so on.

From these juridical facts, the cosmological rights of customary law communities themselves do not receive protection because the legal material has not clearly and definitely protected the interests of customary law communities, including protection of customary areas, customary traditions, customary institutions and customary institutions, the original rights of customary law communities which include rights to land and natural resources, the right to carry out customary law, the right to carry out traditions and beliefs, and other rights, both those of origin and rights as citizens, have not received recognition and protection from the state as they should, so that customary law communities are increasingly far from the ideal of independence, the process of establishing laws in the context of recognizing customary law communities has so far been difficult to reach. Recognition and protection of customary law communities in law is not only not regulated adequately, but also overlaps and is sectoral.

The space for coordination between each government agency is not optimal. Juridical facts also show that in legal practice, to obtain legal protection for customary law communities requires state/government recognition obtained through recognition from the Regional Government.(Syahuri 2011) Thus, recognition of customary law communities is a statement from a state and if there is no state recognition then the existence of customary law communities does not have legal standing, aka it is not a legal subject that must be protected. For example, Article 67 of Law Number 41 of 1999 concerning Forestry mandates the confirmation of the existence of customary law communities through Regional Regulations (Perda). Meanwhile, on the other hand, the Minister of Home Affairs Regulation through Minister of Home Affairs Regulation no. 52 of 2014 concerning Procedures for Recognition and Protection of customary law communities regulates the determination through the Decree of the Regional Head (Regent/Mayor or Governor). The same thing was also done by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency with Minister of Agrarian and Spatial Planning Regulation No. 10 of 2016 concerning Procedures for Determining Communal Rights to Land of customary law communities and communities residing in certain areas. Through this Ministerial Regulation, the existence of customary law communities and their land rights are determined by the Regional Head (Regent/Mayor or Governor).

Facing this situation, it turns out that the state also does not provide a conflict

resolution mechanism that is able to guarantee not only legal certainty but beyond that is able to guarantee the achievement of justice for customary law communities. The available conflict resolution mechanisms are mostly through judicial channels. Meanwhile, the choice to use this route is very risky for customary law communities because it often clashes with the legal status of customary law communities, both their status as legal subjects and their ownership status over the objects of their original rights. Many experiences show that customary law communities lose when facing structural disputes which are resolved through judiciary. Internal problem solving mechanisms are increasingly being eroded. The use of formal law increasingly marginalizes the role of law and traditional institutions in solving problems at the community level. This has the impact of increasingly forgetting traditional laws and institutions.

The existence of customary law communities as a minority group has so far been marginalized in accessing their cosmological rights, where their rights in social, political, economic, legal and cultural life require special affirmative action. This is related to the relationship between the Central Government and Regional Governments which are considered to have problems in matters of authority.

The embodiment of the protection of the cosmological rights of the Polahi indigenous community in Gorontalo in the Regional Regulations of Gorontalo Province is the basis for implementing Pancasila values and the constitutional mandate which leads to elements of justice, which are placed proportionally, which if one component is ignored or disturbed, it will result in injustice. So that protection of the cosmological rights of the Polahi indigenous people is needed as a form of recognition and respect for the existence of customary law in the constitution by providing a clear picture that the Indonesian nation has a unique culture or tradition in law. Where we understand the way of life and outlook on life, regarding customary law as an aspect of national life and culture which is a reflection of the psyche and image of thinking of a nation which can be seen through the existence of customary law itself.

Because it is realized that until now the existence of the Polahi indigenous community in the Gorontalo regional regulations does not yet exist, which means they have not been optimally protected in the constitutional mandate, which means they have not been able to exercise their individual and communal management rights, especially cosmological rights (rights to land, territory, culture), natural resources) obtained from generation to generation or obtained through other mechanisms according to their customs. The absence of these arrangements has resulted in the lack of prosperity for the Polahi indigenous community and could give rise to conflicts that could lead to national security stability.

Previous studies have approached the subject from several directions. Wiranata (2005) and Ragawino (2008) trace the development and principles of Indonesian

customary law, and Arliman (2018) reviews how experts define customary law and how it is applied. Syahuri (2011) and Herlambang Perdana and Wiratraman (2007) discuss constitutional interpretation and the constitutional rights of citizens after the amendments to the 1945 Constitution, while Firma et al. (2019) examine the contribution of customary law and Islamic law to the development of national law. On the cosmological side, Suwito (2015) and Arifin et al. (2013) discuss cosmology as a conceptual framework, and Mulyati, Faruk and Najib (2021) link local cosmology to environmental governance in a customary forest community in Jambi. Work on the Polahi themselves, such as Pomalingo (2015), approaches them as an independent social and cultural community of the Gorontalo people.

