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INDIGENOUS WOMEN IN THE DRAFT LAW OF INDIGENOUS PEOPLES: AN APPROACH BASED ON LEGAL NEUTRALITY AND PANCASILA VALUES

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Abstract

The Draft Law on Indigenous Peoples' Affairs in Indonesia has sparked significant debate, particularly concerning the protection and recognition of Indigenous women's rights. Indigenous Peoples in Indonesia have long maintained distinct socio-cultural identities, yet continue to face legal challenges, exacerbated by overlapping regulations that often neglect or inadequately address their specific needs, especially the rights of Indigenous women. Although the Indonesian Constitution recognises Indigenous Peoples, the enforcement of their rights remains inconsistent, particularly regarding gender equality. This research compares two versions of the draft law: one proposed by the Indonesian House of Representatives (DPR) and another drafted by Indigenous Peoples and their coalitions. While both versions aim to recognise Indigenous Peoples legally, they differ significantly in their treatment of Indigenous women's rights. The DPR's version fails to adequately address gender equality or the collective rights of Indigenous women. In contrast, the Indigenous Peoples' version explicitly acknowledges their rights, particularly regarding land and natural resource management. The research highlights the double marginalisation faced by Indigenous women—both within their communities and in broader societal structures. Patriarchal values within Indigenous communities and the state often exclude women from decision-making processes, leaving them vulnerable to violence, poverty, and further marginalisation. The study argues that gender equality must be a core component of the legal framework to empower Indigenous women, ensuring they are recognised as equal participants in their communities and have legal protection to manage their lands and cultural practices. The comparative analysis suggests that the Indigenous Peoples' version aligns more closely with international human rights standards, especially regarding gender equality. However, challenges remain, such as the exclusion of women from customary decision-making bodies. This research calls for a legal framework that fully incorporates gender equality into Indigenous rights, reflecting the Pancasila values of equality, social justice, and respect for diversity, and ensuring the recognition of Indigenous women as key stakeholders in the preservation of their heritage and rights.

Keywords: Indigenous Peoples' Rights; Gender Equality; Indigenous Women; Draft Law; Legal Recognition.

A. Introduction

The term of Indigenous people is to be comprehend in the context of the International Labour Organisation (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries that "Indigenous Peoples within independent countries states whose distinct socio-cultural, and economic conditions distinguish them from the broader national polity, whose legal status is regulated, either entirely or in part, by their own customary norms, traditions, or specific laws or regulations" (Cuneo, 2020; Fuentes & Fernández, 2022; Yupsanis, 2010; Nur

et al., 2024). Article 1 of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that "Indigenous Peoples possess the entitlement to the comprehensive enjoyment — whether collectively or individually—of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law" (Davis, 2012; Hanna & Vanclay, 2013; Vrdoljak, 2018). Both Indigenous Peoples and individuals are inherent equals to all other peoples; accordingly, they maintain the right to be free from any kind of discrimination, in the exercise of their prerogatives, in particular that based on their indigenous origin or identity" (Article 2 UNDRIP).

ILO estimates that indigenous and tribal peoples constitute 370 million people worldwide in 70 different countries, however the level of legal recognition is different from one to another countries (Larsen & Gilbert, 2020). Indigenous Peoples in Indonesia have been existing for hundreds of years and are recognised by the Indonesian state and government. Pancasila, through its five principles and articles, has instilled various values, such as equality recognition, equal rights and obligations without any distinction of ethnicity, religion, race, or social class (the second principle) and the state's role, as well as obligation to ensure social justice for all Indonesian people (the fifth principle) (Sukirno & Natalis, 2025). These valuesare enshrined within the 1945 Constitution; notably, Article 18B paragraph (2) of the Second Amendment, firmly stating that the State recognises and respects customary law (*Masyarakat Hukum Adat*) and their traditional rights. This recognition is contingent upon their continued existence and their alignment with societal evolution and the principles of the Unitary State of the Republic of Indonesia. Such protections are further reinforced by Article 28I paragraph (3) of the 1945 Constitution, which mandates that cultural identity and the rights of traditional communities be held in due respect.

Besides what is contained in the constitution, several laws and regulations governing Indigenous Peoples and customary law communities are widely considered to be overlapping (These laws and regulations include: Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Law Number 41 of 1999 concerning Forestry, Law Number 26 of 2007 concerning Spatial Planning, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 6 of 2014 concerning Villages, Law Number 23 of 2014 concerning Regional Government, Law Number 39 of 2014 concerning Plantations), causing detrimental to the indigenous communities (Thontowi, 2023). These overlapping and detrimental regulations have prompted Indigenous Peoples to initiate a draft law for customary law communities. This impetus is precipitated by the historical failure to adequately recognise, protect, and guarantee the fundamental rights of the Indigenous Peoples, which have consistently fallen short of expectations. Despite sustained advocacy and various forms of resistance, these communities have struggled to secure formal recognition. This deficiency in upholding traditional indigenous rights is largely attributable to the enduring perception of Indigenous Peoples as 'the other' — a marginalisation rooted in the perceived divergence of their lifestyles from modern norms. Furthermore, it is argued that the continued failure to ratify the draft legislation has exacerbated systemic discrimination and the criminalisation of Indigenous Peoples (Bhawono, 2025).

The delay in the ratification of the draft law is believed to be caused by conflicts of interest among various parties, particularly between Indigenous Peoples, the government, and the private sector/businesses/investors. The Nusantara Indigenous Peoples Alliance reported an increase in criminalisation, violence, and the seizure of customary lands in 2024 (Bhawono, 2024). These conflicts stem from the economic and political interests of the government and businesses, which are driven by needs such as investment, extractive industries, and infrastructure development, all of which require land for their purposes. Much of this land, however, is owned by Indigenous Peoples. In contrast, Indigenous Peoples argue that the existing draft laws do not adequately protect their interests, and they are therefore striving to defend and preserve their inherited rights, including those related to land, territory, culture, and natural resources.

The drafting and enactment of legislation are perpetually fraught with competing interests. These conflicts emerge as various stakeholders seeks to advance disparate agendas, often instrumentalising their institutional power, individual authority, or existing laws to secure preferred outcomes. Consequently, the legislative process frequently becomes a site of contestation, where actors leverage their specific jurisdictions and mandates to ensure that their strategic objectives are enshrined in law The development of various laws and regulations, such as the Marriage Law (Saraswati, 2014) and the Law on the Elimination of Domestic Violence (Saraswati, 2009), demonstrates this phenomenon, as they involve various interests involving the state, women/feminist groups, and other parties. Some women/feminist groups are actively involved in the drafting of these two laws and regulations, driven by their commitment to protecting women's well-being, both presently and in the future, and to preventing discrimination and violence in both private and public spheres.

