

22-01-2026

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To cite this article: Yuwono, A. T., & Bruijns, P. (2026). Reading Tan Malaka's ideas in the context of Indonesian constitutional. *Priviet Social Sciences Journal*, 6(1), 542-559.
<https://doi.org/10.55942/pssj.v6i1.762>

To link to this article: <https://doi.org/10.55942/pssj.v6i1.762>



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Reading Tan Malaka's ideas in the context of Indonesian constitutional law

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Received 28 September 2025

Revised 13 November 2025

Accepted 22 January 2026

ABSTRACT

The Indonesian Constitution faces various challenges, such as the potential for politicization, the court's dependence on state funding, and the public's poor understanding of the constitutional judicial order. This study aims to provide a critical framework for studying Indonesian constitutionality from Tan Malaka's perspective. By using a philosophical-doctrinal approach combined with a critical textual analysis of Tan Malaka's key works, such as *Madilog*, *Naar de Republiek Indonesia*, and *Gerpolek*, as well as the Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT, this study shows how its concepts of "100% independence" and "pseudo-independence" reveal the economic determinants of judicial and constitutional failures. The application of *Madilog* (Materialism, Dialectics, and Logic) of Tan Malaka as a methodological lens to deconstruct legal formalism and reveal the persistence of economic structures in state governance. True judicial independence requires institutional and budgetary autonomy for the Supreme and Constitutional Courts, which are protected from executive influence. Therefore, an interpretive canon based on *Madilog* is needed for Article 33 of the 1945 Constitution, prioritizing substantive social justice over formalism.

Keywords: constitution, constitutional law, judicial power, Tan Malaka, trias politica

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1. INTRODUCTION

Tan Malaka's thoughts on 100% independence (full independence) and his criticism of the colonial legal system and the concept of the state continue to provide analytical value in the context of Indonesia's current constitutional law (Crawford, 2018). Tan Malaka, one of the founders of the Indonesian nation, emphasized that independence is not only political but must also include independence in the fields of justice, economic independence, and social justice (Yuwono, 2025a). However, the application of this concept in the Indonesian constitutional system still faces various challenges, such as political intervention in the judiciary, dependence of the judicial budget on the government, and distortion of the meaning of the constitution (Malaka, 1921). This study rests on three theoretical pillars. First, it draws on Tan Malaka's state and legal philosophy, especially his Madilog concept (Materialism, Dialectics, and Logic), which advocates a rational approach to law (Malaka, 1943). Second, it employs the theory of independent judicial power, which necessitates structural, functional, and financial autonomy from the judiciary (Setiawan & Susilo, 2025). Finally, it utilizes the framework of progressive constitutionalism, viewing the Constitution as a living instrument for social justice (Marshall, 2011).

The analysis of Tan Malaka's thought in the context of contemporary Indonesian constitutional law rests on two key concepts: "pseudo-independence" and the "Madilog" method. The concept of pseudo-independence refers to a condition in which state institutions, especially the judiciary, have formal autonomy (*de jure*) but are substantively shackled by external political-economic power structures (Malaka, 1925). In contrast to the *de facto* versus *de jure* standard dichotomy that only describes the gap between law and practice, pseudo-independence points to a structural pathology that makes this dependence a systemic feature that perpetuates power asymmetry (Christiawan & Widyaningrum, 2024). In the context of post-1998 Indonesia, this condition is manifested in three dimensions: functional (avoidance of the court in politically charged cases), structural (depoliticized judicial appointment mechanism), and financial (budget dependence on the executive) (Zamroni, 2025).

Progressive constitutionalism in Indonesian discourse is defined as a school of interpretation that views the 1945 Constitution as a living instrument, with the main premises of dynamic interpretation, emphasis on substantive justice, and judicial activism in embracing constitutional ideals (Asshiddiqie, 2010). Madilog, initiated by Tan Malaka, made a fundamental intervention on these premises. Madilog shifts the focus from abstract societal values to the material conditions that shape them, placing the development of the constitution as a field of structural conflict between classes, and most crucially, offering a diagnostic tool to uncover why progressive decisions fail to be implemented in a regime (Suhartoyo, 2013). Thus, Madilog does not reject progressive constitutionalism but rather deepens and criticizes it by demanding a materialist analysis of the roots of constitutional injustice.

Indonesia's constitutional system faces two persistent and interrelated challenges that undermine its democratic foundations: the politicization of the judiciary and financial dependence on the executive branch. Despite formal guarantees of judicial independence, these structural vulnerabilities reinforce a system in which legal outcomes are susceptible to political and economic influence. This reality creates a critical gap in the constitutional mandate for social justice, especially as stipulated in Article 33 of the 1945 Constitution concerning people's control over natural resources. The ongoing struggle to realize a truly independent judiciary and substantively just economic order shows that there is a fundamental gap between constitutional theory and state practice (Sudira & Asikin, 2025).

Previous research on Tan Malaka regarding his political and historical role and his contribution to the Indonesian independence struggle has been conducted by many researchers, including: (1) Tan Malaka's Struggle in Indonesia 1921-1949 by Wijaya (2025); (2) After a Century of Thought of the Republic of Indonesia from Tan Malaka by Beda (2025); (3) Independence in Tan Malaka's View: Reviewed from the Philosophy of Existentialism by Ya'qub (2025); (4) The Suitability of Tan Malaka's Political Thought with the Political Reality of Indonesia in 2025 by Abrar (2025), and; (5) Tan Malaka's Thoughts on the Dark Age of Society by Habibie et al. (2025). Studies of Tan Malaka generally focus

more on his historical role and political thought, as well as his contribution to the Indonesian independence movement. However, the systematic application of Tan Malaka's thought to modern doctrinal constitutional law remains limited. This study aims to fill this gap by analyzing Tan Malaka's thoughts as a reference for constitutional theory.

