THE MANIFESTATION OF THE RECHTSIDEE OF PANCASILA IN REGULATING THE CONSTITUTIONAL RIGHTS IN INDONESIA

A. Ahsin Thohari†
Lecturer of Faculty of Law, University of Trisakti, Jakarta, Indonesia
Email: kindsaint@yahoo.com

Abstract: Pancasila is the ideal of the state (staatsidee). It also serves as legal ideal (rechtsidee), fundamental of philosophy (philosofische grondslag), fundamental state norm (staatsfundamentalnorm), and view of life (weltanschauung). It is a flexible ideology that can be drawn, pressed, and broaden to cover almost all circumstances. The perspective and mindset forming the constitution concerning human rights, and citizen constitutional rights had changed due to the changes in worldview attitudes, internationalism, and cosmopolitanism about human and constitutional rights. The constitution in Indonesia had changed several times. However, the provision of the civil rights in the Indonesian constitutions or known as constitutional rights were not eliminated in the 1945 Constitution (since August 18th, 1945), the 1949 Union Republic of Indonesia Constitution, the 1950 Temporary Constitution, the 1945 constitution (after the President Decree in July 5th, 1959) and 1945 constitution after amendment.

Keywords: Legal Ideal (rechtsidee), Pancasila, Constitutional Right.

A. Introduction
The founding fathers have involved in paradigmatic controversy since the beginning of country establishment to create a dream country. The founding fathers have introduced the advanced terms to the society at that time. Such terms are staatsfundamentalnorm, revolutie grondwet, philosofische grondslag, staatsidee, rechtsidee, etc. After the August 17th, 1945 Proclamation, Indonesia enacted the 1945 constitution on August 18th, 1945 that was designed based on its condition and need. The 1945 constitution was the first written constitution in the modern history of Indonesian constitutionality. The Indonesian

† Lecturer of Constitutional Law, Faculty of Law, Trisakti University, Jakarta.
constitution had inline history to the dynamics of constitutionality that was started and
developed as the era context.

Since Indonesia was found, the changes in the constitution had amended several times. The
constitutions included the 1945 constitution of the Republic of Indonesia (applied from
1945 to 1949), the Republic of the United States of Indonesia constitution (established in
1949 and applied up to 1950), the temporary constitution of the Republic of Indonesia
(implemented in 1950 to 1959), and the 1945 constitution (reimplemented in 1959). The
last constitution had changed four stages in a series of changes from 1999 to 2001 that
officially named by People Representative Assembly as the 1945 Unitary State of the
Republic of Indonesia Constitution. The constitutions change in Indonesia were based on
the consideration that they were not appropriate to the demand at that time. Although the
Indonesia constitutions were changed several times, the founders kept the principle of not
eliminating and altered the state foundation (Pancasila).²

It is important to note that when the constitutions were changed, the provision of
the citizens rights in the Indonesian constitutions or known as constitutional rights were
not eliminated in the 1945 constitution (since August 18th 1945), the 1949 Union Republic
of Indonesia Constitution, the 1950 temporary constitution, the 1945 constitution after
the President Decree in July 5th, 1959, and 1945 changed constitution.

B. Pancasila is as staatside

One of the modern state characteristics is constitutionalism or an understanding
that the state power must be limited even though people's welfare is the most important
goal. It means that the purpose of the state is creating the people's welfare; however, in its
process, the state should not be arbitrary and without limitation. Carl J. Friedrich stated
that constitutionalism is an institutionalized system of effective, regularized restraints
upon governmental action.³

Jimly Asshiddiqie asserted that the basis of fundamental constitutionalism is
general agreement or consensus among the society majority about the idealized building
relating to the state. A state organization is needed by the political community member to
protect or promote their necessities through the formation and use of a mechanism named
as a state. The general agreement is the key, when it collapses, so does the legitimacy of the
relevant powers that finally cause civil war and revolution. This is reflected in the three
major incidents in the mankind history, namely important revolutions: French in 1789,
America in 1776, and Russia in 1917, or Indonesia in 1945, 1965 and 1998. The consensus
that guarantees the establishment of the constitutionalism in the modern era relies on the
three consensus elements.⁴

² Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Naskah Komprehensif Perubahan Undang-
Undang Dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses, dan Hasil Pembahasan 1999-
2002, Buku VIII Warga Negara dan Penduduk, Hak Asasi Manusia dan Agama (Jakarta: Sekretariat Jenderal dan
Kepaniteraan Mahkamah Konstitusi, 2010), p.14.
³ Carl J. Friedrich, *Man and His Government: An Empirical Theory of Politics* (New York: McGraw-Hill,
1963), p. 217.
⁴ Carl J. Friedrich, *Man and His Government: An Empirical Theory of Politics* (New York: McGraw-Hill,
1963), p. 217.
Therefore, to guarantee the togetherness of the society in the state life, the formulation of society's goals and ideals name as staatsidee was necessary. It is functioned as the philosophische grondslag and common platforms among the society member in the context of state life.⁵

Soepomo translated the term of an ideal state as staatsidee in BPUPKI meeting on May 31st, 1945 which has the meaning as “dasar pengertian negara (the fundamental of the country)”. In his speech, Soepomo explained as follow:

... before talking about the united states, Republic or Monarchy, we have to talk about a state, the fundamental of the country, therefore all state formation are based on the staatsidee.⁶

David Bourchier, one of Indonesianists from Australia, an associate professor for Asian Studies, the University of Western, Australia, in his book Illiberal Democracy in Indonesia: The Ideology of the Family State Politics in Asia, defined staatsidee as the central concept behind all aspects of state organization and law, including the constitution.⁷ According to Bourchier, a key issue of the controversy in BPUPKI was related to the philosophical foundation as a state basis. The rationale of staatsidee was written by Bourchier as an important and central basis in the positivism approach in the constitutional laws. It was also represented by Georg Jellinek (1851-1911) and Hans Kelsen (1881-1973) that dominated of the mainstream legal thinking in Germany and Netherlands before the World War II. It was finally dominated the legal practices in Indonesia. Due to this doctrine, the state established a hierarchy of legal norms regulating based on the authority from the higher to the lower level. Soepomo confirmed that the staatsidee became the top priority as everything originates from it. Soepomo proposition related to the staatsidee confirmed that there was a close relation between Soepomo's opinion and historical school because it was a key axiom of this school view. The state organization is closely related to the legal genealogy or rechtsgeschichte in Germany and the social structure.⁸

C. Pancasila as Rechtssidee

Besides as the ideal of state, Pancasila is also named as the ideal of law (rechtssidee). According to A. Hamid S. Attamimi, the word idee is translated as “ideal”, ideal means idea, sense, and though. The word idee is not translated as a dream that means desires, eagerness, and expectation. Because the word rechtssidee is translated as the ideal of law, therefore Attamimi described that the closest meaning for the word staatsidee is the ideal of the state. A question arises, what is the definition of the ideal of state?⁹

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⁵ Ibid.
⁶ H. Muh. Yamin, Naskah Persiapan Undang-Undang Dasar 1945, Jilid I (Jakarta: Prapanca, 1971), p. 110.
⁷ David Bourchier, Illiberal Democracy in Indonesia: The Ideology of the Family State Politics in Asia (New York: Routledge, 2014), p. 65.
⁸ Ibid., hlm. 69-70. Also see Tim Lindsey, (ed.), Indonesia: Law and Society (Sydney, New South Wales: 2008), p. 99.
⁹ A. Hamid S. Attamimi, “Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara: Suatu Studi Mengenai Analisis Keputusan Presiden yang Berfungsii Pengaturan dalam Kurun Waktu Pelita I-Pelita IV”, Disertasi doktor (Jakarta: Fakultas Pascasarjana Universitas Indonesia, 1990), p. 49.
Regarding the human rights, Soepomo, as the Chief of a small team designing the constitution, stated that the committee did not include basic rights (grondrechten) because it was not in line with the systematic kinship principle used as the fundamental of constitution design. Soepomo explanations were as follow (with spelling adjustments from the author):

“..., however, we would like to clarify that the exclusion of this does not mean that people will have no possibility to do meeting, gathering, etc., no, it is not. Hence the issue in a modern country has been arranged in the constitution. Yet, many members provided some reasoning to include the issue into the constitution.”