In the context of the Draft Law on Indigenous Peoples' Affairs (Good Forest Governance Needs Good Forest Information, 2024), formal recognition of Indigenous Peoples must necessarily extend to indigenous women, children, and other vulnerable ones within. Such recognition is important because the evidence continues to demonstrate that discrimination against the Indigenous Peoples, including the women and children, remains widespread and recurrent. This occurs because of the persistent patriarchal culture and the values/norms of Indigenous Peoples themselves. Indigenous women and children have experienced structured and systematic discrimination resulted in violence, impoverishment, marginalisation, double burdens, negative stereotypes, and layered criminalisation not only from the state/government and corporations, but also from their own Indigenous Peoples. Such discrimination with its consequences continues and risks depriving indigenous women of both their individual and collective rights accross the economic, social, cultural, and political fields (Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan), 2024). Therefore, recognition of the indigenous women's rights is crucial as they form part of a diverse Indigenous Peoples and occupy social, cultural, gender, and economic relations influenced by various factors, including political factors (Komnas Perempuan), 2024). The interconnectedness or intersectionality of these diverse elements causes the indigenous women vulnerable to violence, impoverishment, marginalisation, a double burden, negative stereotypes, and criminalisation. For example, monitoring conducted by the National Commission on Violence Against Women in relation to natural resource conflicts indicates that indigenous women have faced impoverishment and marginalisation as a consequence of the conversion of their customary lands/forests. This impoverishment and marginalisation take the form of women's knowledge erosion in managing natural resources and their role in building and maintaining the spirituality. Land conversion has decreased the spaces managed by the indigenous women. This will impact to their roles as family food providers, artisans, foragers, and custodians of materials for religious rituals, traditionally obtained from the various trees and plants found in the forests within their customary territories (Komnas Perempuan, 2024).

Efforts by civil society observers to ensure the inclusion of Indigenous women in the draft law on Indigenous Peoples (the community-proposed version) were made as a means of formally recognising their existence and rights, especially given that the House of Representatives' version does not explicitly address them. The presence of two different versions—one of which fails to specifically regulate or protect women's interests—highlights the phenomenon of legal neutrality, a concept that has been criticised by feminists. The differences in substance between the two drafts indicate that the parties are competing in law, power, and authority, using legal spaces as tools to achieve their respective goals.

This research focuses on the study of the draft law regarding indigenous peoples through a feminist theoretical approach and Pancasila values; such research remains limited, as the majority of existing scholarship tends to concentrate on constitutional and human rights issues (Rumiartha

et al., 2022), indigenous communities and the environment (Wani & Ariana, 2018), land dispossession (Fahmi, 2024), the criminalisation of Indigenous Peoples (Aditya & Al-fatih, 2023).

The objective of this research is to examine whether the draft law, formulated by the House of Representatives of the Republic of Indonesia (DPR) and Indigenous Peoples, accommodates the needs and interests of Indigenous women from a feminist perspective and in alignment with Pancasila values. The structure of this paper begins with an introduction to the research background and methods. The following section presents the research findings and offers a comparative discussion of the two draft laws: one initiated by the House of Representatives (DPR) and the other proposed by Indigenous Peoples and their coalitions. The research results are analysed through the existing theoretical framework to explore the dynamics underlying both initiatives. This analysis aims to address the central research question and assess the extent to which the recognition of Indigenous Peoples, particularly Indigenous women and children, is accommodated in the draft law initiated by the DPR (Panja DPR, 2020) as well as that proposed by Indigenous Peoples and their coalitions. The final section provides a conclusion that briefly synthesises the overall research and discussion.

B. Method

This research adopted a doctrinal legal approach, conducting a literature review based on a range of primary, secondary, and tertiary legal materials. These included Pancasila values, relevant laws and regulations pertaining to the research topic, the draft law on Indigenous Peoples initiated by the DPR on 4th September 2020, and the draft law proposed by Indigenous Peoples on 10th June 2025, as well as books, journals, online media reports, dictionaries, and other pertinent sources.

A limitation of this research lies in the scope of the analysis, as not all provisions within the two draft laws were examined. The author selected and categorised specific articles based on their consistency or inconsistency with the theoretical framework, as well as their potential normative and practical implications. The results were analysed descriptively and qualitatively to provide an overview of the neutrality of the law and the implementation of the theory of power, law, and spatial relations concerning Indigenous women within the two draft laws. The analysis also assessed the extent to which the substance of the draft laws aligns with the values of Pancasila. Doctrinal research analysis further employed a prescriptive approach to offer arguments supporting the research findings in the form of suggestions or recommendations, assessing whether the content/material/substance align with the theoretical framework as well as the values of Pancasila as the source of all legal norm (*staatsfundamentalnorm*), and as the ideological and philosophical foundations underlying all laws and regulation in Indonesia (Widiarty, 2024).

C. Results and Discussion

1. The Different Name of the Bill: A Portrait of Legal Neutrality

The legal positivism school of thought has given rise to the concept of legal neutrality, which asserts that the law must remain neutral and objective towards legal subjects, as only through this approach can justice be achieved and legal certainty ensured (Celano, 2013; Hart, 1979; Kelsen, 2005). However, feminists criticise the notion of legal neutrality for its disadvantages to women, as it renders their experiences invisible before the law (Bartlett, 1990; Cain, 1991; Fineman, 2013). Margot Stubbs (1986) argues that this occurs because legal positivism, through its "Rule of Law" doctrine, advocates for equality before the law and neutral, impartial treatment for all. Stubbs rejects this view, asserting that true equality before the law is unattainable due to economic and sexual class relations within capitalist society.

To assess the extent to which legal neutrality persists and how the law supports women's experiences, an approach based on the theory of the relationship between law, power, and space is

required. This theory conceptualises law as a body of knowledge that empowers both individuals and institutions to exercise power within the natural, physical, social, and legal spaces they occupy. The power and knowledge possessed by each entity are influenced by its identity, which in turn affects its ability to achieve desired goals—or, conversely, hinders their realisation. This identity is formed, assessed, accepted, and justified within the spaces each entity inhabits, with each space holding its own power, authority, and legal knowledge (Saraswati, 2014).

A comparison of the two draft laws reveals both differences and similarities in the "Considering", "Recalling", and "Determining" sections. These differences indicate the relations of law, power, and space shaping each party's legislative approach.

Table 1.
The Selection of Bill Names

Parliament's (DPR's)Version	Indigenous Peoples Version
Considering: Four points (a, b, c, d) that a…. b…. c…. d. based on the considerations referred to letters a, b, and c, it is necessary to establish a Law on Indigenous Legal Communities;	Considering: Five points (a, b, c, d, and e) that a…. b…. c…. d. laws and regulations relating to Indigenous Communities are still sectoral, partial, inconsistent with each other and do not accommodate the development of legal needs within Indigenous Communities. e. based on the considerations referred to letters a, b, c, and d, it is necessary to establish a Law on Indigenous Communities;
Considering: Article 18B paragraph (2), Article 20, Article 21, and Article 28I paragraph (3), of the 1945 Constitution of the Republic of Indonesia	Considering: **1.** Article 18B paragraph (2), Article 20, Article 21, Article 28I paragraph (3), Article 32, and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia 2. Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management 3. Article 6 (2), and Article 71 of Act No. 39 of 1999 concerning Human Rights
Stipulating: Law concerning Indigenous Legal Communities.	Stipulating: Law concerning Indigenous Legal Communities.

