

# Local Heritage Vs State Law: The Case of Customary Law of Pologoro Within the Framework of Pancasila in Indonesia

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## Abstract

Pologoro is still controversial because some people consider it a form of corruption without a solid written legal basis. Therefore, a Pologoro-related legal innovation is required, particularly in revising the Village Administrative Law.

This study investigates Pologoro's position as legal culture and its counter-production in positive law, Pologoro's prospects in Village Administrative Law, and Pologoro's perspective within the context of Pancasila.

The study employs a socio-legal methodology, which involves collecting data through various methods, including interviews, observations, and literature review.

Findings indicate that the application of customary law is restricted by Article 5 of the Agrarian Basic Law. Customary law only applies if it does not conflict with national and state interests, national unity, Indonesian socialism, regulations in the Basic Agrarian Law, other laws and regulations, and religious law principles. Reform of the Pologoro legal village administration system is essential because it governs things prohibited, permitted, or even required by the village government and the community. Within Pancasila's framework, statutory regulations must be clarified from the central to the village level. Regional leaders, including regents and mayors, must also evaluate the Village Regulations about levies, particularly Pologoro and administrative service levies.

**Keywords:** Conflict of Positive and Customary Law, Village Administrative Law, Pologoro, Law Reform, Pancasila.

## Introduction

A legal system is positive if built by the rules and norms established by a country's government or legislature (Dainow, 1966). The goal of positive law is to supply society with a legal framework that is transparent and unmistakable in order to facilitate the regulation of behaviour and the resolution of problems. On the other hand, when referring to values,

traditions, practises, and norms that arise in a particular civilisation or culture, the term 'local wisdom' is used (Galligan, 2006).

Positive law and local wisdom might often directly oppose one another. This can occur when distinct principles are followed by positive law or even when positive law directly contradicts the values or standards that are adhered to by the local knowledge (Marmor, 2001). Child marriage, customary practises involving animal sacrifice, and traditions of segregation based on caste or race are a few examples of practices that may exist in some cultures or civilisations despite positive legislation. Other examples include customary practices that involve segregation based on gender or sexual orientation (Sangari & Vaid, 1990).

In situations such as this one, there is a conundrum between applying positive law, which might not conform with local wisdom, and retaining local wisdom by disregarding or breaking positive law. In light of these circumstances, striking the appropriate balance between these facets is critically important.

There are a few ways to resolve the conflict between positive law and conventional wisdom. To begin with, it may make it possible to make adjustments or exceptions in the execution of positive law to consider conventional wisdom in specific situations. Second, to reach a satisfactory agreement with all the parties, the government and the local communities may engage in discussions and negotiations to reach a compromise. Third, there are situations in which positive laws no longer conform with societal and cultural advancements that may need to be renewed or changed, which may need legal reform (Rubin, 1999).

It is essential to remember that indigenous knowledge cannot justify infringing on human rights or the most fundamental principles of justice. In addition, positive law is essential in the upkeep of justice, the defence of individual rights, and the preservation of social order. As a result, it is essential to arrive at resolutions by universal values and legal principles that are equitable and objective to resolve disputes that arise between positive law and conventional local wisdom (Coombe, 1998).

Understanding land is one type of conflict that frequently arises in the society between traditional ways of thinking (customary law) and legal norms that have been codified. Understandings of land by customary law are frequently founded on traditions, conventions, and norms that a specific community or ethnic group has followed for many years. People view land as essential to their cultural identities and lives. Communal systems frequently govern land ownership and use in the context of customary law. Under these communal systems, land is seen as the communal property of the community and is administered by the rules that have been collectively set. In customary law, land rights are frequently inherited and connected to kinship and other social relationships in the community (Tamanaha, 2008).

On the other hand, the notion of land in positive law is based on the norms and laws defined by government or legislative body of a country. The ownership, use, and transfer of land are often regulated by positive law, which does so based on the principles outlined in the written law. Positive legal systems generally recognise the notion of the legal person or corporate property rights and base land ownership on clear proof of ownership and administrative procedures set by the government. These systems also base land ownership on legal individual or corporate property rights (Kelsen, 1999).

One more distinction that can be seen between positive law and customary law is the origin of the authority in each system. Cultural heritage and oral traditions handed down from one generation to the next form the basis of customary law. The customary leaders, elders, or other recognised decision-making procedures among indigenous people are frequently the ones who hold the authority by customary law. On the other hand, positive laws are founded on written statutes and the Constitution of the state, and the capacity to enforce it is placed in legally-recognised government institutions and a court system (Austin, 1880).

In the legal systems of many countries, the fact that positive law and customary law have fundamentally different conceptions of land sometimes serves as a source of contention and disagreement. By recognising traditional rights or granting legal recognition that aligns with local cultural norms, governments frequently try to integrate or harmonise customary law with positive law. This is done under the name of integration or harmonisation. However, these

attempts can be complicated and controversial because they include conflicts between many legal systems, divergent values, and the requirements of modernity (Bwire, 2019).

The landmass that makes up Indonesia's nation is quite substantial. The data on the size of Indonesia's territorial sovereignty, which includes the airspace above sea and land regions, provides evidence in support of this claim. The data shows that Indonesia's territorial sovereignty extends over a sea area of 2,700,000 km<sup>2</sup> and a land area of 1,900,000 km<sup>2</sup>. This enormous region affects the people of Indonesia, which is already one of the countries with the highest population density on the planet. According to information provided by the Indonesian Central Bureau of Statistics, the total population of Indonesia is 270,203,917 people who are dispersed across the country. The enormous population also affects the numerous tribes, cultures, and faiths found in Indonesia, which are quite diverse. There are more than 1,300 distinct ethnic groups living inside the boundaries of Indonesia, as reported by the country's Central Statistics Agency.

Indonesia is a legal state with distinct cultural traditions in each region because of the country's many different ethnic groups, cultural traditions, and religious beliefs. Local wisdom is well-known in Indonesia more than written law in the hierarchy of Indonesian laws and regulations. Local wisdom has a significant impact on the country's legal culture and is frequently referred to as unwritten or customary law (Murhaini, 2017). The execution of an unwritten law eventually results in a law that is not codified, but the law is nonetheless practised by public understanding. There is a strong connection between unwritten law according to one of the schools of thought in legal science, specifically Sociological Jurisprudence, which Eugen Ehrlich pioneered. He referred to the unwritten law as the living law, also known simply as the living law. In a situation in which positive law is ideally in line with the living law of society, which represents the worth of life within it so that the law can operate successfully, it is said to be in line with the living law of society (Hamidi et al., 2018).

It is unavoidable that the characteristics of each region, including the village area, will be influenced by the wide variety of cultures and values present in each location. Within the context of the Indonesian government, the administrative law extends down to the village level, the smallest administrative area. One of the subfields of administrative law is known as village administrative law, sometimes called village government law. Administrative law is a collection of regulations controlling the relationship between citizens and the government in exercising state authority. This relationship is governed by administrative law. Therefore, village administrative law refers to the body of administrative law that is put into effect under the jurisdiction of the village level of government. For the implementation of village government authority to be by the principle of justice, the village government and the communities within the village need to have an administrative law for the village. This legislation will serve as the rules of the game (Nurcholis et al., 2019).

In reality, village administrative law uses both written laws (such as village ordinances) and unwritten laws (such as customary law and customs), such as ancestor rights and local customs. Pologoro is a practice common in the rural areas of Indonesia and is considered one of the local customs. In the early days of Dutch colonial rule, village chiefs were allowed to petition the colonial administration for permission to collect fees associated with purchasing and selling land. This was the origin of the Pologoro system. Pologoro is still a contentious topic because many believe this practice constitutes bribery because there is no solid stated legal basis for it. Despite this, a few regions still follow the tradition of Pologoro, which is determined by the village levies and the norms of the village (Van Der Kroef, 1960a).

The power of the village head is maintained because land is treated differently from other things in communities governed by customary law, particularly in more distant locations. This is an outcome of an agreement signed on land which may require notification to the village head or, at the very least, the intervention of the head. The intervention of the village head in an agreement concerning land is felt to be an absolute requirement for agreeing, although it cannot be called a permit because, without the intervention of the village head, the agreement can be said to be illegal. In addition, if the agreement regarding the land does not interfere with the village head, then at the very least, if something happens, the village head can follow and

supervise or protect the interests of each party. This is because, without the intervention of the village head, the agreement can be considered (Fitzpatrick, 1997).