This study is motivated by the central problem of a persistent gap between constitutional idealism, especially as stated in Article 33 of the 1945 Constitution, and the actual practice of governance that has not fully realized substantive social justice. Furthermore, the independence of the judiciary in Indonesia's *trias politica* system still faces challenges in the form of budget dependency and political pressure, which has the potential to produce what can be called "pseudo-independence" in Tan Malaka's framework of thought (Prabowo & Aman, 2022). Therefore, this study examines key questions related to Tan Malaka's thinking on the constitution and judicial power, which offers a critical framework for the application of progressive constitutionalism in Indonesia today, especially in addressing the gap between normative mandates and structural realities of the present. This main question is detailed through two sub-questions: (1) What are the key elements in Tan Malaka's thought, such as the concept of "100% independence," the critique of "pseudo-independence," and the Madilog method, which forms a materialist-based theory of statehood? (2) How can Tan Malaka's critical framework diagnose and explain structural failures in realizing judicial independence and substantive social justice (especially in the implementation of Article 33 of the 1945 Constitution) in Indonesia post-Reform? Thus, this study aims to show how Tan Malaka's perspective provides a critical framework for progressive constitutionalism in constitutional studies in Indonesia. This research focuses on the post-Reformation period (1998-present), by analyzing the development of the constitution through the perspective of Tan Malaka's main texts, which include Madilog (Materialism, Dialectics, and Logic), Naar de Republiek Indonesia, and Gerpolek (Guerrilla, Political, and Economic).

This study makes a dual contribution to the study of constitutional law in Indonesia. Conceptually, this study develops a new "materialist-constitutional" framework, drawn from Tan Malaka's thought, and offers a diagnostic tool for analyzing the economic substructure of legal and constitutional problems. This framework discusses legal formalist tendencies in progressive constitutionalism by emphasizing the importance of material conditions. Doctrinally, this study has concrete implications for constitutional practice. This study proposes a Madilog-based interpretive canon for Article 33 of the 1945 Constitution, prioritizing substantive economic justice over textual formalism. In addition, this study provides a solid theoretical foundation for redesigning the financial and institutional autonomy of the judiciary, arguing that true independence requires structural separation from executive budget control.

This study argues that although progressive constitutionalism in Indonesia has succeeded in encouraging dynamic constitutional interpretations, its approach often gets caught up in legalism and fails to address the underlying political and economic structures that stand in the way of substantive justice. Through Tan Malaka's perspective, this study proposes a claim that can be falsified, in the form of a gap between the theory and practice of the Constitution in Indonesia, especially related to judicial independence and control over natural resources. Not only is it a failure in implementation, but it is also a logical symptom of the unchanging political-economic structure, which Tan Malaka calls "pseudo-independence." Tan Malaka's perspective contributes to conventional progressive constitutionalism by offering a materialist diagnostic tool (Madilog) that not only criticizes the legal text but also urges a deconstruction of the material power relations underlying constitutional injustice.

2. METHODOLOGY

This study employed a qualitative research design that integrated philosophical-doctrinal analysis with critical textual analysis. The philosophical-doctrinal approach facilitates an in-depth analysis of Tan Malaka's thought and its relevance to constitutional principles. Concurrently, critical textual analysis examines his works within their historical and ideological contexts (Gottschalk, 1969;

Yuwono, 2025c). As a library-based study, this research relies on both primary and secondary sources (George, 2008; Yuwono, 2025b). The primary data sources are Tan Malaka's key works, including *Madilog* (Materialism, Dialectics, and Logic), *Naar de Republiek Indonesia*, and *Gerpolek* (Guerrilla, Politics, and Economics), which form the foundational material for analyzing his thoughts. Additionally, the 1945 Constitution and specific legal decisions, such as the Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT, serve as primary sources for the contextual legal analysis. Secondary sources, such as legal analysis books by Tan Malaka and Jimly Asshiddiqie on thought and constitutional law focusing on judicial power, as well as writings on Tan Malaka and the Constitution, provided additional insights.

The selection of Tan Malaka's main texts, namely *Naar de Republiek Indonesia* (Malaka, 1925), *Madilog* (Malaka, 1943), and *Gerpolek* (Malaka, 1948), is based on their direct relevance to the research question. *Naar de Republiek Indonesia* was prioritized because it contains the most systematic blueprint for the Indonesian state and a sharp critique of compromised independence. *Madilog* was chosen because he provided the philosophical and methodological foundations (Materialism, Dialectics, and Logic) that underpinned his critique of the current formal legal and political structures. *Gerpolek* offers a further synthesis of his strategy, which links political struggle with economic policy. These works are considered foundational for analyzing Tan Malaka's core ideas of the state, constitution, and social justice, leaving aside his more explicitly party-political or international writings that are less directly relevant to constitutional law analysis. For data collection, a literature study was conducted by searching for and collecting primary sources on Tan Malaka, legal decisions, laws and regulations, and relevant additional materials. Furthermore, qualitative content analysis and hermeneutic interpretation were used to analyze the data to understand the deeper meaning of Tan Malaka's works, along with the socio-political conditions of his time and the current conditions (Gadamer, 1975; Yuwono et al., 2025). Data analysis was carried out by: (1) Reading and interpreting Tan Malaka's texts critically to identify key concepts about the constitution, judicial power, and social justice (Nord, 2005); (2) Examine the Harmony and Tension between Tan Malaka's thought and the development of contemporary Indonesian constitutional law, including analyzing relevant court decisions (Ananyina, 2013), and; (3) Applying the *Madilog* method as a critical lens in analyzing legal problems, by looking at material conditions, contradictions, and applicable legal logic (Malaka, 1943). However, this analytical research is textually interpretative in nature, which presents challenges related to Tan Malaka's complex and multidimensional text. In addition, the analysis of court decisions may not cover all relevant jurisprudence because of limited access to court decisions.

Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT was chosen as the main case study based on four clear criteria. First, from the perspective of the issue's superiority, this case reflects a tipping point in the operational implementation of Article 33 of the 1945 Constitution. While the Constitutional Court's decisions are often normative and macro, this State Administrative Court case shows how significant natural resource conflicts between communities and state authorities cannot be resolved due to problems with administrative procedures and formal legal frameworks (Pramesti, 2024). This case directly illustrates Tan Malaka's criticism of pseudo-independence, where the law is used to defeat substantive social justice. Second, in terms of settlement structure, the State Administrative Court serves as an arena in which citizens interact directly with executive power. The dynamics that occur in the trial at the State Administrative Court, including the burden of proof, the position of the parties, and the possibility of political pressure, are more susceptible to criticism of pseudo-independence in the functional dimension than the more closed and abstract process in the Constitutional Court (Ramadhani et al., 2022). Third, this case is relevant to state control over resources because it concerns the government's administrative policy in the management of agrarian resources, which is the operational implementation of the mandate to be controlled by the state, as stated in Article 33 of the 1945 Constitution. Fourth, the time constraints of this case make it an appropriate mirror for contemporary challenges, so that the relevance of Tan Malaka's criticism to the current context becomes stronger and more testable.

To strengthen the analysis and ensure that the findings do not depend only on one jurisdiction, this study triangulates jurisprudence by analyzing the Constitutional Court Decision No. 85/PUU-XI/2013 concerning the Testing of the Water Resources Law. The Constitutional Court's decision was chosen because it was the culmination of a constitutional debate over Article 33, in which the Constitutional Court progressively struck down laws deemed to commercialize water and other resources (Maisa, 2024). By comparing these two rulings, one from the visionary Constitutional Court and one from the formalist State Administrative Court, this study can show the constitutional paradox that is at the heart of the argument, namely that although the Constitutional Court has produced progressive rulings at the macro level, the judiciary at the operational level (the State Administrative Court) remains trapped in a framework of "pseudo-independence" that hinders the realization of substantive justice on the ground. This contrast reinforces the claim that there is a structural gap between constitutional ideals and political-economic realities at the implementation level.

3. RESULT AND DISCUSSION

3.1. Constitution as Instrument: A Doctrinal Re-reading of Article 33 through Madilog

Tan Malaka conceptualizes the constitution not as a static legal document, but as a paradigm that rejects traditional formalist interpretations. In contrast, Tan Malaka argued that the Constitution should function as an active tool of revolution to transform the social and economic structure of society (Adnan, 2023). In his work, *Naar de Republiek Indonesia* (Malaka, 1925), Tan Malaka emphasized that a true constitution must emerge from the full power of the people and not the result of a compromise with the colonial power or the bourgeois elite. The cornerstone of Tan Malaka's constitutional thought is his critique of 'pseudo-independence.' In *Naar de Republiek Indonesia* (Malaka, 1925), Tan Malaka draws a crucial distinction between merely formal-political independence and substantive independence, which encompasses economic and social dimensions of independence. Tan Malaka contends that political sovereignty without economic self-sufficiency creates an illusion of freedom, ultimately reinforcing the structures of oppression in a new, neo-colonial form (Lucky & Endraswati, 2024; Tegegne, 2024). This critique targets independence achieved through compromise with colonial powers, which he viewed as partial and failing to address the roots of structural injustice (Nwaokonko & Uchechukwu, 2022).

This critique underscores the need for constitutional justice to be comprehensive, integrating both political and economic dimensions. For Tan Malaka, the constitution must function as an instrument for fundamental socio-economic transformation, not as a bulwark for an unequal status quo (Sinaga et al., 2023). Consequently, true independence necessitates liberation not only from foreign rule but also from all forms of structural oppression that impede substantive social justice. Tan Malaka posits that the constitution's primary function is to regulate economic relations fairly, prioritizing the interests of the oppressed (Malaka, 1925). Tan Malaka believed it must actively side with the masses and act as a mechanism to dismantle unjust structures inherited from colonialism. Unlike conventional views that see the constitution as a limit on state power, Tan Malaka argues it must empower the state to intervene actively in the economy to realize social justice (Nörr, 1995). Furthermore, Tan Malaka assigns it a legitimizing role, providing a legal basis for radical socio-economic transformation. Rather than impeding change, the constitution should guide a continuous process toward a truly free and just society (Ackerman, 2019).

Tan Malaka's conception of the constitution is fundamentally dynamic, rejecting the notion of a static document. Tan Malaka envisions it as a living instrument that evolves with the people's struggle for social justice. In *Madilog* (Malaka, 1943), Tan Malaka frames the constitution as a dialectical process, constantly moving through thesis, antithesis, and synthesis in response to historical challenges. Thus, it is not a collection of inert articles but a vibrant tool of struggle. This perspective is rooted in the belief that the constitution must adapt to changing socio-economic conditions. Tan Malaka rejects the idea of a perfect, final document, viewing it instead as a perpetual draft, always open to refinement in line with

the growing consciousness of the people (Pineda, 2024).

Tan Malaka's thinking on the constitution shows significant relevance to the 1945 Constitution, especially in Article 33 which mandates the principle of the people's economy and the state's control over natural resources for the maximum prosperity of the people. This constitutional mandate reflects the spirit that is in line with Tan Malaka's idea of the constitution as a tool to achieve economic and social justice (Asshiddiqie, 2010). In addition, the preamble to the second paragraph of the 1945 Constitution which states "the struggle of the Indonesian independence movement has reached a happy moment with the safe passage of bringing the Indonesian people to the front of the gate of independence of an independent, united, sovereign, just and prosperous Indonesian State" is in line with Tan Malaka's vision of independence that is not only political but also economic (Yuwono, 2025a).

Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT related to land disputes is a concrete example of the limitations of formal law in addressing the root causes of structural injustice. An analysis of this ruling shows a pattern of pseudo-independence in which the court, while acknowledging procedural flaws, refuses to conduct substantive testing of the natural resource management policies that are the source of the dispute. Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT issued on January 17, 2022 provides a clear illustration of the practice of "pseudo-independence" in the administrative justice system in Indonesia. In its legal considerations, although the panel acknowledged procedural flaws in the issuance of permits by local governments, the ruling consistently refused to conduct substantive testing of the natural resource management policies that were the source of the dispute. Operationally, this pseudo-independence is seen in three reasoning patterns. First, the restriction of substantive competence where the assembly only limits itself to formal administrative aspects by stating that "the assessment of the socio-economic impact of policies is a non-intervenable area of executive policy". Second, the application of strict procedural formalism in which the assembly focuses on fulfilling procedural elements such as the completeness of administrative documents, deliberately ignoring the substantive agrarian conflicts that underlie the lawsuit. Third, the pattern of avoidance of politically sensitive issues in which the assembly carefully avoids considerations that have the potential to interfere with large-scale natural resource management policies. This pattern of reasoning distinguishes itself from ordinary administrative legal pathologies such as issues of legal standing or authority, because it shows how the legal framework is deliberately limited to avoid confrontation with larger political-economic forces.

This gap is increasingly visible in the practice of natural resource management, where although Article 33 of the 1945 Constitution mandates state control for the greatest possible prosperity of the people, in reality economic policies are still often in favor of the interests of large corporations (Esquirol, 2021). This situation proves that the constitution has not fully functioned as an instrument of social change as envisioned by Tan Malaka, and is still often defeated by the political and economic interests of the elite. This analysis demonstrates that a progressive constitution requires more than a visionary text; it must be supported by robust enforcement mechanisms and consistent political will to translate normative ideals into empirical reality (Thompson, 1997). Tan Malaka's critique of "pseudo-independence" and his view of the constitution as a tool for economic revolution offer a powerful lens for diagnosing the structural weaknesses in implementing Article 33 of the 1945 Constitution. Therefore, constitutional reform must extend beyond mere amendments. It must also involve building institutional capacity and strengthening political accountability to prevent the constitutional mandate for social justice from being overshadowed by more dominant economic-political interests (Oats et al., 2025).

3.2. Judicial Independence as Economic Autonomy: A Structural Diagnosis from Tan Malaka's Framework

Malaka's (1925) skepticism of *trias politica* was rooted in his view that this doctrine created complex political and bureaucratic alienation. Tan Malaka argues that the rigid separation of powers can actually reduce the state's ability to carry out rapid social transformation. *Naar de Republiek Indonesia*

(Malaka, 1925), Tan Malaka argued that a strict separation of powers creates a complex bureaucratic structures that may impede efficient service delivery in serving the people's needs. Tan Malaka observed that the doctrine erects artificial barriers between the populace and state decision-making, fragmenting power and ultimately weakening the state's capacity for swift social transformation (Malaka, 1948). Furthermore, in *Madilog* (Malaka, 1943), Tan Malaka contended that situations demand a concentration of power capable of swift, decisive action, not a division of power that could impede change. Tan Malaka viewed the checks and balances of *trias politica* as a mechanism to maintain the status quo and protect ruling-class interests, thereby obscuring the accountability of power to the people (Askhari, 2018).

Tan Malaka's skepticism toward judicial independence, largely grounded in his analysis of capitalist states, is evident in *Madilog* (Malaka, 1943). Tan Malaka viewed the law and justice system as vehicles for maintaining an inequitable capitalist order, designed primarily to protect the property rights of the dominant class (Patangun & Lawalata, 2024). Tan Malaka argued that even when formally declared independent, the judiciary remains substantively bound to the economic and political powers dominating society. His critique primarily targeted the judiciary's inability to deliver justice for the people. In *Naar de Republiek Indonesia* (Malaka, 1925), Tan Malaka illustrated how court decisions often validated systemic injustices against the lower classes. For Tan Malaka, without fundamental changes to the economic structure, judicial independence remains an illusion (Reich, 1978). Beyond the judiciary, Tan Malaka also argued that the fragmentation of power fostered institutional silos and conflicting interests, which were counterproductive to national development. Tan Malaka maintained that successful social transformation required a well-coordinated concentration of state power (Kencana, 2023).

Tan Malaka suggested a system of people's councils (soviets) based on the organization of direct mass struggle as an alternative to the *trias politica* model (Malaka, 1921). He clarified in his *Naar de Republiek Indonesia* (Malaka, 1925) that the Soviet model was a type of direct democracy that gave citizens the chance to actively engage in governmental decision-making. According to Kotok (1959), this idea highlights the significance of collective control over the state apparatus through truly aspirational representative councils that their constituents can recall at any time. The imperative mandate principle, which required the representatives of the people to directly obey the directives of those they represented, was the main feature of Soviet model, which set it apart from the liberal representative system (Malaka, 1921). In *Madilog* (Malaka, 1943), he claimed that the Soviet system could establish an organic power integration where the executive and legislative branches were unified in people's councils that operated on the collegiality principle. Compared to the liberal representative system, which has a tendency to be elitist, this model is thought to be more successful in guaranteeing the vertical accountability of state power to the people.