Source: author's analysis results

In the Considering section, both versions present their own considerations, yet they share significant similarities regarding the recognition of Indigenous communities and customary law, which reflects respect for Indonesia's pluralism and diversity, as enshrined in Pancasila, the 1945 Constitution of the Republic of Indonesia, and the national slogan *Bhinneka Tunggal Ika* (Unity in Diversity). The state/government acknowledges that this recognition has not been fully realised, particularly in relation to communal cultural and customary rights, including rights to land, territory, and natural resources, whether inherited or acquired through other legal mechanisms in accordance with local customary law. This lack of full implementation has the potential to cause social conflicts, threaten national stability, and hinder the achievement of sustainable prosperity and social justice for Indigenous Peoples.

The key difference is that the version proposed by Indigenous Peoples emphasises the persistence of sectoral, partial, and inconsistent regulations that fail to meet the evolving legal needs, an issue not explicitly addressed in the version proposed by the Parliament (DPR).

Based on the perspective of the theory of law, power, and space relation, the government's (*c.q.* DPR) delay in ratifying the draft law on Indigenous Communities becomes evidence of its power use. The Secretary of AMAN (Alliance of Indigenous People of the Archipelago) stated that the (PDI-P) and the Golkar Party factions of DPR have not yet approved the ratification of the draft law. Therefore, it hinders investment and restores feudalism (Media Indonesia, 2022). On another occasion, the Golkar Party stated that the draft law was not ratified because of unclear substance within the draft (CNN Indonesia, 2024).

Regardless of the validity presented by these two parties, it is obvious that the political parties opposing ratification have used their power, knowledge (law), and social space to support private interest groups under the pretext of hindering investment. The investment is inevitably correlated to private investors/entrepreneurs as private groups and they undoubtedly employed various means to protect their interests. On the other hand, there are public interest groups, namely indigenous communities and their coalitions, who support the immediate ratification of the draft law. These legal subjects use their power/authority in the form of knowledge to gain influences through various channels. Corporations seeking to achieve their interests utilised the legislators' services, which aim to fight for their interests. As authoritative state actors, legislators deliberate in formal parliamentary sessions to determine whether the draft law will be enacted.

During the legislative deliberations, members of parliament from different political parties fought for influence within the social and institutional space of lawmaking. Their positions were shaped by their respective party's missions and concerns in supporting the indigenous communities. Consequently, consensus was not achieved, as some parties opposed the bill due to political interest and differing perspectives (Aliansi Masyarakat Adat Nusantara, 2021). On the other hand, Indigenous Peoples and their coalitions (Good Forest Governance Needs Good Forest Information, 2024) worked through "law" and power, possess, believe, and proposed a discourse based on their experiences of being marginalised, discriminated, and criminalised. These experiences led them to get protection and guarantees from the government through the ratification of the draft law.

2. The Issues of Equality and Gender Equality Principles

Both versions of the draft law incorporate several fundamental principles, including the principle of equality and non-discrimination. Equality is a term that emerged as a response to the issues of social discrimination. This concept was developed to eliminate oppression and promote the idea that every human being has equal rights. Besides, this stems from class conflicts in which one class dominates other classes, which ultimately gives rise to assumptions of superiority and inferiority for certain groups (Barir, 2014). Essentially, gender equality refers to a situation where women and men are treated equally, with the same rights and responsibilities. This means that women should be treated fairly and justly in the distribution of benefits and responsibilities (Flood, 2015). Supporting this, Htun and Weldon defines gender equality as ''an ideal condition in which men and women have similar opportunities to participate in politics, the economy, and social activities; their roles and status are equally valued; neither suffers from gender based disadvantage or discrimination (Flood et al., 2021).

Table 2.
Principles in the Draft Law

DPR's Initiative Draft Law (version dated September 4, 2020)	Coalition's Draft Law
Article 2 Recognition, Protection, and Empowerment of Indigenous Communities are based on: a. Justice; b. E**quality and Non-discrimination;** c. Transparency; d. Humanity; e. National Interests; f. Harmony; g. Diversity; h. Local Wisdom; and i. Preservation and Sustainability of Environmental Functions	Article 2 Recognition, Protection, and Empowerment of Indigenous Communities are based on: a. Recognition; b. Respect for the dignity and status of Indigenous Communities; c. Archipelago; d. Participation; e. Justice; f. Benefit; g. Legal certainty; h. Independence; i. **Equality and non-discrimination**; and j. Environmental sustainability

Source: author's analysis results

The mention and use of the equality principle in both draft laws are very common because it can be interpreted through various aspects of life, such as social, economic, cultural, gender, education, employment, environment, involvement in decision-making, and so on. Therefore, there is concern that the concept of gender equality, as advocated by Indonesian feminists, may be sidelined. While the protection of Indigenous Peoples as a collective remains central, protecting the rights of Indigenous women must also receive equal attention.

However, it must be concerned and considered that the marginalisation, oppression, and discrimination experienced by Indigenous women are not the same as those experienced by Indigenous communities, and vice versa. Indigenous women experience multiple vulnerabilities from the state and their patriarchal communities, both directly and indirectly. It is important to understand that Indigenous women are vulnerable to discrimination, resulting in marginalisation, subordination, double burdens, stereotypes, and violence in their own homelands. The experiences of Indigenous women and Indonesian women in general differ from one another because they have experiences based on their identities. Anti-essentialist feminists believe that violence and oppression against women cannot be attributed solely to patriarchal social system. Rather, such violence is shaped by intersecting identities - such as ethnicity, religiosity, education, age, social status, nationalism, gender, and sexual orientation (Crenshaw, 1989; Dowd, 2003; Wong, 1999). This explains that violence against women may not arise not only from the state/government or men, but also from dynamics within women's own social and identity formation.

Anne B. Denis (2018) emphasises that plurality of identities will create different forms of violence and oppression. However, these will generate various forms of resistance through identities, such as ethnicity, religiosity, education, age, social status, nationalism, gender, and sexual orientation. Therefore, according to the author, the term "gender equality" must still be emphasised because the "spirit" of the struggle in the Customary Communities Draft Law is not solely focused on the equality of Indigenous Peoples in general, but is also directed to Indigenous women children. By excluding gender equality principle, the Indigenous Peoples' Draft Law would risk becoming subordinate to the DPR's version, as it may be shaped by a governmental perspective still influenced by patriarchal assumptions and insufficiently attentive to the diverse identities of Indigenous women (Denis, 2018) . This is actually a form of empowerment, enabling them to recognise their ability/strength to use their knowledge and power to achieve the expected goals. Such empowerment may emerge internally or through sustained support from public interest groups that engage across natural, physical, and social spaces through dialogue, discussion, lobbying, and related strategies.