The function of the village head under customary law is given an even greater responsibility to interfere in land disputes because of the importance of land for each party, both as residential land and as the ground on which to do business. The presence of a mechanism for the sale and purchase of land necessitates the participation of the Village Head in the form of a new agreement between the Village Head, the person selling the land, and the person purchasing the land. In most cases, there will be several levies or some form of tax (retribution) for land sales and purchases that must be paid by the parties, in this case, the seller or buyer, to the Village Head, who is granted a term according to the criteria of each region. These levies and taxes must be paid to the Village Head before the transaction can be finalised. 'Pologoro money' is one of the names used to refer to money paid as "taxes" to the village and money used to buy and sell land, especially in Java. What the parties do when carrying out land transactions with the requirement to pay Pologoro money reflects an unusual phenomenon of legal culture different from other regions, and unique to the customary legal system. This is the case when seen from the perspective of customary law (Puri, 2019).

It is required to amend the law governing village administration to clarify the legal status of the Pologoro practice. This is because the controversy around the lack of a clear legal basis for the Pologoro practice needs to be rectified so that it does not cause problems with the community's value of having legal certainty. It is vital to apply the viewpoint of Pancasila as the legal basis for the Indonesian state to think about the Pologoro practice as a tool. Pancasila is the foundation of the Indonesian state. In the Indonesian society, Pancasila is often called a "margin of appreciation" or "limits of justification". If Pancasila is not used as a "screening board" when filtering legal change in Indonesia, the problem of legal reform in Indonesia will be solved only partially. The renewal of the Pologoro regulatory law in the law governing the administration of villages in Indonesia requires that it be established as either a practice allowed in village governance or not allowed.

In this context, the research aims to analyze Pologoro's position as a legal culture and its interaction with Positive Law, explore Pologoro's prospects in Village Administrative Law, and examine Pologoro's perspective on Pancasila.

The objectives of the research are as follows:

1. To analyze Pologoro's position as a legal culture and its relationship with Positive Law.
2. To explore Pologoro's potential role and prospects in Village Administrative Law.
3. To examine Pologoro's perspective on Pancasila.

## Review of Literature

Both statutory and customary law have the same meaning, a set of standards that regulate behavior and acts in society intending to maintain order (Ndulo, 2011). This meaning is shared by both types of legal systems: statutory law and customary law. The distinction rests in the fact that the people of Indonesia are bound by customary law, which does not exist in written form and is not formulated by the legislative body of Indonesia. Regarding the role of customary law within the legal system, two competing schools of legal thinking, namely legalism (including positivism), and the historical school, come into play when establishing customary law as positive law. These schools of thought are in direct opposition to one another. The legalism school of thought maintains that new laws can be enacted primarily through legislation. On the other hand, the historical school of thought rejects the idea that law and legislation are synonymous, maintaining that law must naturally arise from the legal consciousness of society (MacCormack, 2006).

In its broadest sense, the term "customary law" refers to the traditional norms and rituals that have grown and changed over time within a society, eventually becoming the observed unwritten laws (Zorn, 2010). The state acknowledges the legal standing of customary law. Following Indonesia's declaration of independence in 1945, the Constitution included several new provisions, some of which were tied to Indonesia's traditional legal system. For instance, the 1945 Constitution of Indonesia has a provision called Article 18B paragraph 2 that states: "The state acknowledges and respects the customary law communities and their traditional rights as long as they are still alive and as long as they are in line with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law" (Heryanti & Sihotang, 2022).

As the first person to do so, Van Vollenhoven (1918) established the study of customary law as a distinct academic discipline. He gave it the same standing as other types of legal systems. He defined customary law as norms that apply to native people and easterners who are not native to the area and have punishments.

Ter Haar (1960), the first professor of customary law, described it as the collection of rules manifested in decisions made by legal functionaries (in a broad sense) who have authority and influence and are spontaneously and enthusiastically observed in their implementation. He did this by saying that customary law is the collection of rules manifested in decisions made by legal functionaries.

Roman law and the laws of other continental European nations are not the same as customary law. The pragmatic and realistic nature of customary law is that it satisfies society's practical and religious requirements, hence promoting social justice. The focus on the community rather than the individual, the fact that actions in customary law are only considered valid if done in good faith, and the concrete and fundamental nature of the legal acts are all critical aspects of customary law (Priambodo, 2018).

We can consider Sociological Jurisprudence, which was first offered by Eugen Ehrlich (2017), to analyze the function that customary law plays within the legal system. Ehrlich (2017) bases his understanding of the law on what he refers to as 'living law'. A positive law that is both good and effective should be in alignment with the living law of the society and should reflect the values that are present within that culture. When writing legislation, legislators should be keenly aware of their social environment. In this manner, the successful application of customary law within society is made possible, and representatives inside the legislative bodies must be able to excavate and incorporate the living legal consciousness of the community. Developing a codified legal consciousness through laws can be a foundation for maintaining social order and harmony. In addition, the role of judges as law finders is essential when deciding conflicts since it requires them to consider the evolving legal consciousness in society (Day, 1976). As a result, jurisprudence becomes one of the sources that may be utilized to identify the living law throughout the community. This living law can then be used to settle similar issues (Friedman, 1969).

It is possible to trace back, within the context of society, the function of customary law to its essential goal. If we were to boil it down to its most fundamental component, the primary objective of laws is to preserve order. The establishment of order is the primary purpose of all laws (Morton, 2002). Human beings have always lived in communities, and to have a life that is orderly and ordered inside a society, there must be laws. People, society, and the law are inextricably linked and cannot exist apart. The Roman proverb "*ubi societas ibi ius*" (where there is society, there is law) captures this relationship very well (Tunkin, 1974). People's social interactions are governed not only by the law but also by religion, morality, ethics, etiquette, and other social standards (Raz, 1972). The law



is just one of these norms. The rule of law and other social standards are intricately intertwined and mutually reinforcing. The ability to enforce legal requirements systematically is one of the characteristics that differentiates law from other social standards. Adherence to legal obligations may be coerced. The values prevalent in society are inextricably bound up with the social norm of law, which causes the law to mirror the values within that community. A good law is consistent with the living law of the society and reflects the values generally held to be necessary within the community. These societal norms (behaviors) began as conventions, but with time they became accepted and developed into *adat*, the Arabic word for tradition. The norms of behavior outlined in *adat* eventually evolve into customary laws, while others might be codified into statutes (Butt & Lindsey, 2018).

In several different areas in Indonesia, a form of law known as 'Pologoro' is customary law. There are no official fees that need to be paid in the context of land transfers that are facilitated by the village. The parties engaged in the transaction can voluntarily contribute to the fees. This practice was once known as 'Pologoro', but according to the most recent regulations enacted by the village, the term Pologoro is no longer permitted. Instead, the fees are now referred to as 'uang kas desa' which translates to village funds (Sanjatmiko, 2016).

Because of potential financial loss, discussing this topic is fraught with danger. Concerning the villagers' access to the village money, they need a predetermined quantity to be a source of difficulty for them. Despite the restriction, many involved in land deals facilitated through the village believe that the process still involves Pologoro because of claims made by those involved in the transactions. This demonstrates that although there are some distinctions between the two, they ultimately work toward the same goal and adhere to the same fundamental principles. The difference comes in the fact that the Pologoro is decided by the village's leader, while the village's funds are contributed by the residents of their own free will (van der Kroef, 1960).

Cases associated with Pologoro have been reported from several different regions in Indonesia. Because of the decentralized nature of the system, the regulations that govern Pologoro in the villages are not standardized and might differ from one location to the next. The name Pologoro alludes to the dualistic nature of the village's function within the context of its administrative procedures. The village performs the functions of a customary entity as well as a governmental entity at the same time. In its capacity as a customary body, the village is responsible for collecting Pologoro based on ancestral rights that were in place before the foundation of the Republic of Indonesia in 1945. From a sociological point of view, customary law is entirely drawn from customary norms developed by societal agreements; the critical characteristic of customary law is that it is unwritten. If it is broken, there are no stringent punishments (Hadikusuma, 1992).