Taken together, the studies reviewed here leave three gaps. First, the literature on customary law communities and constitutional recognition is general and does not examine the Polahi, a forest-dwelling community that has not been recognised in any Gorontalo regional regulation. Second, cosmology is discussed mainly as a philosophical or cultural concept and has not been developed into a legal category of rights (to land, territory, culture and natural resources) that the state must protect. Third, studies of the Polahi describe their way of life but do not ask which legal instrument can protect their rights, or how Pancasila and Article 18B paragraph (2) of the 1945 Constitution should guide that instrument. As a result, it remains unclear which aspects of Polahi rights are still unprotected and through what mechanism they can be protected.

This article contributes in three ways. It treats the cosmological rights of the Polahi as a bundle of legally protectable rights, not only as a cultural concept. It connects the conditions of Article 18B paragraph (2) of the 1945 Constitution, the values of Pancasila and the recognition mechanisms in sectoral regulation to one concrete case. And it proposes a protection model, a Gorontalo provincial regulation implemented through Governor and Regent decrees, that specifies the instrument, the recognition procedure and the rights to be protected. The article answers two research questions: (1) what are the cosmological rights of customary law communities under the 1945 Constitution and Pancasila; and (2) what model can protect the cosmological rights of the Polahi indigenous community in Gorontalo.

2. Research Method

This research is socio-legal research that combines normative legal research and empirical legal research. Normative legal research is the primary method. It seeks legal principles in written and unwritten positive law and describes and synchronises applicable laws and regulations (Bahder Johan Nasution, 2008: 86; Winarno Surahmad, 1982). It uses a statutory approach and a conceptual approach, the latter to clarify the concepts of customary law community, cosmological rights, recognition and legal

protection. The empirical component is secondary. Observation and interviews are used to establish the facts that the normative analysis needs: whether the Polahi community meets the conditions of Article 18B paragraph (2) of the 1945 Constitution, which rights it actually exercises or lacks, and how existing regulation affects it. They are not used to measure variables or to test hypotheses.

The legal basis of the analysis is the set of constitutional, statutory and international provisions listed in Table 1. Primary legal materials are these instruments together with official records of law-making and court decisions. Secondary legal materials are books, research results and journal articles on customary law communities, cosmological rights and just legal forms.

Table 1. Principal legal provisions used as the basis of the analysis

Legal instrument	Provision	Use in the analysis
1945 Constitution of the Republic of Indonesia	Preamble paragraph IV; Article 18B(2); Article 28I(3) and (4)	State objective to protect the whole nation; conditional recognition of customary law communities and their traditional rights; respect for cultural identity; state responsibility for human rights
Pancasila	Second, third, fourth and fifth principles	Values of humanity, togetherness and justice that guide the content of the model
Law No. 5 of 1960 on Basic Agrarian Principles	Article 3	Recognition of customary land rights (hak ulayat) as long as they exist
Law No. 39 of 1999 on Human Rights	Article 6	Protection of the cultural identity of customary law communities, including customary land rights
Law No. 41 of 1999 on Forestry	Article 67	Confirmation of customary law communities through regional regulation
Constitutional Court Decision No. 35/PUU-X/2012	Whole decision	Customary forests are not state forests; strengthens customary rights over forest areas
Minister of Home Affairs Regulation No. 52 of 2014	Whole regulation	Recognition and protection of customary law communities by decree of the regional head
Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 10 of 2016	Whole regulation	Determination of communal land rights of customary law communities
Law No. 12 of 2011 on the Formation of Laws and Regulations (as amended)	Article 7	Place of regional regulations in the hierarchy of laws; basis for a provincial regulation
UN Declaration on the Rights of Indigenous Peoples (2007)	Articles 3, 26 and 32	Self-determination; rights to lands, territories and resources; free, prior and informed consent (non-binding, used as interpretive guidance)

Empirical data were collected in Tumba Hamlet, North Tamaila Village, Tolangohula District, Gorontalo Regency, where the Polahi community lives. Observation was carried out [PERIOD AND FOCUS OF OBSERVATION]. Interviews were conducted with [NUMBER] informants, selected by [SAMPLING TECHNIQUE AND SELECTION CRITERIA]. The informants were [CHARACTERISTICS: number per category, e.g. Polahi customary leaders, community members, village or district officials, Gorontalo government officials; age and gender where relevant]. The interviews were [TYPE, e.g. semi-structured; DATES; LANGUAGE; RECORDING AND CONSENT PROCEDURE].