Furthermore, it must also be remembered that discrimination and its various derivatives, such as violence, subordination, marginalisation, stereotypes, and double burdens, occur because of the power relations between women and men in a systematic and structured patriarchal space, both private and public spaces. The rejection against gender equality often occurs from members of men (as the privileged group) than women (as the disadvantaged group). Men typically avoid attempts to equalise organisations and continue to hold dominant positions in various contexts. Powerful men's resistance to gender equality work seems to be a phenomenon that recurs across organisations and societies (Flood et al., 2021), affecting Indigenous women in Indonesia. Previous research data indicates that 40% of 2,989 indigenous women were reported experiencing gender-based violence, including domestic violence and sexual harassment (Adiningsih, 2025). These facts confirm that Indigenous men have power and privilege over women in their private lives. Therefore, women should face power relations against men and institutions in the public spaces of indigenous communities. Furthermore, they have also to face power relations between men and women within patriarchal systems and structure of the general society outside the Indigenous communities.

This phenomenon can be described using ecological theory (Heise, 1998). Such theory means a theory based on the interconnectedness of various layers within society. These layers constitute spaces influenced by power relations, ranging from the individual level (such as Indigenous women and children), family, society (including stakeholders), and the state/government (through law enforcement, policies, and legal regulations). The spaces within each layer are fundamentally dynamic and open systems because they are formed through the interaction and interconnection of various elements (Saraswati, 2026). The elements possess their own power, and is utilised as a means to create and maintain social identities and differences within society. Spaces are then created by power, that is used to shape how space is claimed, occupied, used, and regulated for the benefit of dominant groups, to the detriment of others.

In the context of gender issues, this ecological theory presents how the layers can empower or disempower women. In the ecological theory, the three elements of law, power, and space play a crucial role in empowering or disempowering women or vulnerable groups. It is also important to understand that not everyone, including women, is completely powerless as it depends on his/her relationship to the law, power (which has been transformed), and access to the spaces.

Given the persistent vulnerability of Indigenous women within patriarchal community structures, the sustained advancement of gender equality is crucial. The introduction of the term "gender equality" aligns with Presidential Instruction (*Inpres*) No. 9 of 2000 concerning Gender Mainstreaming in National Development, Act No. 39 of 1990 concerning Human Rights, and CEDAW, which have been ratified by the Indonesian government through Act No. 7 of 1984 concerning the Ratification of the Elimination of All Forms of Discrimination Against Women, and some other laws and regulations that accommodate women's roles in the public sphere. Therefore, to prevent the position of vulnerable Indigenous women from becoming increasingly weak, inferior, and powerless, its term needs to be added so that they can be equal to men in enjoying their rights, having access to natural resources, and giving their contribution to their customary homelands.

According to the author, the DPR's version of the draft law is a legal product motivated by positivist ideology as its substance does not specifically mention women, children, or other vulnerable groups. This draft is strongly influenced by legal neutrality because all Indigenous Peoples are considered equal. The drafters failed to recognise the power relations between women and men, women and their communities, women and the state, as well as men and the state within the Indigenous communities. Beside women, there are other vulnerable groups that also require special attention, such as children, adolescents, and people with disabilities.

3. The Neglected Issue: Collective Rights of Indigenous Women

The following table presents several differences in the regulation on Indigenous Peoples' rights. The DPR's draft law does not explicitly recognise the collective rights of Indigenous women, while the Indigenous Peoples' version does. According to Women's Policy Paper of AMAN, the collective rights of Indigenous women are a set of rights derived from the knowledge of Indigenous community that are closely related to the areas managed by the Indigenous women in their customary homelands. These rights can be interpreted as a form of access to the utilisation, management, maintenance, development, exchange, and intergenerational sustainability of land and natural resources in customary areas (Wibowo & Demadevina, 2021).

Table 3.
Collective Rights of Indigenous Communities and Indigenous Women

DPR's version of the Draft Law dated September 4, 2020.	Coalition's Version of the Draft Law
RIGHTS AND OBLIGATIONS Article 22 (1) Indigenous Communities have the right to the Indigenous Homelands that they have owned, occupied, and managed for generations based on the provisions of this Law. (2) The Indigenous Homelands as referred to in paragraph (1) are communal and cannot be transferred to other parties.	POSITION, RIGHTS, AND OBLIGATIONS OF INDIGENOUS COMMUNITIES Article 4 Indigenous Communities have the right to participate and be represented in determining the planning, development, and sustainable use of their Indigenous Homelands in accordance with local wisdom.
Article 23 Customary legal communities have the right to participate and be represented in determining the planning, development, and sustainable use of their customary homelands in accordance with local wisdom.	Article 5 In their position as legal subjects, as referred to in Article 4, Indigenous Communities have the rights to: a. Receive, collectively or individually, all human rights and fundamental freedoms inherent as human beings and Indigenous Peoples; b. Fully receive their rights based on their origins, including the collective rights of Indigenous women; and c. File lawsuits in their own interests and/or the interests of Indigenous Peoples.
Articles 24 and 25 concerning Rights to Natural Resources Articles 26 and 27 concerning the Rights to Development Articles 28 and 29 concerning the Rights to Spirituality and Culture Article 30 concerning the Rights to the Environment	Article 6 (1) The State recognises the rights of Indigenous Peoples. (2) The rights referred to in paragraph (1) include: a. Cultural and spiritual identity; b. Governance; c. Implement customary law; d. Customary homelands; e. Citizenship status; f. Development; g. Good and healthy environment; **Collective rights of Indigenous women**. … (9) **The collective rights of indigenous women as referred to in paragraph (2), letter h, include:** **a. self-determination for Indigenous women;** **b. Participate in decision-making for Indigenous women within an Indigenous community;** **c. Regulate, manage, utilise, and maintain areas managed by Indigenous women within the customary homelands; and** **d. Use, control, preserve, and develop their traditional knowledge**

Source: author's analysis results

In human rights discourses, the rights are commonly classified as individual , group , and collective rights (Sander, 1955). Individual rights are held by persons as individuals. Group rights refer to the rights of individual exercised through a group that has recognised standing to act on behalf of its members - for example, by seeking remedies, lobbying, or advocating affirmative measures in response to rights violations. These rights serve to protect individual members and typically arise in situations of discrimination or harm (Sander, 1955). Collective rights, by contrast, are held by the group as a distinct entity. They extend beyond addressing violations and aim to protect and promote the group's shared identity, interests, and unique characteristics (Sander, 1955).

The debate on collective rights for Indigenous Peoples has emerged some perspectives. Those who support collective rights argue that the rights are as important to Indigenous Peoples as human rights and therefore must be protected. Not all countries recognise collective rights as they only recognise individual rights. This can threaten the very existence of Indigenous Peoples and leave them without effective means of self-defense and, as a result, they will slowly and surely become extinct.