On the other hand, because it is a governing body, the village must abide by the rules of positive law. Positive law is defined as being written, binding, and enforceable, and it outlines specific punishments if it is violated. As a result, collecting Pologoro" might ensnare the village in various restrictions concerning the management of local finances, as it is forbidden for local governments to engage in activities that constitute illegal levies (Adhisyah, 2019).

## Research Methods

This investigation adopts a socio-legal approach and incorporates various data collection techniques, including interviews, observations and a review of published material. The socio-legal method aims to comprehend the intricate interactions between law, society, and the social context in the study. Within the scope of this investigation, a socio-legal strategy is employed to examine how law violations and local heritage influence the framework of a Pancasila rule of law state. This is achieved by analyzing and exploring the interplay of these

two factors. By utilizing this approach, researchers can understand how positive law and customary law converge, diverge, or complement each other in situations where law breaches while preserving local values (Mulcahy & O' Callaghan, 2021).

Field research is an example of a socio-legal strategy employed in this investigation. It enables a deeper understanding of the local context, norms, and practices. Researchers interviewed local communities, traditional leaders, and other stakeholders, to gain insights into the connection between law violations and local heritage. Additionally, thoroughly examining relevant legal documents, policies, and government and court decisions is essential to understand and track the legal framework that applies to the specific scenario (Adler, 2003).

In the context of Pancasila being the foundation of the state, a socio-legal approach aids in identifying and analyzing how Pancasila values manifest in the relationship between law violations and local heritage. This is accomplished by assessing how Pancasila values are reflected in the interaction between law violations and local heritage. The research investigates whether breaking the law contradicts Pancasila's social justice, unity, and oneness values. Moreover, within a state governed by Pancasila law, this method can demonstrate a harmonious balance between maintaining law and order while safeguarding cultural traditions (Simanjuntak & Priyono, 2022).

Applying a socio-legal perspective in this research contributes to a comprehensive understanding of the complexities surrounding the link between law violations and local heritage within the Pancasila legal state. The findings of this research are expected to offer valuable insights for policymakers, governments, and communities in finding the right balance between preserving local heritage and implementing legislation fairly and reasonably (Adler, 2003).

## Findings

### **Pologoro: Legal Culture and its Counterproductive Interplay with Positive Law**

Since the time of the Dutch colonial government, Pologoro has been an integral part of the local levies routinely administered by the village administration (Nurcholis, 2017). The Dutch colonial administration granted the authority to register the sale and purchase of land and transfer land rights to the village head, who was responsible for carrying out the initial stages of the Pologoro process. In order to fulfil the administrative requirements for the transfer of land rights, the head of the village will be present during the transfer of land rights and will make a note of it in the book that records village administration. The village leader will afterwards receive a portion of the sale and the land purchase. This practice has ultimately become ingrained in all aspects of village governments across Indonesia, and it has evolved into a 'habitual practice' (Habibi, 2022).

The beginning of the Pologoro arrangement is marked by the discovery of the accumulated historical significance of a community. It has then grown from one generation to the next and has become ultimately strongly supported by the people who buy and sell land or houses. The duty to pay Pologoro was then legalised by collecting money, and it was classified as a legal levy officially. This has been done so that it could be legally enforced. One of the agreements concerning Pologoro has been included in the Regional Regulation of the Province of Central Java, followed by the Regulation of the Regional Head below it, which controlled the agreement in greater detail (Van Der Kroef, 1960b).

The stipulations of regulations govern the amount of Pologoro's levy. The agreement on the levy is mentioned occasionally in an agreement document in the village or the ancient laws and rules. The amount of the tax varies based on the village where the land buyer originated from, and the agreement on the levy is also subject to variation. For instance, in the Kendal Regency, the obligation to pay Pologoro levies was once regulated by the Kendal Regent Decree number 06 of 2001 concerning Guidelines for the Implementation of Regional Regulations No. 9 of 2000 concerning Village Sources of Income and Regulations of one of the villages in Kendal, namely Jenarsari Village Regulation number 02 of 2002 concerning Village Levies (Hasil, 2003). This decree was issued in 2001. Following information is provided in the

Article 5 of the Kendal Regent Decree number 06 of 2001 regarding the amount of payment for Pologoro services for the administration of land transfers.

**Table 1:** Payment for the Pologoro Services in Kendal Regency  
Source: Article 5 of the Kendal Regent Decree number 06 of 2001

	Buyer/ Seller	Land Selling Price	Pologoro Levy Rates
1.	Not a Villager for Business	> IDR 2,500,000 to IDR 50,000,000	1.5% of total sales
		> IDR 50,000,000 to IDR 100,000,000	1.25% of total sales
		> IDR 100,000,000 to IDR 200,000,000	1% of total sales
		> IDR 200,000,000	0.75% of total sales
2.	Villagers for Business	> IDR 2,500,000 to IDR 50,000,000	1.25% of total sales
		> IDR 50,000,000 to IDR 100,000,000	1% of total sales
		> IDR 100,000,000 to IDR 200,000,000	0.75% of total sales
		> IDR 200,000,000	0.5% of total sales
3.	Not a Villager Not for Business	> IDR 2,500,000 to IDR 50,000,000	1% of total sales
		> IDR 50,000,000 to IDR 100,000,000	0.8% of total sales
		> IDR 100,000,000 to IDR 200,000,000	0.6% of total sales
		> IDR 200,000,000	0.4% of total sales
4.	Villagers Are Not for Business	> IDR 2,500,000 to IDR 50,000,000	0.9% of total sales
		> IDR 50,000,000 to IDR 100,000,000	0.7% of total sales
		> IDR 100,000,000 to IDR 200,000,000	0.5% of total sales
		> IDR 200,000,000	0.3% of total sales
5.	Inheritance/grant	Not Specified	Half of the provisions number 1 to 4
6.	For Social Benefit	Not Specified	A quarter of provisions 1 and 3 (not for business) are charged to the foundation.

A body known as the Task Force for the Clean-Up of Illegal Levies was set up after the Government Regulation on Clean-up of Illegal Levies was used as the basis for the institution's creation from a legal standpoint. This task group has been entrusted with eliminating illegitimate levies effectively and efficiently. Officials from the Police, the Attorney General's Office, the Ministry of Home Affairs, the Ministry of Law and Human Rights, the Centre for Financial Transaction Reports and Analysis, the State Intelligence Agency, and the Military Police of the Indonesian Armed Forces are all included in this Task Force (Haryo Putro et al., 2022).

In Chapter V of the regulations about village levies, the provisions addressing the prohibition of village taxes connected to administrative services are controlled. Article 22 of the Minister of Village Regulation on the Development of Disadvantaged Regions and Transmigration number 1 of 2015. According to the first paragraph of Article 22 of Regulation Number 1 issued by the Minister of Village on Development of Disadvantaged Regions and Transmigration in 2015, villages are not allowed to charge fees for the administrative services



offered to village communities. Paragraph 2 of Article 22 of the Minister of Village Regulation for the Development of Deprived Regions and Transmigration number 1 of 2015 states that letters of introduction, letters of reference, and certifications are considered administrative services. The village head or other village apparatus has the authority to testify and record in the village book about land ownership, particularly land not certified by the National Land Agency. This pertains to administrative services provided by the village in the purchasing and selling land or buildings. Activities such as witnessing and recording are considered administrative services, and according to this regulation, fees cannot be charged for administrative services.

In areas that had previously controlled Pologoro as part of their regional rules, the practice of Pologoro has been outlawed in laws and regulations and then gradually phased out. This process began in earnest in the 1990s. The circular letter of the Purbalingga Regent dated 12 April 2017 with the number 140/02899/2017 concerning the Prohibition of Pologoro Fees in the Sale and Purchase of Land, and the Implementation of the National Agrarian Programme is one example of this abolition. In the letter, various reasons concerning Pologoro are explained, including the following: Pologoro has traditionally been an income source used to pay the Village Head and the Village Officials in addition to the operational expenditures of the Village Administration. The village imposes each tax, and the community must have a legal foundation in the form of Village Regulations.