Tan Malaka highlighted the significance of popular direct control as a fundamental component of an equitable and democratic political system. According to his explanation in *Naar de Republiek Indonesia* (Malaka, 1925), this direct control was made possible by the imperative mandate mechanism and the recall right, which gave the people the ability to actively monitor and revoke the mandate of their representatives if it was thought that they were no longer fulfilling it. This idea seeks to guarantee that state power is genuinely in the hands of the people and to avoid political alienation (Fritsche et al., 2013). Compared to the liberal representative system, which has a tendency to be elitist, this model is thought to be more successful in guaranteeing the vertical accountability of state power to the people.

Tan Malaka's critique of the rigid *trias politica* ultimately highlights an enduring constitutional dilemma, namely the need for checks and balances to prevent tyranny, and the need for the effectiveness and coordination of state power to realize rapid social transformation (Librayanto, 2008). In the context of modern Indonesia, which has committed itself to constitutional democracy, the Soviet model proposed by Tan Malaka may no longer be practical. However, the spirit of his criticism remains very relevant. Tan Malaka work serves as a warning that a formalistic separation of powers without substantial public participation and oversight can create an elitist bureaucracy that is alienated from the

people. Thus, the most important legacy of his thinking in this regard is not his institutional solutions, but his insistence on constantly evaluating whether the Indonesian constitutional structure, in practice, has truly centered sovereignty in the hands of the people or even marginalized it (Khallaf, 1990). This strengthens the need for institutional innovations such as strengthening the supervisory functions of the House of Representatives, the Ombudsman Republik Indonesia, and the mechanism of public participation in the formation of laws (Sujata, 2002).

Tan Malaka's skeptical attitude, expressed in *Madilog* (Malaka, 1943), that formal independence is an illusion without economic autonomy, is empirically proven in today's institutional design. The functional dimension of this pseudo-independence can be seen in the consideration of PTUN Decision 210/G/2021/PTUN. JKT. Despite acknowledging procedural errors on the part of the government, the courts limited the remedies provided and failed to conduct substantive tests of the policy's impact on people's land rights, suggesting the existence of judicial restrictions rooted in a formalist and non-materialist approach to justice. These functional constraints are structurally determined by the financial and appointment dimensions. The judicial budget negotiated annually with the executive (Ministry of Finance) creates a conduit for political pressure and fosters institutional dependency (Purba & Safuan, 2024). At the same time, the process of appointing constitutional judges, although formally involving independent panels, remains highly politicized, with candidates often having strong ties to political parties or executives (Arif, 2025). This triangulation of evidence suggests that cautious verdicts, budget dependencies, and politicized appointments. This confirms Tan Malaka's central thesis that judicial independence is a structural condition, not just a proclamation of law.

3.3. Madilog as an Anti-Formalism Heuristic: Contrasting Constitutional and Reasoning

For Tan Malaka, an independent judiciary was a non-negotiable prerequisite for achieving 100% full independence. Tan Malaka insisted the judiciary must be entirely free from political and economic interference, both foreign and domestic to perform its role as an impartial arbiter of justice (Malaka, 1925). This independence was comprehensive, encompassing not only functional autonomy but also financial self-sufficiency. Tan Malaka advocated for a fiscally independent judiciary to prevent the Supreme Court, Constitutional Court, and lower courts from becoming dependent on the executive, thereby shielding legal decisions from the influence of practical politics (Napitupulu, 2022). Ultimately, Tan Malaka saw judicial independence as the bedrock of genuine sovereignty, arguing that without it, national independence becomes a mere illusion, as the law can be easily manipulated to serve the interests of the ruling elite (Kelman et al., 2021).

Tan Malaka gave an expressed concern regarding of the application of the law by the rulers who tended to establish the law unilaterally without going through a fair judicial process. In his *Muslibat Politik & Rencana Ekonomi Berjuang* (Malaka, 1945), Tan Malaka specifically warned of the dangers of abuse of power in the name of revolution by stating:

"It cannot be forbidden in the mass movement's: if this or that ruler who holds power and state money, accuses and inaugurates the name of this criminal and that before the fault of the 'criminal' can be ascertained by the law of justice." (p. 34).

This statement reflects deep concern about the possible distortions of power that can arise when a revolution is used as a legitimacy to apply the law without due process. In Tan Malaka's view, a true revolution must be able to create a fairer legal system, not reinforce arbitrary practices similar to the regime he has replaced. Malaka's (1945) warning of "power-hungry rulers" who act outside the legal process is a very important transition of thought from his criticism of the nation's own abuse of power. In the current Indonesian context, this commemoration no longer focuses on physical revolution, but on the threat of a "revolution" of policies or political interests that ignore due process of law (Denning, 1980). The citation serves as a lens for evaluating cases where executive power or corporate interests allegedly influence the judicial process, or when the courts themselves are incapable of acting independently. In other words, Tan Malaka understands judicial independence not only as independence from external intervention, but also as a judge's commitment to a fair legal process and

free from euphoria of power or momentary interests in any form (Cotterrell, 2006). This is the basis for efforts to build a legal culture that respects procedure and substantive justice, even in the midst of high political and economic pressures.

A contrasting analysis between the Constitutional Court Decision Number 85/PUU-XI/2013 concerning Water Resources and the Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT through the perspectives of Materialism, Dialectics, and Logic reveals fundamental differences in approaches to substantive justice. From the point of view of materialism, the Constitutional Court's decision shows sensitivity to material conditions by considering the real impact of water privatization on people's right to life. The constitutional judge clearly analyzed the socio-economic consequences of the control of water resources by corporations, thus invalidating the Water Resources Law which is considered to ignore the interests of the people. On the contrary, the decision of the State Administrative Court is formalistic by limiting its analysis to the procedural aspects of land administration, without exploring the material impact of the policy being sued on the economic life of the surrounding community. This difference in approach proves Malaka's (1943) claim that law often obscures the material reality behind juridical formalism.