Opponents believe that recognising collective rights will endanger the individual rights of Indigenous Peoples as individual rights - for women and children, or for minorities within the groups - will suffer under collective rule and the state's ability to protect the individual rights within the community will be diminished. Furthermore, opponents believe that Indigenous Peoples' claims to collective rights are often considered as a threat to national unity.

The debate on collective rights, particularly for Indigenous Peoples, is increasingly contentious, concerning claims to customary homelands. Almost all over the world Indigenous Peoples are fighting to defend or reclaim their ancestral lands from governments, private citizens, or corporations (Jarboe, 2010). This is because the right to occupy their ancestral lands is a prerequisite for their survival as Indigenous Peoples. that have been inhabited for centuries, even before the formation of the unitary state of the Republic of Indonesia. They have faced a difficult struggle to defend or reclaim these lands from colonialists, which framed customary land ownership not as inherent ownership but as conditional "use" aligned with colonial policies and beliefs. Similar patterns persist today, as the Indonesian government and corporate actors invoke investment and development interest to justify comparable claims over Indigenous lands (Adiningsih, 2025).

Efforts to protect Indigenous Peoples through collective rights have been conducted with the issuance of the Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly on September 13, 2007. The Declaration extends collective rights to indigenous groups, including women, elders, children, and minorities. Several provisions of the Declaration address land use, acknowledging that many injustices against Indigenous Peoples stem from the dispossession and exploitation of their lands. The Declaration recognises their right to control or reclaim ancestral lands, to develop them according to their own priorities and strategies, and to provide redress where these rights are violated. It also guarantees restitution of land taken without free, prior, and informed consent, or, where return is not possible, the provision of just and equitable compensation. In addition, there is already the Indigenous and Tribal Peoples Convention, 1989 No. 169 but the Indonesian Government has not yet ratified it. As a result, Indigenous Peoples cannot rely on this Declaration to change the way the government views because it does not have enforcement tools and only a statement of principles.

Based on the description above, it is understandable if the term of "collective rights of Indigenous Peoples" appears in the Indigenous Peoples' version of the draft but is absent from the DPR's version. This demonstrates a divergence of interests between the government and the Indigenous Peoples. The omission of collective rights makes it easier for the government to use its power to control natural and physical spaces, including customary lands and social spaces, by

controlling the Indigenous Peoples without adhering to the norms and values prevailing within the local indigenous communities.

According to the author, the proposed collective rights of Indigenous women cannot stand alone beside the collective rights of Indigenous Peoples since the Indigenous women are part of the community. Referring to the definition of collective rights, these rights are not solely dominated by women but also by men who inhabit the Indigenous lands. Therefore, the term "collective rights of Indigenous Peoples, including the collective rights of indigenous women" should be added to complete the Indigenous Peoples' version into the draft. Furthermore, to maintain consistency of the formulation, the general provisions section should include a definition or explanation of collective and women's collective rights.

4. The obligation of Indigenous Peoples: The Challenge of Empowering Indigenous Women

The involvement of women and other vulnerable groups, including youth, the elderly, and people with disabilities in decision-making processes is crucial for empowering them. Furthermore, they fundamentally have the same rights as members of Indigenous Peoples. Its involvement aims to ensure that vulnerable groups in Indigenous Peoples are respected and their opinions are heard. Their involvement is crucial, as all decisions related to the lands they occupy directly affect their life and the community sustainability with their knowledge (law), power, and spaces. If women and the vulnerable are not heard and included in the decision-making process done by Indigenous Peoples and the government, the Indonesia's biological and non-biological diversity as well as local wisdom will be threatened with extinction in the near future. This is of course undesirable, therefore, there must be a commitment and political will of the government to protect the Indigenous Peoples.

Table 4.
Community Obligations

DPR's version of the Draft Law dated September 4, 2020.	Coalition's Version of the Draft Law
Article 30 Customary Legal Communities are obliged to: a. Maintain the integrity of their customary homelands within the framework of the Unitary State of the Republic of Indonesia; b. Develop and preserve their culture as part of Indonesian culture; c. Practice tolerance among Customary Legal Communities and other communities; d. Maintain the sustainability of environmental functions and control environmental pollution and/or damages in indigenous homelands e. Manage and utilise natural resources in indigenous homeland sustainably; f. Cooperate in the identification and verification process of Customary Legal Communities; g. Safeguard and not transfer the assets of Customary Legal Communities to parties outside the Customary Legal Communities; h. Maintain the sustainability of national development programs and results; and i. Comply with the provisions of laws and regulations.	Article 8 Indigenous Communities are obliged to: a. Protect the integrity of their customary homelands and manage them for the welfare of the indigenous communities; b. Participate in all development processes that have been jointly approved by the indigenous communities; c. Develop and preserve their cultural values within the framework of the Unitary State of the Republic of Indonesia; d. Ensure the involvement of women, children, youth, the elderly, people with disabilities, and other vulnerable groups in decision-making processes on their Customary Homelands; e. Participate in resolving conflicts that occur in their customary homelands; f. Cooperate in identification and verification activities for Indigenous Communities; and g. Sustainably utilize natural resources in their customary homelands

Source: author's analysis results

This formulation emerged because Indigenous Peoples are believed to still practice patriarchal culture resulting in limited roles for women and other vulnerable groups, particularly in decision-making process in the private and public spheres. Involving women, children, youth, the elderly,

people with disabilities, and other vulnerable groups in the decision-making process can bring them into "spaces where access to natural and non-natural resources exists" (customary institutions, legal institutions, non-legal institutions, and other institutions within the indigenous communities or those formed by government and non-government). This access, if properly utilised through the "power" they possess, will empower Indigenous women and other vulnerable groups - both individually and collectively. Therefore, involving women and youth in decision-making is actually one concrete way to empower them as members of Indigenous Peoples.

The Indigenous Peoples' draft must ensure internal consistency regarding its legal subjects; Article 4 should explicitly affirm their status as entities with full legal subjectivity. The term "vulnerable group" is mentioned in Article 6(7), while Article 25, concerning the empowerment of Indigenous Peoples, only refers to Indigenous youth and Indigenous women. Similarly, Article 26(6)(d) states: "... strengthening customary law that respects human rights, including the rights of Indigenous women." The author argues that the draft should include a dedicated section and article that specifically addresses the rights of Indigenous women and children, and, where necessary, other vulnerable groups within Indigenous communities, in line with the provisions of Act No. 39 of 1999 on Human Rights.