Now, budgets have been created to account for these requirements in the allocation of village funds and the village funds for fixed salaries. These budgets also account for the costs associated with government administration, development, community empowerment, and village community development. Since the requirements of the village have been met through the use of other budgets, it can now be said that Pologoro is no longer relevant to those requirements. A Land and Building Rights Acquisition Fee and Income Tax would be applied to the sale and purchase of land and buildings, according to a recent announcement made by the Ministry of Finance regarding matters about taxes. Pologoro is levied, collected by the Village Government whenever there is a transfer of land rights in the village that no longer has a strong legal basis. Thus, Pologoro levy is no longer permitted. These costs have been included for state revenue from taxes so that other costs, such as Pologoro, should not be charged anymore because the object of collection is the same, namely the transfer of rights to land and buildings.

In Law Number 6 of 2014 concerning villages, the laws relating to Pologoro as a levy are frequently tied to the authority of the village government. Article 72, paragraph (2) of the Village Law, governs the inclusion of the village's initial income in Chapter VIII of the Village Law, which is concerned with the execution of village finances and community assets. The town's initial revenue source is another good income from within the community. Then, in the fourth paragraph of Article 69 of the Village Law, it is explained that the Draught Village Regulation Village Regulations concerning the village income and expenditure budget, levies, spatial planning, and village government organisations are required to obtain an evaluation from the Regent/Mayor before they can be enacted into a village regulation. It is required to look at the regulation of the Minister of Villages concerning the Development of Disadvantaged Regions and Transmigration number 1 of 2015, clarifying what types of levies are permitted and what are not. Since the Village Minister's Regulation prohibits taxes on administrative services like Pologoro, this regulation applies to the current situation. The levies that are permitted according to the Article 23 paragraph (1) of the Minister of Village Regulation on Development of Disadvantaged Regions and Transmigration number 1 of 2015 are levies for business services such as public baths, village markets, village tours, boat moorings, fish auctions, fish cages, and other similar services.

Considering Pologoro from the point of view of legal culture involves looking at Pologoro from the viewpoint of legal culture. Lawrence M. Friedman's (1975) legal system theory incorporates several sub-theories including one called the legal culture. According to the legal system theory, the law can be broken down into three distinct subsystems: the legal structure, the legal culture, and the legal content. The legal structure is the apparatus or human

resources executing the law. The substance of the law is the rule of law itself. Legal culture refers to the public awareness of the law, which is evident in their daily application. Legal culture refers to individuals' attitudes, behaviours, and perspectives concerning the law and the judicial system. The cultural norms serve as the basis for developing the legal norms that make up legal culture.

The influence that societal and legal norms have is directly proportional to the legal culture of a society. Because legal subjects are persons with thoughts, ideas, habits, and behaviours, and they react to legal orders and institutions, and because their reactions shape the effects of orders and institutions, we can say that legal subjects are people with thoughts, ideas, habits, and behaviours. In a nutshell, legal culture can be understood as an example of an intervening variable. However, laws are not directly influenced by social factors. A change in the established legal order does not necessarily follow in the wake of disruption.

Several additional authorities offer a variety of perspectives on the culture of the judicial system. According to Lucke and Schwenk (1992), 'legal culture' is a catch-all phrase that refers to beliefs and attitudes. Legal awareness is a term that appears frequently in some of the relevant literature. According to Podgorecki (1968), legal culture comprises information and opinions regarding the law. Martin Levin (1972) contends that the scope of legal culture has been used in a setting that is considerably more limited than the legal norms and attitudes about the disposition of cases and the behaviour of legal practitioners in local courts. Legal culture is society's collective knowledge and perspective towards the legal system (Friedman, 1994).

linguistically, legal culture is a conjunction of the words culture and law. The term culture can be understood in a variety of ways, but the definition provided by Spencer-Oatey (2012) is among the most comprehensive. The term 'culture' was coined by Spencer-Oatey (2012), who defined it as "a set of vague basic assumptions and values, orientations to life, beliefs, policies, procedures, and conventions of behaviour that are shared by a group of people and which influence (but do not determine) the behaviour of each member and their interpretation of meaning from the behaviour of others". Law is hard to define, yet it is prudent to have features such as the presence of orders, prohibitions, permissibility, and stringent sanctions. In the meantime, according to Syafruddin Makmur, the concept of legal culture refers to the overall attitude of society and the value system prevalent in society (Rahayu et al., 2020). This value system is what will define how the law ought to be applied in the community being discussed.

Asshiddiqie (2010) thinks that a particular focus needs to be given to the civilisation of law, which includes legal socialisation and education, to materialise the concept of a rule of law state in the future and to produce a society that abides by the law. This would be necessary to build a society that respects the law. About the efforts being made to reform the law in Indonesia. Rahardjo, (2007) says that a significant amount of attention should be paid to the behaviour of individuals rather than just to the technical aspects of the law. Therefore, the importance of legal education, promoting positive individual behaviour, and enhancing society cannot be overstated. According to Komarov, legal culture can be defined as the complicated way society thinks about the law, its application, and the enforcement of laws by institutions, apparatus, and state laws (Akhmetov et al., 2018).

Drozdova (2019) maintains that a community must develop a sophisticated legal culture for sufficient laws. Applying legal mechanisms to every apparatus at every level of government is therefore made possible by this. The acts of these authorities can afterwards be monitored through the utilisation of community and individual organising. Then, there will be a judiciary independent of the executive branch and ample mass media to monitor any deviations from the law, even though occasionally, the movers of the mass media will become known to the public and be destroyed by government entities that violate the law.

Legal culture, which includes the norms, beliefs, and practises of a community, is ultimately a significant factor in the formulation of new laws (as well as the maintenance and revision of existing rules and statutes). If legal culture is not taken into consideration, then it is certain that the modern legal system will fail. This failure will be marked by the emergence of

various phenomena, such as misunderstanding of information regarding the contents of legal regulations to be conveyed to the public and discrepancies between what is desired by law and the practice carried out by the public. If legal culture is not taken into consideration, then it is certain that there will be a failure of the modern legal system. People generally desire to behave according to the principles and perspectives established in their lives (Ulfatdjanovna, 2022).

From the point of view of legal culture, the practice of Pologoro as it is carried out in society is seen as a historic practice dating back to ancient times. Since then, these activities have been passed down via families and kept by village authorities' ancestors. Something that was done constantly and in ancient times for a lengthy duration eventually became a habit in which the village community did this automatically without even considering the purpose of the action, including Pologoro, which has turned into a routine, and even the legal culture that has developed within the population of the village (Nelken, 2004).

The community sees the Pologoro of the village as a component of the community's contribution to the village because it contributes to an increase in the village's income through the village treasury. To preserve the harmony of communal life and the general well-being of society, this is meant to be a form of living together that involves working together with one another. Participation from the local community in the construction of Pologoro is analogous to participation from the local community in constructing a hamlet. The socialist economic viewpoint considers individuals who buy and sell land to be wealthy individuals responsible for donating a portion of their money for the general welfare of the community in which they live. The community is also fully conscious of the importance of playing an active part in the development of the village through Pologoro (Nelken, 2004).

However, when looking into Pologoro's practice, there are a few variations here and there. In the community, there were many financial irregularities involving the Pologoro. The Supreme Court has handed down seventy-six decisions regarding criminal matters associated with Pologoro. These decisions can be found in the online directory. There were seven decisions concerning crimes against state security, four about losses to state finances, five concerning embezzlement, and the remaining sixty cases related to criminal acts of corruption. The cassation decision number is 2514 K/PID.SUS/2016, involving criminal acts of corruption in the Pekalongan Regency region, is one of the major verdicts. As a result of the ruling, the Head of Bantar Kulon Village in the Lebakbarang District of the Pekalongan Regency was given a term of five years in jail, in addition to a fine of two hundred million rupiahs and a second penalty of six months in prison. The defendant was found guilty of corruption concerning state financial losses caused by using Pologoro in land acquisition for building a Micro Hydro Power Plant of 544,000,000,600,405.00 rupiahs.