The normative and empirical materials were integrated in three steps. First, the statutory and conceptual analysis produced the criteria for protection: the reality and ideality requirements of Article 18B paragraph (2) of the 1945 Constitution and the rights set out in the provisions in Table 1. Second, the observation and interview data were compared with these criteria to identify which rights of the Polahi community are recognised, which are not, and why. Third, the gaps found were used to formulate a prescriptive model of protection based on Pancasila and the 1945 Constitution. All materials were analysed qualitatively and the results are presented prescriptively.

3. Results and Discussion

The analysis produced three legal findings, which are discussed in the two sub-sections below. First, Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution recognise customary law communities and their traditional rights only on conditions: the community must still exist, accord with the development of society and the principles of the Unitary State of the Republic of Indonesia, and be regulated by law. Recognition is therefore a matter for implementing regulation and is not automatic. Second, the implementing regulation is sectoral and inconsistent. Article 67 of Law No. 41 of 1999 requires confirmation by regional regulation, whereas Minister of Home Affairs Regulation No. 52 of 2014 and Minister of Agrarian Affairs and Spatial Planning Regulation No. 10 of 2016 use a decree of the regional head. Third, no Gorontalo provincial regulation recognises the Polahi community in Tumba Hamlet, so it has no recognised legal standing and cannot exercise its cosmological rights (rights to land, territory, culture and natural resources) as a legal subject. [ONE OR TWO SENTENCES ON WHAT THE OBSERVATION AND INTERVIEWS SHOWED, e.g. how the Polahi community lives, uses its territory and is affected by the absence of recognition].

A. Cosmological rights of customary law communities in Indonesia

The Indonesian Constitution regulates the recognition and protection of the rights of indigenous peoples. This is closely related to the modern state, constitution, and recognition of indigenous peoples. The modern state emerged at the same time as

democracy, human rights and constitutionalism. In a modern state, the constitution is a document that contains an agreement between all components within the state to achieve common goals which outlines the ideals, rights that must be fulfilled and the government's obligations to fulfill these rights. The constitution exists as a reflection of the social relations within the citizens of society. Therefore, the constitution can also be called a monument, an anthropological document because it expresses the cosmology of a nation, embodies the ideals, hopes and dreams of building a country (Rahardjo, 2007)

Customary Law Communities are part of the Indonesian national entity and citizens. This basic assumption is supported by the fact that the entity of Customary Law Communities actually existed before the birth and establishment of the Unitary State of the Republic of Indonesia (NKRI) on 17 August 1945. In fact, the formation of the NKRI itself began with the unification of traditional communities throughout the archipelago which constitute part of the elements of state formation, in addition to the elements of territory and government.

As a national entity, Customary Law Communities, both communally and individually, have rights and obligations like other Indonesian citizens. Referring to the Preamble to the 1945 Constitution, the fourth paragraph clearly and emphatically states that the goal of the state is "... to protect the entire Indonesian nation and all of Indonesia's blood and to advance general welfare, to make the nation's life intelligent and to participate in implementing world order...". Customary Law Communities are part of the entire Indonesian nation and the blood of Indonesia that must be protected by the state. The state's obligation to protect customary law communities is clarified and reaffirmed by Article 18 B paragraph (2) of the 1945 Constitution, that "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State Republic of Indonesia, which is regulated by law". Likewise, Article 28 I paragraph (3) states "Cultural identity and the rights of traditional communities are respected in line with developments over time and civilization."

The constitution mandates that all state administrators, both in the executive, judicial and legislative environments, both at the central and regional levels, are obliged to protect the existence and rights of Indigenous Peoples, including their traditional rights as part of Human Rights (HAM). The existence and rights of Customary Law Communities must be protected, especially the Cosmological Rights of Customary Law Communities which cover the areas where they live and reside. Cosmological Rights are what later gave birth to and are closely related to other rights such as economic rights, social rights, cultural rights, political rights, rights of origin, and the right to manage customary land.