Table 5.
Community Empowerment

DPR's version of the Draft Law dated September 4, 2020.	Coalition's Version of the Draft Law
Article 32 (1) Empowerment of Customary Legal Communities is carried out by the Central Government and Regional Governments. (2) Empowerment as referred to in paragraph (1) is aimed at increasing the independence and welfare of Customary Legal Communities. (3) Empowerment as referred to in paragraph (1) is carried out by considering the local wisdom and customs of Customary Legal Communities. Article 33 (1) Empowerment of Customary Legal Communities as referred to in Article 32 is carried out through: a. improving the quality of human resources; b. preserving traditional culture, traditional knowledge, and intellectual property; c. facilitating access for the benefit of Customary Legal Communities; d. productive businesses; and e. cooperation and partnerships.	EMPOWERMENT OF INDIGENOUS COMMUNITIES Article 25 (1) Empowerment of Indigenous Communities, including Indigenous Youth and Indigenous Women, is carried out by the Central Government and Regional Governments. (2) Empowerment as referred to in paragraph (1) is aimed at increasing the independence and welfare of Indigenous Communities. (3) Empowerment as referred to in paragraph (1) is carried out by considering local wisdom and customs of Indigenous Communities. (4) Empowerment of Indigenous Communities is carried out in a planned, coordinated, and integrated manner involving Indigenous Communities. (5) Empowerment of Indigenous Communities includes institutional aspects, expanding access, and providing facilities. Article 26 (1) Empowerment of Indigenous Communities as referred to in Article 25 is carried out through, among other things: a. Improving the quality of human resources; b. Preserving traditional culture and the environment; c. Facilitating access for the benefit of Indigenous Communities; d. Productive businesses; and e. Cooperation and partnerships. … (6) Cooperation and partnerships as referred to in paragraph (1) letter e, include: a. Facilitating cooperation between Indigenous Communities and other parties; b. Developing mutually beneficial cooperation and partnership patterns; c. Positioning Indigenous Communities as equal partners; and d. Strengthening customary laws that respect human rights, including the rights of indigenous women.

Source: author's analysis results

In the section on Customary Institution Decisions, specifically Article 36 (1), it is stated that "Customary Institution Decisions must be in accordance with Human Rights valuesand must not discriminate against and/or harm minority and vulnerable groups of the indigenous communities, including women." This formulation further demonstrates the inconsistency of the Indigenous Communities' version of the draft in its use of legal subjects because it utilises the term "minority group"—a term that has never appeared but is suddenly added to this section. This inconsistent arrangement is feared that it will cause direct, indirect, and multiple discrimination against certain vulnerable groups.

Regarding women involvement in customary institutions, this is not yet been clearly demonstrated in both versions of the drafts (Articles 43-47 of the DPR's version and Articles 32-36 of the coalition's version). One of the roles of customary institutions aims to resolve disputes/conflicts in Indigenous communities through deliberation and consensus but neither article mentions the inclusion of indigenous women in customary institution membership. This absence among customary institutions raises some questions about the seriousness of the government and Indigenous communities in involving the women in the public sphere. Indigenous women have distinct lived experiences that warrant recognition of their collective rights. At the same time, their rights also extend into the public sphere, including participation in the resolution of conflicts within and between communities. The exclusion of indigenous women as members of customary institutions demonstrates a patriarchal mindset of the government and even the Indigenous Peoples themselves.

This situation strongly aligns with MacKinnon's (1989) argument that male-dominated thinking is always used in drafting regulations and resolving problems within the community. While drafting legislations is a legal matter, normatively and procedurally, so it is substantially tinged with strong patriarchal political overtones. Therefore, to ensure that dispute resolution takes women's interests into account, the inclusion of indigenous women - including Indigenous children and youth as members of customary institutions is crucial, as Indigenous women have different experiences than indigenous men and the government.

Learning from Act No. 7 of 2012 on Social Conflict Management requires that at least 30% of the Conflict Resolution Task Force members from community representatives be women. Drawing from this standard, the Customary Communities Draft Law should adopt a similar requirement for customary institutions - regardless of their name, as long as they function to resolve customary disputes or social problems within Indigenous Peoples.

The author observed inconsistent regulations, for example, Article 8 which stipulates "ensuring the involvement of women, children, youth, the elderly, people with disabilities, and other vulnerable groups in decision-making processes concerning customary homeland." However, when it is about regulating customary institutions, there is not a single article that regulates the involvement of women or vulnerable groups as members. A traditional institution is essentially a home ("space") for Indigenous women to advocate for justice. By not including the them as the members, it is actually a form of ignoring the knowledge, experience, and abilities of the women or, in other words, ignoring their existence.

The neglect of Indigenous women's rights is also evident in Article 10 of the Indigenous communities' version of the draft which regulates the National Commission of Indigenous Communities. A national coalition was proposed in 2014 by Alliance of Indigenous Communities of the Archipelago (AMAN). This Alliance urged the government to immediately establish a National Commission for Indigenous Communities (*Komnas Masyarakat Adat*) to affirm the rights of indigenous communities, which have remained unclear to date. An independent national institution will serve as a mediator or intermediary to mediate and resolve conflicts between government officials and indigenous communities. *Komnas Masyarakat Adat* will consist of experts experienced in working with Indigenous Peoples to identify, verify, and ensure the process of affirming Indigenous Peoples' rights (Aditya, 2014).

Table 6.
National Commission on Indigenous Peoples

DPR's version of the Draft Law dated September 4, 2020	Coalition's Version of the Draft Law
-	National Commission for Indigenous Communities (*Komnas Masyarakat Adat*) Article 10 (1) The Government shall establish a National Commission for Indigenous Communities no later than 1 (one) year after the Law is enacted. (2) The National Commission for Indigenous Communities, as referred in paragraph (1), shall be permanent and independent and shall be domiciled in the capital city of the Republic of Indonesia. (3) The National Commission for Indigenous Communities shall consist of 9 (nine) members representing academics, Indigenous Peoples, women, and civil society organisations, considering balanced representation across regions. (4) The composition of the National Commission for Indigenous Communities shall consist of: a. 2 (two) members representing academics; b. 2 (two) members representing women; c. 2 (two) members representing civil society organizations; and d. 3 (three) members representing Indigenous Peoples. (5) Members of the National Commission for Indigenous Communities are appointed for a term of 5 (five) years and may be reappointed for one subsequent term.

Source: author's analysis results

The proposal from the Indigenous communities was then incorporated into Article 10 of the Customary Legal Draft Law. This becomes a good idea considering the large number of Indigenous communities in Indonesia still experience discrimination and various detrimental actions.

The author states that the existence of Indigenous women has been neglected, articulated in Article 10 paragraph 4 due to the provision that "...the membership of the national commission consisting of two members representing women" is unclear. Are the women here referred to Indonesian women in common or Indigenous women? In the author's view, if the goal is to address and empower Indigenous women's - who have distinct knowledge and experiences from other Indonesian women - then they should be given the opportunity to serve on this commission. This formulation is unclear as other elements, such as academics, mass organisations, and Indigenous communities do not have provisions regarding gender. Thus, it is assumed that those occupying this position can be represented by women or men.

The author observes that the provisions addressing women and other vulnerable groups are inconsistent and scattered across various articles. Therefore, it would be beneficial to group the vulnerable groups into separate sections for greater systematic and easier understanding. Again, the author provides an example of legislation, namely Act No. 39 of 1999 on Human Rights that classifies women and children as legal subjects in separate sections/articles without necessarily diminishing their basic rights.