Pologoro is a legal levy that is calculated as 10% of the price of the land area and is based on the Bantarkulon Village Regulation number: 03 of 2010 About the 2010 Budget Village Fee. This is according to the case of the village head in Pekalongan Regency. However, following the publication of the Regulation of the Minister of Village on Development of Disadvantaged Regions and Transmigration number 1 of 2015, which stated that administrative activities were prohibited from being subject to levies, the Pologoro levies in the village regulations should also be abolished. This was done in order to comply with the new regulations. This conforms with the legal principle known as *lex superior derogate legi inferiori*, which stipulates that a higher law supersedes a lower law when the two are in conflict. The ministerial regulations of one level above the village level shall not conflict with the regulations of the village level (Dina, 2019).

However, Pologoro was responsible for providing welfare to the village head and other officials. Since village officials now receive funds from the government in addition to contributing funds to the village, and since there is now a village fund budget, the central government has decided to do away with the Pologoro levies. The National Property Agency already collects taxes connected to the sale and purchase of levies related to property transactions, meaning that the same thing is subject to levies twice, which is not logically fair. On the other hand, most of the village community was unaware of these developments.

The culture of notifying others of messages passed down from generation to generation is also closer to village communities than the culture of knowing changes in rules and regulations. Villagers find it easier to know things that are commonly practised. As a result, it is of utmost importance to have clarity regarding the regulation of Pologoro in the law, outreach to the community, and firmness for the apparatus to not depend on Pologoro as a source of income for the village (Dina, 2019).

### **Potential of Pologoro: Village Administrative Law and its Implications**

Because it is a constitutional state, Indonesia is obligated to regulate the authority of its government based on the law rather than power. Within the confines of this conversation, administrative law refers to legal principles that fall under the purview of the state in general and the village in particular. Utama (2007) explains some of the characteristics of administrative law. These characteristics include the following: there is a special relationship between citizens and the state; there is a collection of rules regarding the authority of state institutions and state officials; and there are state officials as executors of the special agreement.

In the meantime, village administrative law in Indonesia already has a series of regulations that serve as legal substances, ranging from the centre to the regional level. These regulations are coupled with one another and mutually reinforce one another. In a nutshell, village administrative law is a set of guidelines regulating the authority level held by the officials operating at the village level (Utama, 2007).

The Village Law from 2014 serves as the most fundamental legal framework for regulating communities. Article 5, paragraph 1 of the Village Law, Article 18, paragraph 2 of the Village Law, Article 20, paragraph 2 of the Village Law, and Article 22D Paragraph 2 all include preambles. The Constitution of the Republic of Indonesia was established in 1945. There is nothing in the Village Law that forbids the use of Pologoro as a form of entertainment. On the other hand, in Article 69, paragraph 4, which governs the Draught Village Regulation, the word 'but' is used. Before being turned into a village regulation, the draught of the Village Regulation that regulates the Village Income and Expenditure Budget, levies, spatial planning, and village government organisations must first be evaluated by the Regent/Mayor. The Village Law emphasises the permissibility of taxes based on village regulations that the Regent/Mayor has assessed before being confirmed. This is the only requirement for a regulation to be considered legal.

Another set of regulations that govern levies may be found in Law Number 23 of 2014, which is all about Regional Government. It is unlawful for the Regional Government to impose levies or by names other than those authorised under the law, as indicated in the second paragraph of Article 286 of the law governing the Regional Government. Then, in paragraph 1 of Article 287 of the Regional Government Law, it is stated that regional heads are prohibited from levying taxes or making other designations that are not regulated by the law and that if they do so, they will be subject to administrative sanctions in the form of a non-payment of their financial rights that are specified in the provisions of laws and regulations for a period of up to six (six) months. Then, the revenues from levies or other names obtained by regional heads outside illegally must be deposited in full to the state treasury, as specified in paragraph 2 of Article 287 of the Regional Government Law. Although this law does not directly govern the prohibition of levies by the villages, it can be equivalent to mean that levies without a written legal basis are not permitted and are even susceptible to administrative punishments if they are imposed. It is forbidden in all forms, including Pologoro, which is not founded on written legislation.

Following are some examples of legal norms that govern the implementation of regulations governing village administrative law:

Government Regulation of the Republic of Indonesia Number 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages as amended for the first time by Regulation of the Government of the Republic of Indonesia number 47 of 2015 and amended twice by Regulation of the Government of the Republic of Indonesia Number 11 of 2019 concerning Second Amendment on Government Regulation of the Republic of



Indonesia Number 43 of 2014 concerning Regulate Government (Supplement to the State Gazette of the Republic of Indonesia Number 6321 and State Gazette of the Republic of Indonesia of 2019 Number 41). The implementing regulations do not regulate charges or Pologoro clearly and concisely. These regulations were enacted to control better, in general, the powers, rights, and obligations of the village administration, as well as its connections with the community and other institutions.

Government Regulation of the Republic of Indonesia Number 60 of 2014 concerning Village Funds Sourced from the State Revenue and Expenditure Budget as amended for the first time by Government Regulation of the Republic of Indonesia number 8 of 2016 and amended twice by Government Regulation of the Republic of Indonesia Number 8 of 2016 concerning Second Amendment to Government Regulation of the Republic of Indonesia Number 60 of 2014 concerning Village Funds Sourced from the State Revenue and Expenditure Budget as amended for the first time by Government Regulation of the Republic of Indonesia number 8 of 2016 concerning First The government regulation does not explicitly regulate taxes or Pologoro at all. This government regulation aims to regulate the allocation of village funds from the State Revenue and Expenditure Budget to the village government and the distribution and designation of those monies.

Technical Guidelines for Rules in the Village was issued as Regulation Number 111 of 2014 by the Minister of Home Affairs of the Republic of Indonesia. This regulation was published in the Republic of Indonesia State Gazette in 2014 as Number 2091. Many articles in this regulation focus on regulating charges or Pologoro. Nevertheless, this regulation of the Minister of Home Affairs has an impact on the levies that are imposed by villages. This regulation serves as a framework for establishing village regulations, which can afterwards be utilised to make provisions about the levies imposed by villages. The authority of the Regent/Mayor, as exercised through the Head of the District, to examine Village Regulations no later than three days after their submission is a clause considered an important part of this regulation. If there is no evaluation result beyond the deadline of three days, then the Village Regulation will be applied automatically (Article 14). This regulation does not prohibit the practice of Pologoro or include such prohibition.

The State Gazette of the Republic of Indonesia in 2016 Issue Number 53 published Regulation Number 1 of 2016 Concerning the Management of Village Assets issued by the Minister of Home Affairs of the Republic of Indonesia. Because this regulation is focused on regulating administrative law relating to managing village assets, it does not regulate levies or Pologoro. Instead, these topics are covered in a separate regulation.

Guidelines for Village Financial Management have been outlined in Regulation Number 20 of 2018, issued by the Minister of Home Affairs of the Republic of Indonesia. This regulation was published in Number 116 of the State Gazette of the Republic of Indonesia in 2018. Article 12, paragraph 5 of this regulation concerning Guidelines for Village Financial Management says that one of the village's original incomes comes from the result of village levies. This rule is concerned with the management of the village's finances. Pologoro is an example of a tax that is not permissible; nonetheless, there needs to be clarity over which levies are illegal and which are permitted.

Guidelines for Authority Based on Origin Rights and Village-Scale Local Authority was published in the State Gazette of the Republic of Indonesia in 2015 as Number 158. This regulation was issued by the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia. The clear regulation of village taxes can be found in this village regulation. It is forbidden to charge a fee for providing administrative services to village communities, as stated in paragraph 1 of Article 22. Letters of application, letters of reference, and certificates are all included in the description of administrative services controlled in Article 22, paragraph 2 of the Constitution. If Pologoro levies are involved, the matter will be handled by Pologoro's administrative services. This is because Pologoro is executed by performing a sale and purchase witness or transferring land rights accompanied by a designation of the boundaries. This is how it is done. After completing these activities, each participant receives a certificate entered into the village book. The issuance of the certificate is



under the purview of the administrative services provided by the village. This limitation was reportedly included because administrative services from village officials are the duties and obligations of the head and other village officials who receive funding from the government. As a result, funds are no longer required from beneficiaries of these administrative services, according to the author. Article 23 further indicates that villages can collect fees for business services such as public baths, village tours, village markets, boat moorings, fish cages, fish auctions, and so on.