Referring to the United Nation Declaration on the Rights of Indigenous Peoples (UNRIP), the objects or types of rights of indigenous peoples that must be recognized and

respected are very diverse. Starting from the right to self-determination (which includes the right to make choices regarding the way of life; determine, develop plans and sequence of interests for the use of regional land and their resources (Development), the right to determine the relationship of their government institutions with the central or state government, and so on, up to rights to land, territory and natural resources, rights to participation and the right to obtain information; cultural rights; and the right to justice

All of these rights are included in the cosmological rights of customary law communities, which consider that cosmological rights provide genuine belief that the overall structure of customary law communities, their natural world and the supernatural world are created in a state of harmony and harmony from the overall structure of their cosmos which is experienced as a living, diverse thing. , spirited, orderly and orderly. So when the cosmological rights of customary law communities(Arliman 2018)It is maintained that it will become a reference for a unifying identity and ideology that is so strongly binding that it can create a way of seeing oneself as well as a way of seeing nature and a way of seeing history that is unique to the customary law community.

Customs are divided into four levels according to Koentjaraningrat, namely the cultural-value level, the norms level, the legal level, and the special rules level. The first level is the most abstract layer, and broad in scope. This level is only a concept. The second level of custom is the norm. Norms are cultural values that are related to certain roles of humans in society. The third level of custom is the legal system (both customary law and written law). The number of laws in a society is greater than the number of norms that guide it. The fourth level of custom is specific rules that regulate activities that are clear and limited in scope in community life. It is very concrete in nature and relates to the legal system.

In connection with the form of customary law as a habit, the legal culture that exists in a customary law society is in the form of unwritten law. Another characteristic of legal culture in a customary law society is that the applicable law always considers and pays attention to the balance between the psychological conditions of members of the community, so that the substance of the function and application of obedience to the law is based on a sense of justice and a sense of the need for law in society.

A balance of life in a traditional community order is a cosmological right(Arifin et al. 2013)What is quite important and is the main instrument in the regeneration process is maintaining the survival of the group. So two important things are needed for this to happen, first, a legal framework that is comprehensive and capable of serving various aspects of legal needs that are included in cultural patterns, and second, namely leadership that is able to implement this legal framework appropriately. The need to maintain the survival of their groups (indigenous communities) will encourage these groups to make various efforts to continue their lives.

B. Model for protecting the Cosmological Rights of the Gorontalo Polahi Indigenous Peoples based on Pancasila and the Constitution of the Republic of Indonesia

Customary law is a living law because it embodies the real law of society, it continually grows and develops like life itself and customary law is rooted in traditional culture.(Wiranata 2005). Thus, customary law is a law that lives and develops in indigenous communities because it cannot be separated from the existence and dynamics of indigenous communities. According to Hazairin, customary law communities are community units that have the equipment to be able to stand independently, namely having legal unity, unity of authority and environmental unity based on shared rights to land and water for all its members, the legal form of the family (patrilineal, matrilineal, or bilateral), all members are equal in their rights and obligations.

In order to fulfill the needs of life, humans will utilize what is available around them. Therefore, humans will try to adapt in order to create balance and order in society. one of which is the implementation of social control systems in the form of norms & laws (customs).(Herlambang Perdana and Wiratraman 2007)which is a product of that society. In traditional Indonesian society groups or known as customary communities and the norms/laws that apply in this traditional society are known as customary law.

Philosophically, the State's recognition and respect for customary law communities includes 3 things, namely: the existence of customary law communities, the existence of institutions/institutions that exist in customary law communities, and the existence of customary law rules/norms in the lives of customary law communities (Rikardo Simarmata, 2006: 16). The state's recognition and respect for customary law communities in Indonesia can be traced from the provisions contained in the 1945 Constitution, MPR Decrees, Laws and Government Regulations. The philosophy of recognizing and respecting customary law communities means that the state also recognizes and respects the existence of institutions or institutions that exist in customary law communities.

This institution includes elements tasked with implementing and enforcing customary legal norms so that community life can run harmoniously, regularly and orderly. These institutions are traditional density institutions and customary courts. The customary meeting is an institution that has the authority to form and maintain customary law in the form of an assembly led by the traditional head and assisted by traditional law community leaders, religious leaders and intellectuals. The customary density institution is tasked with forming customary law, implementing and maintaining customary law so as to create an orderly, peaceful and harmonious community life. Recognition and respect for customary law communities from an institutional aspect, the existence of customary density and customary justice institutions is also an important element.