In a dialectical context, the Constitutional Court's decision succeeded in managing the tension between public and private interests by creating a progressive synthesis that prioritizes the protection of vital resources for society. This dialectical process is reflected in the judge's consideration that places constitutional values above commercial interests (Wardiono & Rochman, 2020). On the other hand, the decision of the State Administrative Court did not succeed in producing a meaningful synthesis, because it only resolved the dispute at the procedural level without touching on the substance of the conflict between the rights of the people and the state's claims. This failure confirms Tan Malaka's criticism of the law's limitations in resolving fundamental social contradictions. Although both decisions demonstrate consistency of internal logic, the underlying premise is very different. The logic of the Constitutional Court is derived from living constitutional values and oriented towards substantive justice, while the logic of the State Administrative Court departs from strict legal positivism. This paradigmatic difference explains why equally logical decisions can produce very different outcomes for the achievement of social justice. The formalism of the State Administrative Court that is ignored from material reality, according to Tan Malaka's framework, is a characteristic of the judiciary in a system that is still trapped in "pseudo-independence". Meanwhile, the Constitutional Court's progressivism, while appreciable, remains an exception in Indonesia's judicial landscape dominated by a formalistic approach.

3.4. Beyond *Trias Politica*: Tan Malaka's Soviet Model as a Mirror of Democracy Deficit

Tan Malaka's thoughts on social justice and people's sovereignty show significant alignment with the two precepts in Pancasila, namely Social Justice for All Indonesian People (*Keadilan Sosial bagi Seluruh Rakyat Indonesia*) and Wisdom Led by Wisdom in Deliberation/Representation (*Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan/Perwakilan*). Echoing the spirit of social justice, Tan Malaka argued in *Madilog* (Malaka, 1943) that a genuine democracy must ensure the equitable distribution of wealth and eradicate economic exploitation. His ideal system envisioned power emanating directly from the people through democratic processes, rather than being concentrated in an elite.

The concept of populism in Tan Malaka's thought is mainly reflected in his idea of the people's councils (soviets) as an alternative to the liberal system of representation. This model emphasizes the direct participation of the people in political and economic decision-making, which is in line with the principle of populism in Pancasila which prioritizes wisdom in representative deliberations (Munawar-Rachman, 2022). According to him, a constitution based on Pancasila must be able to ensure the realization of social and economic justice through clear arrangements regarding the control of natural resources for the greatest prosperity of the people. Tan Malaka's thinking on social justice also finds its relevance to the provisions in the 1945 Constitution, especially Article 33 which mandates the principle

of the people's economy and the state's control over natural resources for the greatest prosperity of the people (Asshiddiqie, 2010). Nevertheless, Tan Malaka reminded that the harmony between theory and practice must continue to be fought, so that the ideals of social justice and the people do not become mere rhetoric.

Tan Malaka's thinking shows that there is a substantive difference with two main aspects in Pancasila, namely the Precepts of God and the compromise approach that is the background for the formulation of the country's foundation. In contrast to the theological foundation that underlies Pancasila, Tan Malaka actually developed his thinking based on the scientific thinking method outlined in Madilog (Materialism, Dialectics, and Logic) (Malaka, 1943). This materialism-dialectical approach emphasizes the analysis of material conditions and class conflicts as historical drivers, which is contrary to the concept of Godhead in Pancasila which is more spiritual and transcendental (Tjaya, 2019). In addition, Tan Malaka consistently rejected the compromise path taken in various agreements with the Netherlands, such as the Linggarjati Agreement and the Renville Agreement, which he considered a form of surrendering the nation's dignity to foreigners (Malaka, 1948). Tan Malaka argued that the approach of diplomacy and a middle ground would only result in an incomplete independence, while what was needed was 100% independence obtained through uncompromising struggle. This contradiction reflects a fundamental difference in the strategy of struggle, where Tan Malaka prefers a confrontational approach to the peaceful path taken by the nation's other founders. This conflict of thinking shows that although Tan Malaka is in line with the spirit of social justice and populism in Pancasila, there are significant methodological and philosophical differences in looking at the basis of the state and the strategy of the independence struggle. To clarify the focus of the analysis, the comparison section with the founders of other nations is arranged in Table 1.

Table 1. Comparison Table between Tan Malaka's Conceptualization and Other Indonesian Nationalist Legal Thinkers

Conceptual Dimension	Tan Malaka	Soepomo	Mohammad Yamin	Soekarno
People's Sovereignty	Direct democracy via people's councils (soviets) with imperative mandate & recall, emphasizing continuous control from below.	The state naturally embodies the people's will, negating the need for direct democratic mechanisms.	Representative democracy within a unitary state and strong legislative supremacy and a legalistic framework for popular representation.	Populist synthesis and charismatic leadership channeling the people's voice, often transcending formal institutional channels.
Institutional Design	Rejects <i>trias politica</i> as alienating and advocates a unified system of people's councils (soviets) integrating powers.	Paternalistic executive with functional group representation.	A strong constitutional state with a clear <i>trias politica</i> and a powerful legislature as the cornerstone.	A strong executive balancing nationalist, religious, and communist factions, often at the expense of institutional checks and balances.
Economic Justice	The constitution must be a tool for socio-economic transformation to eradicate all forms of exploitation.	State-led economy for national harmony and stability, explicitly designed to avoid Western-style class conflict.	Economic policies must serve and protect the national interest within a structured legal system.	State control for social justice and national development.
Legal Method	Law must be analyzed through the lens of class conflict and	Law derives from the indigenous, pre-colonial spirit and values of the	Emphasis on a strong written constitution and statutory law as the	Synthesizes diverse ideologies for political mobilization, often

	material conditions.	nation.	primary source of authority.	prioritizing rhetorical power over systematic methodology.
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Source: (Elson, 2009; Power & Warburton, 2020; Soyomukti, 2008)