Village Deliberations are regulated by Regulation Number 16 of 2019 issued by the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2019 Number 1203). Because regulating the decision-making process in village discussion forums is the primary emphasis of this regulation, no provision in this regulation regulates levies. There are occasions when regional chiefs at the city or district level get involved in the legal proceedings of the village administration. As an illustration, the Banyuwangi Regent Regulations include the following two provisions:

Regulation Number 47 of 2018 Issued by the Banyuwangi Regent Concerning the List of Authorities Based on Origin Rights and Village-Scale Local Authorities. This particular Perbup includes a specialised chapter governing local tax collection. The topic of village levies is broken down into five paragraphs in Chapter VII, Article 9, which may be found here. The Minister of Village Regulation on Development of Disadvantaged Regions and Transmigration No. 1 of 2015, which governs village levies, can be considered an elaboration of these provisions. On the other hand, the rule against charging fees for village administrative services is included in this Perbup. This particular Perbup places a greater emphasis on the provision of business services to the village community or locations beyond the village, as well as the use of village-owned public facilities by members of the general public located outside the village.

Regarding managing the village's finances, Banyuwangi Regent Regulation Number 17 of 2019 was just issued. The principles for managing village finances, including the regulation of levies, are governed by this Regent Regulation. This document does not limit charging fees for administrative services such as Pologoro. However, there are limitations placed on the imposition of levies if they are founded on something other than the community's regulations. It requires that the Village Regulations about levies contain objects, topics, and obligations, as well as the amount of taxes and the availability of reduced levies or exemptions from levies. This need is very specific. Then, after that, it prescribes considerations about the number of mandatory levies considering the demands or expenditures required to deliver services to the community, the capabilities of the community, and the principle of fairness.

Following this, the example of the village regulation that, as of the 2017 Village Regulation, continues to permit Pologoro and an example of a village law that, as of the 2021 Village Law, prevents levying administrative services on a limited basis. The collecting of administrative service fees in an arbitrary manner is against the law according to Songgon Village Regulation number 02 of 2021 about Village Fees Limited. It is forbidden for the government of the village to charge fees for administrative services such as recommendation letters, cover letters, small business certificates, medium business certificates, demographic information, financial information, social information, or cultural information, as it is indicated in point 1 of Article 5 of the document. We can see that the village government must offer a certificate at no cost to the applicant. This requirement is detailed on this page.

On the other hand, what makes Article 5.2 special is that it authorises the village government to charge fees for administrative services, except the following: the testimony of legal actions in the transfer and acquisition of property rights to a person or entity; on ownership, transfer of rights, logging and transportation of timber from people's gardens; the arrangement of recommendation permits for excavation mining C using heavy equipment and machines/tractors. These fees are We can see in this text that there is a provision that enables levies to be placed on witnesses to the acquisition or transfer of property. Pologoro may be used as an administrative levy if this provision stands. The regulators probably noticed a gap in the information that needed to be addressed regarding the prohibition of taxes on administrative

services, which includes the statement letter in the regulations that were presented earlier. Order for it to develop its interpretation of the details, including which administrative services are prohibited and which are permitted. This particular regulation for the community does not provide any explanation for the fees that are required. The only difference is that Article 6 explains that the number of levies made by the Village Government is adjusted to a reasonable price and is not excessively high.

In contrast to Seboro Village Regulation, Sadang District, Kebumen Regency number 06 of 2017 addressing Village Fees, this regulation concerns Seboro Village. The Pologoro practise in transactions involving the transfer of rights to land or structures is authorised by this Village Regulation, which outlines the practise fully, even though the Minister of Village Regulation on the Development of Deprived Regions and Transmigration is mentioned in the preamble of this Village Regulation in regards to the prohibition on administrative service charges. Pologoro is determined to be collected at a maximum of 2% of the sale value of the tax object and a minimum of two hundred thousand rupiahs, as stated in Article 3 of the Village Regulation. This information is presented simply and understandably. Pologoro exempted some transactions from the inheritance fee, including grants, the purchasing and selling certified land, land acquisition for public purposes, and property purchase in the framework of swapping village treasury land. The previous inheritance charge was one per cent and decreased to one per cent.

### **Pologoro as Tax**

Pologoro's tax must consider the principles of fairness and balance, the community's capacities, and the village's conditions, according to a clause that can only be found in the Seboro Village Regulation, which explicitly enables Pologoro to exist. This provision can be found in Article 3, paragraph 5 of the regulation. This article is one of a kind because it takes into account certain variables when determining how much money Pologoro needs to acquire. It examines the capacity of a community to carry out the transaction, followed by the financial requirements of the village, as well as the equilibrium between the two factors if this is a factor. However, the Village Regulation stipulates that the Pologoro charge cannot be less than two hundred thousand rupiahs and nor more than two per cent of the sale value of the tax object. This limitation places a ceiling on the amount of the levy. When deciding the minimum and maximum limitations, the village government uses its experience to consider the community's social climate and activities.

Next, there is an intriguing fact that must be taken into consideration, and that is the fact that the Pologoro levy is only applied to land that has yet to be approved. This is a unique solution since it restricts Pologoro's reach to include the uncertified territory. The regulator acknowledges the significance of substantial documentation of land ownership, as demonstrated by that transfer accompanied by certificates that do not have to be subject to Pologoro costs. However, given that the transfer of land rights without a certificate is fraught with great peril, doing so necessitates strong testimony from the village government. Eventually, the community will become aware of the significance of certifying land to avoid being subject to Pologoro levies when they transfer the land rights.

Based on the observed occurrences, it is possible to deduce that many Village Regulations still permit only a restricted amount of Pologoro. It is necessary to investigate this matter from the point of view of administrative law. To begin, it is important to understand the fundamental tenets of administrative law. These include the following: the principle of jurisdiction, which states that every action taken by a state administration official must not violate the law (must be by a sense of justice and decency); the principle of legality, which states that every action taken by state administration officers must have a legal basis (must be based on regulations); and the principle of administrative consistency. In Indonesia, a constitutional state, the principle of legality in all activities taken by the government is of the utmost importance. Additionally, the principle of discretion, which refers to the freedom of a state administration official to make judgements based on his or her own opinion so long as such decisions do not conflict with the law's legality, is also highly significant.

Nearly all of Pologoro's social practises are grounded in the applicable written law, specifically the village laws. This is done by the notion of jurisdiction, which can also be seen as conformity with justice and decency. The agreement of the village government and the village communities represented in the Village Consultative Body is also used as a basis for formulating the village's regulations. A formation founded on the community's consensus almost always has very powerful implementation power. However, it is vital to pay attention to consistency with the norms presented thus far regarding the prohibition of Pologoro taxes for administrative services. There is a need to clarify whether administrative service charges, such as Pologoro, are forbidden or allowed on a limited basis. Then it is important to carry out stringent oversight from the community, the Village Consultative Body, and the mass media regarding the certainty of the entrance of Pologoro money into the village treasury and the use of the village treasury for the benefit of the village. This is because it is necessary to ensure the entry of Pologoro money into the village treasury and the use of the village treasury for the benefit of the village. This is done in preparation for corruption cases that use the Pologoro loophole.

The legality principle acknowledges that Pologoro's practice is founded on a regulation enacted by the village; nonetheless, the legality principle has three sub-principles that must be satisfied in order to meet the essential legality principle criteria, and this aspect of the legality principle needs to be re-examined. The sub-principles are *lex certa*, *lex stricta*, and *lex scripta*. The concept of *lex scripta* holds that the mere fact that a rule is set down in a document attest to the validity of the rule as a legal norm. These documents can be duplicated and distributed, allowing for effective socialisation and implementation by those upholding the law. *Lex stricta* is Latin for "strict law." It is limited because it should be interpreted more broadly and construed as such. In a nutshell, you are not allowed to use comparisons when it comes to the application of words in statutory rules. In addition, *Lex Carta* is Latin for "clear law." The law cannot be interpreted in multiple ways nor leave readers of the legislation's language with unanswered questions. In the instance involving Pologoro in Indonesia, it is unclear if the practice in question was entered as an administrative service that is forbidden from being collected.