The state's recognition and respect for customary law communities is not beneficial for customary law communities if the state does not recognize and respect the existence of customary law institutions and customary courts. Philosophically, recognition and respect for customary law communities also means that the state must also recognize and respect the existence of customary law. Like the existence of the Polahi indigenous people in Gorontalo province who exist, live, grow and develop, they should receive protection for their cosmological rights because their existence is in accordance with the values of Pancasila and the 1945 Constitution which animates the national legal system which consists of elements of written law and unwritten law. (customary law) and religious law.

According to the former Chief Justice of the Constitutional Court of the Republic of Indonesia, "the existence of customary law communities can be considered very strategic, and therefore, to increase their empowerment, it is necessary to conduct a national inventory. Efforts to carry out inventory nationally are a necessity, as well as in the province of Gorontalo so that the existence of the Polahi indigenous community can continue to be an important part which of course cannot be separated as part of the Indonesian state universally and the province of Gorontalo in particular. The existence of the Polahi community should indeed be accommodated through existing juridical instruments such as regional level legislative products in the form of regional regulations. But in reality, up to now, their community has not been accommodated in the Gorontalo provincial regulations, so this has implications for fulfilling the rights of indigenous peoples. Therefore, currently it is certain that the Polahi indigenous people in Gorontalo province, in terms of social status and legally, do not have legal protection.

This of course has quite important implications because without being covered by these regulations, the existence of the Polahi indigenous community is increasingly worrying. In this case, according to the author, the concept of good legal protection is of course that the government guarantees legal certainty in order to provide protection to its citizens, in this case the existence of indigenous peoples so that their rights as citizens are not violated, it is not enough for the government to just carry out its obligations by establishing various legal products, but there needs to be a guarantee that the implementation of the norms of these legal products can work and create justice in society, especially legal protection for the existence and sustainability of customary law communities.

The legal protection model for the Polahi indigenous community is by means of statutory regulations in the form of regional regulations in the province of Gorontalo, which must recognize and respect the Polahi indigenous community by confirming the existence of the customary law community by the provincial and district governments as outlined in the form of a Governor's Decree and/or Regent. So that the Polahi indigenous community can manage and utilize their cosmological rights (rights to land, territory,

culture and natural resources) in their customary territory in accordance with local wisdom and statutory regulations. This is a mandate for the implementation of Pancasila values and the constitution which the Indonesian state as the highest power organization is obliged to recognize materially and formally. Juridical recognition and respect in regional regulations provides a constitutional basis for the direction of legal politics so that they have clarity regarding their cosmological rights (rights to land, territory, culture and natural resources). Because the cosmological rights of the Polahi indigenous community, when protected in the form of regional regulations, become the cultural identity of customary law and become a prerequisite for the existence of the unity of the customary law community, is the right of autonomy to manage their own household.

The Regional Regulations of Gorontalo Province provide protection to the Polahi customary law community so that they can live safely, grow and develop as a community group in accordance with human dignity and are free from discrimination and violence. It also provides legal certainty for the Polahi indigenous people in enjoying their cosmological rights and becomes the basis for the government in implementing the restoration of indigenous people's rights, empowerment and implementing development programs.

With the existence of regulations in the form of regional regulations for recognition of the Polahi indigenous people, they can directly implement cosmological rights including protection for: 1. Legal subjects, 2. Return of customary territories to be managed, utilized and preserved in accordance with their customs, 3. Provision of compensation for the loss of the rights of customary law communities to manage customary areas with permission from the central or regional government in accordance with their authority, 4. Developing and maintaining local culture and wisdom in the context of preserving environmental functions, 5. Increasing the standard of living of indigenous Polahi communities, preserving local wisdom and traditional knowledge , and preservation of assets and/or traditional objects.

These elements can be organised into the model of protection summarised in Table 2, which has four components. At the normative level, a Gorontalo provincial regulation recognises the Polahi community as a customary law community and states its cosmological rights. At the administrative level, the Governor and the Regent confirm by decree the community as a legal subject and its customary territory, which makes the regulation operational and is consistent with both recognition mechanisms identified in the findings above. At the substantive level, the regulation guarantees the five forms of protection listed above, with free, prior and informed consent for any use of customary territory by outside parties. Finally, implementation involves the community in development and government and is assessed through the three elements of Friedman's theory: legal substance, structure and culture.