The comparative framework above reveals the distinctive position of Tan Malaka's thought. Tan Malaka's thinking offered a consistent, economic-based framework for evaluating the state and its laws, which stood in stark contrast to Soepomo's more state-focused integralism, Mohammad Yamin's legalistic nationalism, and Soekarno's synthetic populism (Perkasa, 2024). Despite fundamental methodological differences, the alignment between Tan Malaka's thought and Pancasila is actually more substantive when viewed in terms of the end goal. The Precepts of Social Justice for All Indonesian People (*Keadilan Sosial bagi Seluruh Rakyat Indonesia*) found a strong resonance in Tan Malaka's vision of a society free from all forms of economic exploitation. Its commitment to people's sovereignty is also in line with the spirit of the People's precept, which in its progressive interpretation does not have to be limited to the liberal representative model, but can include broader direct participation (Intan, 2006). Thus, contradictions at the philosophical level (spiritualism and materialism) do not necessarily cancel the alignment at the level of normative goals, namely the realization of social justice and people's sovereignty. Pancasila, as a living philosophy, has room to absorb constructive criticism from Tan Malaka's thought in order to strengthen its economic-popular dimension that has often been neglected in practice (Darmaputera, 1988; Yuwono et al., 2025).

The constitutional system in Indonesia allows for political alienation after elections, where representatives in the House of Representatives can make decisions that are contrary to the interests of constituents without an immediate recall mechanism (Kafi & Khasanah, 2025). This can be seen in the legislative process related to natural resources, where laws often reflect compromises among political elites rather than the direct interests of the affected communities (Ines et al., 2025). The Soviet model promoted by Tan Malaka highlights the weaknesses of a system that concentrates power on a political class that is separate from society. This situation can reinforce the urgency for institutional innovations that increase direct public participation, such as strong public consultation laws, participatory budgeting, and the strengthening of the Ombudsman's role as a direct channel for citizens' complaints against the bureaucracy.

3.5. Synthesizing Contradiction: Pancasila, Madilog, and the Search for Substantive Alignment

Table 2. The Relevance of Tan Malaka's Thoughts in the Contemporary Context

Aspects of Tan Malaka's Thinking	Context History	Relevance to Contemporary Conditions
The constitution as a tool	Criticism of pseudo-independence (only politics without economy)	Gaps in the implementation of Article 33 of the 1945 Constitution in the management of Natural Resources
Criticism of <i>trias politica</i>	Rejection of rigid power fragmentation	Distortion of checks and balances Reform period
Independence of judicial power	Skepticism of judicial independence in the capitalist system	Dependence of the judiciary budget on the executive
Madilog as an analysis method	Materialism-dialectic approach to legal analysis	Criticism of legal formalism that does not touch substantive justice

Source: Author

Based on [Table 2](#), Tan Malaka's thoughts on the independence of the judiciary show a very important relevance to contemporary challenges in the judicial system in Indonesia. His ideas about the need for a judiciary that is completely independent of political and economic intervention are a criticism that remains relevant to the current state of the judiciary, which still faces the problem of budgetary dependence on the government as well as political pressure from various parties ([Widlak, 2025](#)).

The contemporary challenges faced by the Indonesian judiciary, as reflected in various court decisions including the Decision of the State Administrative Court Number 210/G/2021/PTUN.JKT, shows how vulnerable the judiciary is to external intervention ([Pengadilan Tata Usaha Negara Jakarta, 2022](#)). The decision represents a strategic case that reflects the dynamics of the relationship between executive and judicial power in the contemporary Indonesian constitutional system. In order to analyze how the judicial power exercises its control over the government, this decision brings up state administrative disputes involving substantive public interests ([Anggraini, 2022](#)). Tan Malaka's concern regarding the reliance of judicial power on executive power is consistent with this verdict's analysis, which shows signs of political pressure in the legal system ([Alam et al., 2025](#)).

[Malaka \(1925\)](#) argued that a genuine constitution must tackle socio-economic injustice by ensuring equitable wealth distribution and outlawing exploitation. [Malaka \(1943\)](#) further stressed that it should serve as a blueprint for an egalitarian social structure guaranteeing both political and economic justice. This perspective aligns with progressive constitutionalism, which treats the constitution as a living instrument that evolves with societal dynamics ([Wisnubroto, 2024](#)).

In the Indonesian context, Tan Malaka's thoughts highlight that the 1945 Constitution, especially Article 33, needs to be interpreted progressively to realize substantive social justice. Article 33 of the 1945 Constitution remains important to discuss because it serves as a constitutional basis in the management of Indonesia's economy with social justice. This article affirms the principle of the people's economy, in which the earth, water, and natural resources in it are controlled by the state and used for the greatest prosperity of the people ([Asshiddiqie, 2010](#)). The gap between theory and practice in the application of Article 33 can also be seen from the high poverty rate around areas rich in natural resources.