The idea of exercising discretion comes up rather frequently in connection with this Pologoro phenomenon. Village Regulations can take on various forms because the village administration and the Village Consultative Body have latitude in interpreting statutory regulations that apply to the Village Regulation guidelines. If this variation is because the village is special or the village's needs regarding levies, then it is appropriate; however, if this variation is related to a ban, specifically levies for administrative services, then it needs to be consistent. This is done in the interest of preserving the benefits that come with having legal certainty in a regulation. At the very least, the Village Regulation on Discretion should be consistent with the regulations that come before it.

Nevertheless, the laws presented so far need to make it abundantly apparent whether Pologoro is included in the administrative service levy that is not permitted at all or is permitted on a restricted scale. In addition, it is necessary to make people aware of the arguments favouring the arrangement. The rationale behind a prohibition and the reason for the ban itself must make sense and align with the standards of ethics upheld by the people of Indonesia. This is done for the additional purpose of bringing to the attention of the governing body of the village the philosophical and contemporary relevance of Pologoro in the purchasing and selling of land.

The potential inclusion of Pologoro in Indonesian laws and regulations can be split into two categories. To begin with, if you want Pologoro to be eliminated, it implies that you need to establish a clear Pologoro prohibition in statutory rules. This can only be done if you have the authority to do so. The current status quo is the ban on fees for administrative services brought about by the Village Minister Regulation on Development of Disadvantaged Regions and Transmigration. These services include certificates, recommendation letters, and cover letters. It is not quite apparent whether or not Pologoro falls under the category of administrative services. Because Pologoro, in practice, in addition to using a statement from the village government regarding land transfers, also carried out testimony and land measurements, it is

necessary to reaffirm the certainty of Pologoro's prohibition in statutory regulations. This can be done by considering the pros and cons of society. Second, if you want to regulate Pologoro such that it is only allowed on a limited basis, then you need to make explicit provisions that Pologoro is not an administrative service activity. This is required if you want to regulate Pologoro. This, of course, also considers whether or not the community still needs income from buying and selling, in addition to the economic convenience aspect that comes into play when purchasing land in Indonesia.

### **The Essence of Pancasila**

The philosophical value known as Pancasila serves as the cornerstone upon which the Indonesian state was established. The Pancasila, made up of five fundamental precepts, has a profound significance, which can be seen mirrored in each of its tenets. In subsequent growth, Pancasila can be explained as a moral and social guidance that leads to just and civilised development. This is an important aspect of its role in the development of Indonesia (Huda, 2018).

The conviction that there is only one God is the first premise of the Pancasila. Regardless of one's religious affiliation or other beliefs, this guiding principle emphasises having faith in God Almighty. The concept of "one Godhead" in Indonesian culture imparts the lesson that it is essential to cultivate a peaceful relationship with God and promotes the idea that all religious beliefs should be respected (Ropi, 2017).

The second tenet is to have a humanity that is just and civilised. This idea acknowledges that every person has the same rights and dignity in equal measure. A just and civilised humanity promotes the equal and fair treatment of all its citizens, regardless of the disparities between them in terms of race, ethnicity, religion, gender, or social background (Prasetyo, 2016).

The unification of Indonesia is the third tenet of the Pancasila philosophy. This principle emphasises maintaining unity and integrity despite a diverse collection of nations. Respect for the many different cultures, ethnicities, and faiths found in Indonesia is instilled through the Unity of Indonesia programme, as is the will to work together to ensure that the nation's territorial integrity is preserved (Ramage, 1997).

The democratic process, in which wise counsel is prioritised in the deliberations of representative bodies, is the subject of the fourth precept. This principle emphasises the significance of democracy as a form of state government by calling attention to its value. A democracy that is led by wisdom in representative discussions teaches the value of active engagement of the people in making political decisions and sensible government. This is one of the lessons that may be learned from such a democracy (Gumbira & Wiwoho, 2019).

The concept of social justice for all people in Indonesia is the fifth and final tenet of the Pancasila. This principle emphasises ensuring that all citizens share a fair and equitable allocation of resources, opportunities, and benefits. The concept of social justice emphasises the need to eliminate social inequities, protect vulnerable people, and promote environmentally responsible growth (Kim, 1998).

Each Pancasila precept is connected to the others and affects one another. They cannot be broken apart into parts but must be comprehended and experienced as an integrated whole. In addition to functioning as a form of declaration of values, the Pancasila also serves as a grundnorm, also known as a basis, on which all legal norms in Indonesia are based (Kim, 1998).

According to Hans Kelsen's explanation, Grundnorm is a source of validation and legitimacy for all applicable legal standards. In Pancasila's framework, the grundnorm concept serves as a rock-solid basis for the Indonesian legal system. The Indonesian state defends fundamental concepts such as the existence of the one and only God, just and civilised humanity, the unity of Indonesia, democracy led by wisdom in debates and representation, and social fairness for all Indonesian people through its adoption of Pancasila as the grundnorm. The Pancasila Grundnorm reflects the fundamental principles that have shaped and continue to define the identity and personality of the Indonesian people. This grundnorm, when put into effect, provides a solid foundation upon which Indonesian legislation can be formulated,

implemented, and enforced. The Indonesian state reaffirms its dedication to the rule of law, fairness, and equality for all of its citizens by recognising and respecting the fundamental standard of Pancasila. Grundnorm In the operation of the Indonesian legal system, Pancasila serves as an indestructible foundation (Harun, 2019).

In common parlance, a worldview (also known as a way of life), a view of life (also known as *weltanschauung*), a guide to life (also known as *weld anschauung*), or a view of the world and life (*wereld en levensbeschouwing*) is the same thing as Pancasila. In this context, the Pancasila is a code of conduct for day-to-day activities. As with all types of knowledge, there are multiple tiers to one's understanding of the Pancasila, which serves as the ideological and philosophical foundation of the Republic of Indonesia. Two distinct types of knowledge can be distinguished. First, there is what is referred to as common sense or ordinary knowledge, which is the knowledge obtained via common sense by people in general. Second, the body of knowledge and ideas that have been acquired via the use of specific scientific methods or through analysis (Indra Kurniawan, 2018).

In the context of law in Indonesia, Pancasila is frequently referred to as the source of all sources of law. In other words, it is considered the source of all sources of law. This could mean that Pancasila is the Indonesian government's attempt to standardise the values that underpin all of its legal legislation. Although in practice, there is not a single legislation that includes the precepts of Pancasila in its considerations or makes Pancasila a touchstone when attempting to cancel laws and regulations through a judicial review in the Constitutional Court, this does not mean that the precepts of Pancasila do not exist in the Philippines. This is because Pancasila is an abstract concept in which the values of the five precepts are expected to exist already and may be felt in laws and regulations. Examining statutory regulations or laws in a Pancasilaist approach can be accomplished in several ways; one is to evaluate them intellectually without making a judgement to repeal them, as the Constitutional Court does immediately (Dewantara et al., 2019).

## Conclusions

### Opportunities and Possibilities of Pologro to exist in the Context of Pancasila

An approach that aligns with the values and principles of Pancasila can be used in the context of Pancasila to carry out efforts to bridge the gap between customary law and positive law regarding land. These efforts can be carried out in the context of Pancasila. Pancasila, which serves as the foundation of the Indonesian state, includes tenets like social justice, unity, and the coexistence of diversity and unity (Wardhani et al., 2022).

To begin with, the government can encourage an open discussion between many stakeholders, such as indigenous peoples, academics, legal professionals, and the government itself. This conversation needs to take place with an attitude of mutual respect, listening to one another, and understanding to produce equitable results for all involved parties.

Second, there must be a harmonisation between customary law and positive law by considering the principles of justice, equality, and protection of human rights. This must be done to ensure the legal system is consistent. This can be accomplished by revising or adjusting positive laws to accommodate local wisdom and cultural values within the bounds of conformance with broader principles, including the rights of indigenous peoples. This can be done in a variety of different ways.

Third, it is essential to improve systems for the fair and open resolution of disputes. Resolving conflicts through this method should contain components of customary law and require the active participation of indigenous peoples. Fairness, safeguarding individual rights, and applying conventional wisdom ought to be the primary concerns at this stage of the process.