Table 2. Components of the proposed protection model for the Polahi indigenous community

Component	Content	Basis in the Constitution and Pancasila
Normative	Gorontalo provincial regulation that recognises the Polahi community and its cosmological rights	Article 18B(2) of the 1945 Constitution; Article 67 of Law No. 41 of 1999; second principle of Pancasila (humanity, non-discrimination)
Administrative	Governor's and Regent's decrees that confirm the community as a legal subject and delimit its customary territory	Minister of Home Affairs Regulation No. 52 of 2014; Minister of Agrarian Affairs and Spatial Planning Regulation No. 10 of 2016; fifth principle (justice, legal certainty)
Substantive	Legal subject status; return of customary territory; compensation for lost rights; development of local culture and wisdom; improved standard of living	Article 28I(3) and (4) of the 1945 Constitution; UNDRIP Articles 26 and 32; fifth principle (social justice)
Participation and implementation	Community participation in development and government; assessment of substance, structure and culture	Third and fourth principles (togetherness, deliberation); Friedman's legal system theory

With the existence of Gorontalo provincial regulations, the Polahi indigenous community has an obligation to protect, maintain, fulfill and respect the Polahi indigenous community. Recognition and respect for the Polahi indigenous community in the form of Gorontalo provincial regional regulations is an appreciation from the state for human values and human rights, the value of togetherness, and the value of justice. Lawrence Friedman's Law Enforcement Theory to realize the supremacy of law requires at least 3 mutually reinforcing foundations, substance, structure and culture. Substantially good regulations, wise and fair legal instruments and good public response to various regulations which of course accommodate the various interests of the people and this is in line with the wishes of every citizen who wants the creation of social justice for all Indonesian people so that is what is expected Regional governments, especially the regional government of Gorontalo Province, can pay more attention to the implementation of the norms of regulations made, especially in relation to legal protection for the existence of the Polahi indigenous community in Gorontalo.

Recognition and respect for the Polahi indigenous community in the form of regional regulations in Gorontalo province embodying a real and living feeling of law among the people and reflecting the personality of the Indonesian people and nation. The obligation of the central and regional governments to empower the Polahi customary community is to develop their potential and maintain their sustainability based on the rights of the Polahi customary community. By respecting and considering aspects of cultural history,

customary law and traditional institutions (Soerojo Wignjodipoero, 1983:14). The Polahi customary law community in Gorontalo means life grows and develops in their cosmology which always implements togetherness (communal) values which are visible in the mutual cooperation way of life in society. Togetherness (communal) values contain a philosophical meaning, namely that common interests take priority over individual interests, but individual interests are not ignored. The value of togetherness is defined as recognition and respect for individual interests which are encompassed by common interests (public content).

Protection of the cosmological rights of the Polahi indigenous community is a reflection of Pancasila values as the crystallization of customary legal values that are in accordance with the spirit of Indonesian society (volkgeist). The values of Pancasila are synonymous with truth and justice for traditional law communities and the Indonesian nation as a whole. Therefore, it is appropriate if Pancasila is used as the source of all sources of law in Indonesia. Philosophically, the consequences of the state's recognition and respect for customary law mean that the state must assess the existence and function of customary law for the Indonesian nation, using the benchmark values contained in the principles of Pancasila. Customary law as an element of the national legal system functions as a tool of social control aimed at realizing legal objectives, namely justice for the Indonesian people. In Sudjito's opinion, as referred to by Arif Rahman, the truth of Pancasila values is objective-universal. This nature makes Pancasila accepted by the nation itself and is embodied in the form of customary law, while at the global level it is embodied in the form of international law. Therefore, customary law and international law openly meet and merge in national law. This meeting needs to be facilitated and regulated by the State in the form of state law, so that its existence does not interfere with Indonesian nationalism (Arif Rahman, 2012:20-21).