5. The Values of Pancasila as State Foundation

To determine the extent to which the draft proposed by House of Representatives and Indigenous Peoples reflects the principles of Pancasila, the relevant provisions were analysed against those principles and their indicators.

Table 7.
Indicators of the Bill Substance Reviewed using Pancasila

No.	Principle	Description
1	ONE	BELIEF IN THE ONE AND ALMIGHTY GOD *(Ketuhanan Yang Maha Esa)*
		Policies, laws, and regulations are established to provide protection and respect for every person to believe in one Almighty God according to their respective religions and beliefs in a civilised manner.
		Indicators:
		1. Policies, laws, and regulations guarantee that the Indonesian nation is a State that recognises the existence of Almighty God.
		2. Policies, laws, and regulations guarantee that every citizen can practice the teachings of their religion and beliefs.
		3. Policies, laws, and regulations guarantee freedom and respect for every religious adherent and believer to worship and carry out their religious obligations.
		4. Policies, laws, and regulations guarantee that every person carries out the commands of their religion and beliefs in harmony with social, national, and state life.
		5. Policies, laws guarantee respect for every person's right to embrace their religion and beliefs.
2	TWO	JUST AND CIVILIZED HUMANITY
		Policies and laws are established to recognise equality, equal rights, and equal obligations among all human beings.
		Indicators:
		1. Policies and laws guarantee the independence, sovereignty, unity, and integrity of the nation, as well as equal relations among nations worldwide.
		2. Policies and laws guarantee relations between nations by prioritising national interests.
		3. Policies and laws uphold universal human rights while maintaining national wisdom and equal, just, and civilised relations between nations.
		4. Policies and laws reflect the recognition and equality of human beings in accordance with their dignity and status as creatures of Almighty God.
		5. Policies, laws and regulations serve to foster an attitude of mutual respect and appreciation for differences in ethnicity, religion, belief, race, and intergroup relations.
3	THREE	UNITY OF INDONESIA
		The policies, laws, and regulations established are capable of fostering a sense of belonging to and love for the homeland in every person and a willingness to protect the entire Indonesian nation.
		Indicators:
		1. Policies, laws, and regulations guarantee national unity, the integrity and territorial integrity of the Unitary State of the Republic of Indonesia, and develop culture.
		2. Policies, laws, and regulations strengthen the spirit of nationalism that protects the entire Indonesian nation within the framework of the Unitary State of the Republic of Indonesia.
		3. Policies, laws, and regulations ensure that every citizen prioritises the interests of the nation and state above personal or group interests.
		4. Policies, laws, and regulations serve to foster a sense of love for the homeland and a willingness to sacrifice for the interests of the nation and state in every citizen.
		5. Policies, laws, and regulations foster a spirit of mutual cooperation and pride in the Indonesian nation and homeland.

No.	Principle	Description
4	FOUR	DEMOCRACY LED BY THE WISDOM OF DELIBERATION AMONG REPRESENTATIVE
		Policies, laws, and regulations are established to encourage and respect the aspirations and interests of the people in politics and to continuously improve the democratic system and practices.
		Indicators:
		1. Policies, laws, and regulations consistently emphasise that the Republic of Indonesia is not a nation founded for one group but for all Indonesians basing the governance on deliberation and representation.
		2. Policies, laws, and regulations emphasise the wisdom of deliberation and representation grounded in the values of divinity, humanity, unity, and social justice for all Indonesian people.
		3. Policies, laws, and regulations guarantee a democracy based on deliberation and representation that can achieve social welfare.
		4. Policies, laws, and regulations guarantee that every citizen respects and upholds every decision based on deliberation/consensus and implements these decisions in good faith and with a sense of responsibility.
		5. Policies, laws, and regulations guarantee the implementation of a civilised and just political democracy.
5	FIVE	SOCIAL JUSTICE FOR ALL PEOPLE OF INDONESIA
		The established policies and regulations are capable of encouraging the development of joint ventures with a spirit of mutual assistance.
		Indicators:
		1. Policies and regulations serve to realise justice and prosperity for all Indonesian people, both physically and spiritually.
		2. Policies and regulations guarantee protection for everyone to respect the process of creativity, work, and initiative responsibly for the sake of realizing the welfare of the people.
		3. Policies and regulations guarantee the rights of every citizen to education, health, employment, and business opportunities, as well as a decent living.
		4. Policies and regulations establish the economic independence of the communities and equitable public welfare.
		5. Policies and regulations guarantee economic activities that are just, sustainable, competitive, and environmentally conscious, and maintain a balance between progress and national economic unity.

Source: Regulation of the Pancasila Ideology Development Agency of the Republic of Indonesia No. 4 of 2022 concerning Pancasila Value Indicators

In relation to the first principle, Belief in the One and Almighty God, both drafts regulate the rights of Indigenous Peoples to spirituality and culture (Articles 28 and 29 of the DPR' version and Article 6 of the Indigenous Peoples' version).

Regarding the title of draft law, the version of Indigenous Peoples is more aligns with the second, third, and fifth principles of Pancasila. In particular, it fulfills the second principle by recognising Indigenous Peoples regardless of their formal legal status, thereby promoting respect for diversity in ethnicity, religion, belief, race, and intergroup relations. The Indigenous Peoples' version of the draft fulfills the third principle and its indicators because it guarantees national unity, the integrity, and integrity of the Unitary State of the Republic of Indonesia, and fosters cultural development. The policies and laws strengthen the spirit of nationalism, protecting the entire Indonesian state within the framework of the Unitary State of the Republic of Indonesia. On the

other hand, the DPR' version, which limits its scope to legally recognised Indigenous Peoples, is less consistent with the second, third, and fifth principles of Pancasila. It does not adequately protect communities that lack formal state recognition, even though they have historically existed long before the establishment of Indonesian state. Relying on state recognition risks creating injustice for unrecogised Indigenous communities that continue to face discrimination and other forms of harm. This approach is inconsistent with the principle of Pancasila, which seeks to ensure justice and prosperity of all Indonesians, regardless of their legal status. Furthermore, people possess creativity, works, and initiatives which manifest in Indigenous women's collective rights to manage their homelands, which have not been appreciated by the government for investment and corporate interests.