Fourth, instructional strategies and a heightened awareness of the law are essential in resolving this disagreement. Education on both positive and customary law and a deeper comprehension of the Pancasila ideals can contribute to developing a society with more awareness and comprehension. This can lessen the likelihood of conflict while simultaneously building mutual respect and collaboration in the administration of land resources



We must comprehend Pologoro through the tenets that are embodied in Pancasila as a whole in order for us to be able to view Pologoro's practice through the lens of Pancasila. The practice of Pologoro, which entails soliciting financial support from community members to advance the village's interests, may be sanctioned, provided that it adheres to the relevant laws. Nevertheless, the implementation of Pologoro would only be improved if the regulations continue to contain disharmony across the various levels of regulation. The fact that each community has a slightly different protocol for dealing with Pologoro is not, in and of itself, the primary source of the issue. The primary concern is whether or not Pologoro is authorised by law in its written form at present.

Since human beings are viewed as creatures of God in the Divine Precepts and are expected to observe religious teachings, humans are also expected to respect their nation's laws (Shestack, 1998). Pologoro is prone to various irregularities; moreover, many must be aware of the Village Minister's Regulation on Development of Disadvantaged Regions and Transmigration, which prohibits administrative service fees. This regulation was created to help disadvantaged regions develop and encourage migration. Because of this, many people in the village have chosen to observe the Pologoro culture because it has evolved into a tradition passed down from generation to generation.

If Pologoro is handled well and carried out openly and honestly, it can contribute significantly to the growth and improvement of the community. People in the village can contribute to one another and the community's overall progress through Pologoro. The amassing of contributions from members of the community can be put towards the development of infrastructure, the cultivation of human resources, the delivery of services in the areas of health and education, and the general improvement of the welfare of the village community as a whole.

Nevertheless, the execution of Pologoro is fraught with several problems that require immediate attention. First and foremost, there must be complete transparency on the allocation of the funds that have been collected. In order to prevent waste, abuse, or corruption of the Pologoro monies, the public must have access to transparent information regarding their use and distribution. Second, the regulations about Pologoro need to be modified and synchronised throughout the many layers of regulations that are now in effect, such as the regulations of the village, the regulations of the area, and the laws of the nation. Because of this, there will not be any disagreements or discord regarding the adoption of Pologoro (Karl, 2007).

Steps that are both effective and directed are required to meet the goal of broadening the public's understanding of the rule of law about Pologoro. Education and outreach directly involving community members are two methods that can be utilised as one technique.

In order to provide the community with an understanding of their rights and obligations within the context of Pologoro, education and outreach are crucial techniques that should be utilised. In order to accomplish this objective, various forms of media and activities that take place locally can serve as efficient channels via which pertinent information can be disseminated. Workshops or seminars, for instance, might be arranged in villages to examine the Pologoro regulations in greater depth and provide relevant case studies. During this particular occasion, legal professionals or prominent members of the community who have a strong comprehension of Pologoro may be invited to deliver in-depth explanations.

The government's role at the central and regional levels is quite significant when it comes to ensuring that the general public has a solid grasp of the Pologoro regulations. The government must lead in formulating and carrying out efficient education and outreach programmes. The central government can coordinate This program's rollout, which can also offer direction to regional governments so that those governments can carry out operations analogous at the local level.

In addition, the government can broadcast information about Pologoro to a wide audience by using various communication channels, such as television, radio, and the Internet. Educating a larger audience about Pologoro through educational or promotional content that can be disseminated in the mainstream media is possible. In addition, the government may make

use of various social media platforms in order to spread information regarding Pologoro and to enable conversations between communities to enhance their level of comprehension.

It is essential to involve community leaders, village leaders, and other community groups in developing education and outreach programmes. They can become influential agents of change in changing people's attitudes and actions toward Pologoro. The general population will more readily accept and comply with preexisting regulations if they actively disseminate information and provide a positive example for others.

In addition, the government needs to ensure that the Pologoro education and outreach programme considers many facets of environmental responsibility. Students in schools and other educational institutions must receive formal instruction on Pologoro as part of the formal curriculum. Therefore, beginning from a young age, the younger generation will be thoroughly aware of the rule of law surrounding Pologoro.

Pologoro's contribution, from the point of view of humanity and unity, is one that the community deems capable of assisting the village. This idea conveys a powerful sense of rootedness and connection to one's community. However, it should also be highlighted that not all persons have the financial capability to pay Pologoro the maximum amount; in fact, some of them even have to acquire land through a credit system in order to meet their financial obligations.

Due to this, there is a need for adaptable arrangements for the total amount of Pologoro dues, taking into consideration the social situations of the community as well as the requirements of the village. Pologoro must also be regulated more deeply from the perspective of democracy and social justice. This is because there has been a rise in the number of divergent viewpoints held by public members concerning the moral standing of Pologoro, namely whether or not it should be declared halal or haram. Therefore, Pologoro's status as an appropriate tax object must be clarified, and this situation must be avoided so that it does not become a double tax object.

In addition, it is important to note that the village government did not rely on Pologoro as a source of cash for individual existence, as was the case during Dutch colonial rule. In order to construct a robust community that is mutually supportive of one another in the village, Pologoro ought to take a more active role as a vehicle. The local administration of the village needs to prioritise the development of infrastructure and resource management practices that are beneficial to all of the village communities.

In a broader sense, the village's governing body must include the community members in making decisions concerning Pologoro. A method that encourages participation will make it possible to provide a more accurate representation of the interests of the entire society. It is possible to create an equitable and acceptable regulation for all parties involved if all parties, including community leaders, stakeholders, and legal experts, are included.

In addition, the necessity for a more intense outreach of the objectives and advantages of Pologoro to the community should be considered. The community will be better able to select the best choice if they thoroughly comprehend Pologoro's workings and the effects of their actions. When it comes to Pologoro, the village government can enlist the assistance of religious leaders and other influential members of the community in order to effectively communicate correct information and foster an atmosphere of trust among the populace.

The purpose of Pologoro should be to foster more cohesion and solidarity among the communities that make up the villages. This can be accomplished by establishing an organisation or committee responsible for administering the revenues collected from Pologoro in a manner open to public scrutiny and accountable to those who use those funds. The money might be used to support development projects that would benefit the entire village community, such as constructing roads, bridges, and rivers. In addition, Pologoro money can be granted for education and health initiatives in rural communities, such as the construction of new schools and health centres or the modernisation of existing facilities. Pologoro can serve as a forum for the development of the economic potential of the village by offering support in the form of venture capital to interested locals. As a result, Pologoro is transformed into an efficient tool that contributes to the overall improvement of the welfare and development of the local

community. The sense of togetherness and solidarity among the communities that make up the village can be strengthened and kept intact with the help of active participation and transparency in the management of the Pologoro finances, leading to an improvement in the quality of life for everyone.

In this context,

1. Pologoro's position as a legal culture and its compatibility with positive law are limited by Article 5 of the Basic Agrarian Law. While Pologoro historically provided welfare to village officials, changes in the funding system and the introduction of village fund budgets have led to the discontinuation of Pologoro levies.
2. The prospects of Pologoro in Village Administrative Law suggest the need to update its regulations to align with the village administrative law system. The existence of conflicting regulations and varying interpretations of Pologoro's legality necessitates clearer guidelines and academic studies in collaboration with the community.
3. Pologoro's practice is still prevalent in some regions, despite the prohibition on levying administrative services as per the Village Minister's Regulation. The lack of awareness of the ban contributes to the perpetuation of Pologoro's culture, raising concerns about its legality and social justice implications.
4. To ensure that Pologoro aligns with the principles of a Pancasila state, it is essential for regional heads to carefully consider the legal culture, apparatus, and substance of the levies, adhering to the values of divinity, humanity, unity, democracy, and justice.
5. Collaborating with legal professionals, agrarian experts, and community leaders can lead to a more comprehensive and sustainable approach to addressing the challenges related to Pologoro and its impact on society.

The research has some limitations, such as not conducting an exhaustive analysis of Pologoro implementation across various provinces. Future studies can overcome this constraint by including case studies in different regions to gain a deeper understanding. To enrich the research, future studies should involve interviews with village communities, village heads, and other officials to understand their perspectives and experiences concerning Pologoro and its removal by the government. Further research opportunities include exploring the ethical and societal repercussions of eradicating Pologoro, conducting comparative legal research on administrative fees in other countries, and involving government entities and civil society organizations in policy discussions and implementation guidelines.

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