Empirical evidence points to a continuing paradox in resource-based development in Indonesia, where many resource-rich areas still face high levels of poverty. According to the [Badan Pusat Statistik Indonesia \(2025\)](#), of the 50 districts/cities categorized as 'resource-rich' (defined as areas with a contribution of more than 20% to the region's GDP), 60% (30 regions) recorded a poverty rate that exceeded the national average, which was 9.36%. This includes resource-rich provinces such as East Kalimantan (with a poverty rate of 6.80% despite having mining wealth) and West Papua (with a poverty rate of 26.55%), which shows a significant gap between natural resource wealth and community welfare (Ronal, 2025). See [Table 3](#)

Table 3. Poverty Rates in Selected Resource-Rich Provinces (2025)

Province	Mining Contribution to GDP (%)	Poverty Rate (%)
East Kalimantan	45.2	6.80
Riau	35.8	7.41
West Papua	25.3	26.55
Central Kalimantan	22.1	5.61
Southeast Sulawesi	21.5	10.25
National Average		9.36

Source: ([Badan Pusat Statistik Indonesia, 2025](#); [Ronal, 2025](#))

The concept of Madilog (Materialism, Dialectics, and Logic) introduced by Tan Malaka provides a critical and methodological approach in analyzing constitutional law issues. As a method of thinking, Madilog encourages legal analysis based on the material conditions of society, examines the

dialectic that takes place between various socio-political forces, and applies strict logic in drawing legal conclusions (Malaka, 1943). This approach aims to free legal analysis from the shackles of formalism and place it in a real socio-economic context, so that law is not just a series of articles that do not exist, but is actually able to answer the concrete problems faced by society (Yuwono, 2025a).

A critical examination of the constitution, laws, and regulations is made possible by the use of Madilog in constitutional law. According to the materialism perspective, laws or policies are evaluated according to their tangible effects on people's lives, particularly with regard to access to justice and the allocation of financial resources (Cooter & Gilbert, 2022). Dialectics is used to understand the conflicts of interest that underlie a legal policy, while logic ensures that the analysis carried out is systematic and consistent (Wardiono & Rochman, 2020). This method is in line with progressive legal thinking, which emphasizes that the law must liberate and side with the people (Anwar & Priyatmono, 2025). Madilog can be utilized to critique various legal policies that fail to promote social justice and to foster progressive constitutional interpretation in Indonesia. This approach sees the law not as a self-contained, independent system, but as a means that should be assessed on its capacity to deliver real social justice.

Tan Malaka's thinking shows its relevance not as a ready-to-use technical blueprint, but as a strong critical framework for diagnosing deep problems in Indonesian constitutional law. His critique of "pseudo-independence" invites Indonesian constitutional scholars to reassess the true independence of the judiciary, beyond formal guarantees towards real financial and functional autonomy. Skepticism of the *trias politica* that is alienated from the people encourages an evaluation of the effectiveness and accountability of state institutions. The Madilog method he uses offers a tool to dismantle legal formalism and demand a progressive interpretation of the constitution and in favor of substantive justice, especially in actualizing the mandate of Article 33 of the 1945 Constitution. Despite the philosophical tension with Pancasila, Tan Malaka's passion for social justice and people's sovereignty serves as an important balancer, preventing the constitutional ideals of Indonesia from becoming mere empty words. Thus, reading the Indonesian constitutional law through Tan Malaka's perspective means equipping oneself with a tradition of deep critical thinking from within oneself to criticize inequality, reject compromise on basic values, and continue to encourage the constitution as a living instrument of struggle towards the ideal of 100% independence.

4. CONCLUSION

This research reinforces its main claim that constitutional idealism that has not been fully realized in practice in Indonesia is not only a failure in implementation, but also a logical symptom of the ongoing political-economic structure. In Tan Malaka's frame of mind, this is diagnosed as a form of "pseudo-independence". The application of the Madilog method (Materialism, Dialectics, and Logic) has succeeded in revealing that without touching the economic determinants that frame judicial and constitutional power, progressive interpretations of the constitution will remain limited to the discourse of legal texts and fail to realize substantive social justice. In terms of theoretical implications, this study enriches the discussion of constitutional law by integrating Tan Malaka's thoughts that have been neglected so far. This research strengthens the basis of progressive constitutionalism by providing an alternative perspective on the constitution as a tool for social life and social change. Tan Malaka's thinking on direct democracy through the people's council (soviet) also made a significant contribution to the debate on the deliberative and participatory democratic model in the Indonesian context.

Doctrinally implicitly, a Madilog-based canon of interpretation is needed for Article 33 of the 1945 Constitution, which requires the courts to assess the material truth of a policy, in addition to its formalities. Institutionally, the financial independence of judicial institutions, such as the Supreme Court and the Constitutional Court, must be guaranteed through budget design that is no longer controlled by the executive. In addition, the innovation of public participation mechanisms that realize the spirit of direct control of the people within the framework of constitutional democracy is a must.

The novelty of this research lies in a multidisciplinary approach that connects Tan Malaka's philosophical thought with the analysis of contemporary constitutional law in Indonesia, as well as using the Madilog method as a critical lens to analyze court decisions and constitutional policies. Nonetheless, the research is subject to certain limitations. These include limited access to a broader range of court decisions, the inherent complexity of Tan Malaka's multidisciplinary corpus which challenges exhaustive analysis, and a focus on the Reformation era that necessarily constrains the historical scope.

To develop these findings, the future research agenda can be focused on three aspects. First, conducting a systematic review of the decisions of the Supreme Court and the Constitutional Court using a codification scheme based on the principles of Madilog to map the consistency of the materialist-constitutional approach. Second, the ethnography of the judicial institution's budgeting process will provide empirical evidence of the practices of dependence and political pressure that form the pseudo-independence. Third, design research to design and test innovative models of public participation, such as community advisory councils that have binding power in natural resource management, aims to translate Tan Malaka's ideal of direct control into modern constitutional governance instruments.

Ethical Approval

Ethical approval was not required for this study.

Informed Consent Statement

Informed consent was not obtained for this study.

Author Contributions

This research is the result of a collaboration between the two authors. ATY plays a role in formulating concepts, methodologies, and interpreting data. PB contributed to the search for data sources. The two authors agreed on the final version of the manuscript to be published.

Disclosure Statement

No potential conflicts of interest were reported by the authors.

Data Availability Statement

The data presented in this study are available upon request from the corresponding author for privacy reasons.

Funding

This study received no external funding.

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