The cosmological rights of customary law communities in the form of wealth in material natural resources and immaterial rights related to spiritual ties to natural resources and the environment always respect the values that live and are believed in by their community as beliefs and convictions that are hereditary. The values that live in society which are closely related to the work copyright omnibus law which will be dominant in this study consist of two values, namely the value of justice for one's own destiny, the right to free, prior and informed consent (FPIC). Customary law community customary rights give members of customary law communities the right to utilize land, forests and water or all natural resources in the customary area.

Several philosophers and legal experts relate the problem of balance to justice. Plato as quoted by Theo Huijbers describes justice in the human soul by comparing it with the life of the state, stating that the human soul consists of three parts, namely the mind (logistikon), feelings and passions both psychological and physical (epithumatikon),

feelings of good and evil (thumoeindes) . The soul is well organized if a harmonious unity is produced between the three parts. Justice lies within balanced boundaries between the three parts of the soul according to their respective forms.

Roscoe Pound, an American legal expert, said that law guarantees social cession, (social cohesion) and change in social order by balancing conflicts of interest which include:

- a. Individual interests;
- b. social interests (arising from the general conditions of social life); And
- c. Public interests, especially state interests.

Means customary law community(Arliman 2018)which are units of society that have the necessary equipment to be able to stand independently, which have legal unity, unity of authority and environmental unity based on collective rights to land and water for all its members, the form of family law (patrilinear, matrilinear, or bilateral) influences the system His government was based mainly on agriculture, animal husbandry, fishing and the harvesting of forest and water products, supplemented to a lesser extent by hunting wild animals, mining and handicrafts. All members have the same rights and obligations, with communal life having a togetherness character that gives rise to the values of mutual cooperation and mutual assistance among its members.

Based on this, the adage which states that where there is society there is law (ubi societas ubi ius) becomes real, considering that in any society there will definitely be rules that will regulate people's lives. Soepomo, as further explained by MSKaban in describing customary law communities/customary law associations, states that legal associations in Indonesia can be divided into (a) those based on a hereditary (genealogical) relationship; (b) based on regional environment (territorial) and (c) structure based on both bases (genealogical and territorial)

According to John Rawls, justice is conceptualized as honesty (justice as fairness). According to him, justice is the first policy of social institutions as the truth of thought systems. Therefore, an elegant theory must be rejected or revised if the theory is not true. Likewise, legal rules and institutions must be reformed and abolished, if these rules and institutions are unjust.

This concept contains principles of justice, namely (i) the principle of equal liberty, namely that every person has the same rights to individual freedom as other people; (ii) the principle of equal opportunity, namely that economic injustice in society must be regulated to protect disadvantaged parties, by providing equal opportunities for everyone on fair terms.

The value of justice in management controlled by customary law communities(Arliman 2018)is to pay attention to the cosmological rights of customary law communities. Related to this, the essence of a state or government is not just to ask for

approval or agreement, but more than that, it must provide broad access for traditional law communities to be able to participate in the development process, so that communities are not marginalized (marginalized). (Firma et al. 2019) Indigenous communities as part of the State in general must be positioned as an integral part of the development process. This means that the active participation of traditional law communities must be responded to positively by the government as policy makers and political and legal decisions.

Customary law communities should not be built solely based on the government's wishes, but must be given the freedom to be creative according to their potential, so that there is balance. Development policies must be integrated while still being based on customary law communities which have customary law, as part of the national legal system whose existence should be recognized. Therefore, regulation in regional regulations is also an urgency for the Polahi indigenous community where this indicates that customary law communities are communities that have social, economic, cultural and political institutions that have been passed down from generation to generation and have laws that are manifested in rules or norms that are related to their values and outlook on life, and all of that. especially visible when compared with other communities in the country concerned.

Thus, traditional values are still maintained by indigenous community units (Mulyati, Faruk and Najib 2021) Polahi is expected to become one of the basic capital that can be utilized by the regional government of Gorontalo province in supporting the implementation of government and development, as well as a form of community participation in supporting the running of government and development. In this way, regional governments are expected to be able to utilize the traditional values that are still maintained and upheld by the Polahi indigenous community as an instrument to involve community participation in the process of government and development in the region, including in the management of natural resources controlled by customary law community units. .

This refers to Philosophically, the state's recognition and respect for customary law communities includes 3 things, namely: the existence of customary law communities, the existence of institutions/institutions that exist in customary law communities, and the existence of customary law rules/norms in the lives of customary law communities (Rikardo Simarmata, 2006: 16). The state's recognition and respect for customary law communities in Indonesia can be traced from the provisions contained in the 1945 Constitution, MPR Decrees, Laws and Government Regulations. The philosophy of recognizing and respecting customary law communities means that the state also recognizes and respects the existence of institutions or institutions that exist in customary law communities.