Regarding the article on equality principle used in both drafts, the omission of gender equality does not align with the second and fifth principles because many Indigenous women still experience multiple forms of discrimination and injustice within their Indigenous Peoples and by the government/state. The substance of this article does not meet the indicators of the second principle, which require that policies and laws must reflect the recognition and equality of human beings in accordance with their dignity and worth as creatures of Almighty God. Policies and laws consistent with the second principle serve to foster mutual respect for diversity in ethnicity, religion, belief, race, and intergroup relations. Therefore, the government/state has a role and obligation to protect the rights of citizens and uphold human dignity. Effective implementation of the second principle supports the realisation of the fifth principle, which mandates social justice for all Indonesian people. Their collective rights stipulated in the draft law on Indigenous communities, according to the author, align with the second and fifth principles. The alignment with the second principle is due to the substance of the legislation reflecting the recognition and equality of human beings in accordance with their dignity and status as creatures of Almighty God. Furthermore, the draft law is expected to foster mutual respect and appreciation for differences in ethnicity, religion, belief, race, and intergroup relations. The regulation of women's collective rights meets all the indicators of the fifth principle because the substance of the draft law, if passed, will impact the realisation of justice and prosperity for all Indonesian people, both physically and spiritually. Recognition of collective rights in the draft law guarantees protection for Indigenous People's creative processes, works, and initiatives, including those led by Indigenous women to advance communities' welfare. Affirming women's collective rights also supports the sustainable livelihoods through the rights to education, health, employment, business opportunities, community economic independence, and public welfare based on just and environmental responsibility.

In the DPR's version, the general obligations of Indigenous People (Article 30) reflect the third and fifth principles. Meanwhile, Article 8 of the Indigenous Peoples' version, which regulates the involvement of women, children, youth, the elderly, the disabled and other vulnerable groups in decision-making process concerning indigenous homelands aligns with the second principle. It affirms equality and human dignity by ensuring inclusive participation and promoting mutual respect accross diverse social groups.

The provisions of the empowerment of Indigenous Peoples, including indigenous youth and women by the central and regional governments, have aligned with the second principle as the inclusion of vulnerable groups reflects the recognition and equality of human beings in accordance with their dignity and status as creatures of Almighty God. Furthermore, it demonstrates mutual respect and appreciation for differences in ethnicity, religion, belief, race, and intergroup relations. The empowerment of Indigenous women and Indigenous youth aligns with the fifth principle and its indicators, which aim to provide social justice and prosperity through policies that guarantee the rights of every citizen to education, health, employment, and business opportunities, as well as a decent living through equitable, sustainable, competitive, and environmentally conscious economic activities, while maintaining a balance between progress and national economic unity.

Both the DPR's draft law and the Indigenous Peoples' version provide for the establishment of Indigenous institutions, including their roles in resolving conflicts. This article aligns with the third principle to maintain national unity. The regulation containing that a dispute resolution will be handled by customary institutions through deliberation, and consensus demonstrates its compliance with the fourth principle, one of the indicators of ensures that every citizen respects and upholds every decision made based on deliberation/consensus and implements decision in good faith and with a sense of responsibility. Settlement through deliberation and consensus is the embodiment of a civilised and just political democracy. Unfortunately, the provisions of this customary institution do not regulate its membership and do not explicitly mention indigenous women or other vulnerable groups. According to the author, by not involving women and/or vulnerable groups as members of customary institutions, it will be inconsistent with the second and fifth principles.

D. Conclusion

The House of Representatives' draft law on Indigenous Peoples remains predominantly positivist in its approach, focusing largely on legal formalism without giving sufficient attention to the lived experiences of women within Indigenous communities. This limitation becomes evident in the absence of provisions specifically addressing gender equality or the unique challenges faced by Indigenous women, who are often doubly marginalised both within their own communities and by state institutions. While the draft law acknowledges the rights of Indigenous Peoples as a collective entity, it fails to fully recognise the role and rights of Indigenous women, children, and other vulnerable groups, thereby undermining the spirit of inclusivity that is essential for achieving social justice.

In contrast, the version of the draft law proposed by Indigenous Peoples is more inclusive, explicitly recognising the rights of women, children, and other vulnerable groups. However, this version still faces significant flaws, primarily in the lack of consistency across the document. Provisions relating to the protection of these groups are fragmented and dispersed across various sections, which diminishes their overall impact. For greater clarity and coherence, these provisions should be consolidated into a dedicated section that clearly outlines the rights and protections afforded to Indigenous women, children, and other vulnerable groups. This would not only improve the structure of the draft law but also send a clear message about the importance of these protections in achieving the overall goal of safeguarding Indigenous Peoples' rights.

Both versions of the draft law still suffer from critical gaps. Notably, neither explicitly mandates the inclusion of vulnerable groups in key decision-making processes, such as customary dispute resolution bodies or the National Indigenous Peoples' Commission. These bodies are essential in the governance and protection of Indigenous communities, and the exclusion of women, children, and other vulnerable groups from these processes constitutes a significant oversight. Customary dispute resolution is a central feature of Indigenous governance, and without active participation from all community members, particularly those who are most vulnerable, the processes risk being skewed by patriarchal or other exclusionary practices. Therefore, it is imperative that both drafts include provisions that specifically require the inclusion of women and other vulnerable groups in these bodies, ensuring that the voices of all members of the community are heard and represented.

From the perspective of Pancasila values, both drafts make important strides in recognising Indigenous spirituality, aligning with the first principle of Pancasila, which upholds belief in one and Almighty God. However, the Indigenous version of the draft law aligns more closely with the second, third, and fifth principles of Pancasila. The second principle of Pancasila advocates for justice and civilised humanity, ensuring that all individuals are treated with equality and dignity. The Indigenous draft's emphasis on collective rights and its broader recognition of cultural identity, alongside its focus on social justice, particularly for the most vulnerable groups, directly

aligns with this principle. Additionally, the Indigenous version better reflects the third and fifth principles, focusing on unity, social justice, and sustainable development for all people, including Indigenous women and children. By recognising the need for collective rights and ensuring that Indigenous communities have the power to govern and protect their lands, the Indigenous version supports the broader goals of national unity and prosperity.

A critical flaw in both drafts, however, is the absence of explicit gender equality provisions. This omission represents a failure to fully satisfy the second and fifth principles of Pancasila, which require not only the recognition of all individuals as equals but also the establishment of a legal framework that guarantees social justice for all, including women. Without the inclusion of gender equality provisions, both drafts risk perpetuating the marginalisation of Indigenous women, who continue to face discrimination and violence within their communities and from external actors, including the state and businesses. Both drafts also correctly empower customary institutions to resolve disputes, which aligns with the third and fourth principles of Pancasila by ensuring decisions are made through deliberation and consensus. However, the current lack of specific representation for women and children in these customary bodies remains a significant oversight, one that needs urgent attention and rectification to ensure that all members of Indigenous communities are able to fully participate in the governance and decision-making processes that affect their lives.

Given the gaps in both versions, it becomes clear that there is a need for a more comprehensive and inclusive approach to Indigenous rights—one that fully addresses the unique challenges faced by Indigenous women. The inclusion of gender equality provisions is not just a matter of social justice but a necessary step in ensuring that all members of Indigenous communities, regardless of gender or age, can equally enjoy their rights and contribute to the wellbeing and governance of their communities. Without this shift, the legal frameworks risk further entrenching the marginalisation of women and other vulnerable groups, hindering the true potential for social justice and equality in Indonesia. Only through a more integrated and holistic approach can Indonesia achieve the full recognition and empowerment of its Indigenous Peoples, with gender equality firmly at the core.

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