This institution includes elements tasked with implementing and enforcing

customary legal norms so that community life can run harmoniously, regularly and orderly. These institutions are traditional density institutions and customary courts. The customary meeting is an institution that has the authority to form and maintain customary law in the form of an assembly led by the traditional head and assisted by traditional law community leaders, religious leaders and intellectuals. The customary density institution is tasked with forming customary law, implementing and maintaining customary law so as to create an orderly, peaceful and harmonious community life.

Recognition and respect for customary law communities from an institutional aspect, the existence of customary density and customary justice institutions is also an important element. The state's recognition and respect for customary law communities is not beneficial for customary law communities if the state does not recognize and respect the existence of customary law institutions and customary courts. Philosophically, recognition and respect for customary law communities also means that the state must also recognize and respect the existence of customary law. Customary law that exists, lives, grows and develops in Indonesia is flexible, flexible and in accordance with the values of Pancasila. The Preamble to the 1945 Constitution contains the main ideas that animate the national legal system which consists of elements of written law, unwritten law (customary law) and religious law.

Customary law as a form of Indonesian people's culture embodies real and living legal feelings among the people and reflects the personality of the Indonesian people and nation (Soerojo Wignjodipoero, 1983:14). Customary law communities in Indonesia always implement togetherness (communal) values which are visible in the mutual cooperation way of life in society. Togetherness (communal) values contain a philosophical meaning, namely that common interests take priority over individual interests, but individual interests are not ignored. The value of togetherness is defined as recognition and respect for individual interests which are encompassed by common interests (public content). The implementation of this way of life can be seen, for example, in mutual cooperation activities in social life.

The values of Pancasila are synonymous with truth and justice for traditional law communities and the Indonesian nation as a whole. Therefore, it is appropriate if Pancasila is used as the source of all sources of law in Indonesia. Philosophically, the consequences of the state's recognition and respect for customary law mean that the state must assess the existence and function of customary law for the Indonesian nation, using the benchmark values contained in the principles of Pancasila. Customary law as an element of the national legal system functions as a tool of social control aimed at realizing legal goals, namely justice for the Indonesian people. In Sudjito's opinion, as referred to by Arif Rahman, the truth of Pancasila values is objective-universal. This nature makes Pancasila accepted by the nation itself and is embodied in the form of customary law, while at the

global level it is embodied in the form of international law. Therefore, customary law and international law openly meet and merge in national law. This meeting needs to be facilitated and regulated by the State in the form of state law, so that its existence does not interfere with Indonesian nationalism (Arif Rahman, 2012:20-21). The state's recognition and respect for customary law communities philosophically also means that the state recognizes and respects customary law as part of the national legal system that exists, lives, grows and develops based on the process of social interaction within customary law communities.

4. Conclusion

This article set out to identify the cosmological rights of customary law communities under the 1945 Constitution and Pancasila and to propose a model for protecting those rights for the Polahi indigenous community of Gorontalo. Cosmological rights are the rights of a customary law community to its living space and its relationship with nature, including rights to land, territory, culture and natural resources, and they underlie its economic, social, cultural and political rights. The Constitution recognises these rights only conditionally (Article 18B paragraph (2) and Article 28I paragraph (3)), and the implementing regulation is sectoral and inconsistent. No Gorontalo provincial regulation recognises the Polahi community, so it has no recognised legal standing to exercise these rights.

The protection model proposed here is a Gorontalo provincial regulation that recognises the Polahi community and its cosmological rights, implemented through Governor and Regent decrees that confirm the community and its customary territory. The regulation should guarantee legal subject status, return of customary territory, compensation for lost rights, development of local culture and wisdom, and improvement of the community's standard of living, and it should involve the community in development and government. Such recognition expresses the values of humanity, togetherness and justice in Pancasila.

The empirical component of this study is limited to the Polahi community in Tumba Hamlet, so the model should be tested against other customary communities in Gorontalo before it is generalised. The Gorontalo Provincial Government and Provincial Parliament are advised to prepare the regional regulation, and the Governor and Regent to begin identifying and confirming the community and its customary territory.

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