Concerning this issue, Adnan Buyung Nasution in his speech of Innagural Professorial Lecture in the Melbourne Law School, the University of Melbourne in 2010, entitled Towards Constitutional Democracy in Indonesia, stated:

“The state must, therefore, be given unreserved trust, he argued. There was no need for concern about the potential for abuse of power by the state. It was simply inconceivable that the state could inappropriately use its power. There was thus no need for any limitations on state power, let alone human rights. For the same reasons, the Integralistic State idea rejected the need to guarantee human rights because it was considered to be excessive and have a negative impact. The rights of the individual were therefore placed below joint interests, which were seen as more important.”

In Soepomo’s view, the state must be given trust without reserves. There is no need for concern about the potential abuse of power by the state. It can only be imagined that a country can inappropriately use its power. Thus, there is no need to limit state power, especially in human rights.

For the same reason, the idea of an integralist state of Soepomo also rejected the need to guarantee human rights, because the guarantee was considered excessive and had a negative impact. Therefore, individual rights are placed under common interests, which are more important.

Attamimi argued that Soepomo, after debating, finally proposed a compromised solution. However, it did not deviate from the systematic design of the constitution that was compiled following the ideal of the kinship state and previously called the ideal of an integralist state. The compromise was seen in the formulation of Article 28 of the 1945 Constitution. Mohammad Hatta’s proposal, which initially read, "The people’s right to express their feelings verbally and in writing, the right ..." was then changed in the formulation and accepted became "Freedom of association and assembly ...." The change requested by Soepomo was related to the word "rights", indicated a conflict between the

10 Ibid., p. 357.
11 Adnan Buyung Nasution, “Towards Constitutional Democracy in Indonesia”, Innagural Professorial Lecture, pada Melbourne Law School The University of Melbourne, Melbourne, tanggal 20 Oktober 2010, p. 15. Innagural Professorial Lecture ini juga tersedia dalam <http://www.law.unimelb.edu.au/files/dmfile/NasutionPaper111020_web2.pdf>, accessed on 13rd February 2015.
people and the state, and did not suit the ideal of the kinship state. Whereas the main point of the draft constitution by Soepomo and compiled based on the agreed family principle, such as by Hatta.\(^\text{12}\) The essence of Soepomo’s integralist state understanding lies in the concept that the state is an integral arrangement of society; its members and parts constitute an organic community union, an unselfish unity catering all groups, unity of life-based on kinship.\(^\text{13}\)

The phrase that is closely related to the ideal of the state is the ideal of law. The ideal of law is a translation of rechtsidee. Gustav Radbruch argued that the ideal of law does not only function as a regulative benchmark to test whether a positive law is fair or not. Instead, it also serves as a constitutive basis where the law will lose its meaning without the ideal of law. With a broader perspective, Rudolf Stammler provided an understanding of the ideal of law as the construction of thought which is a necessity for giving legal direction to the ideals desired by the community. The ideal of law aims as a guiding star (\textit{leitstern}) for the achievement of the ideal of society. Even though there is an endpoint that is impossible to achieve, the ideal of law is beneficial because it contains two sides. First, by the ideal of law, an applicable positive law can be tested. Second, the positive law can be directed by the ideals of law as something with coercive sanctions towards something fair (\textit{zwangversuchzum Richten}).\(^\text{14}\)

The Radbruch’s thought about rechtsidee was expressed through justice in law context. Radbruch showed that his ideas about equality and law are intertwinning. Radbruch’s value-oriented theory of law idealises "justice". Therefore, Hans Gribnau, a legal expert from Tilburg University, the Netherlands, said that "the point of departure of Radbruch’s value theory of law is the idea that law aims to realise justice (although law does not necessarily serve it in fact); justice - or the 'ideal of law' (rechtsidee) - is the specific constitutive value of law.\(^\text{15}\)

Rabruch also said that the concept of law depends on rechtsidee, which in English is translated into the idea of law. In developing the concept of law, the rechtsidee is the value which the reality of law (for example, the law) is directed. The rechtsidee are also considered as \textit{Gerechtigkeit} or justice, which are absolute, axiomatic, or values that cannot be derived from other values.\(^\text{16}\) So, the quality of legal ethics is derived from the ideal of law (rechtsidee). Therefore, rechtsidee is also called a method of thought. According to Stammler, the function of rechtsidee is to evaluate the truth of the law.\(^\text{17}\) Thus, the

\(^{12}\) Attamimi, \textit{op. cit.}, p. 64-65.

\(^{13}\) Simandjuntak, \textit{op. cit.}, p. 218.

\(^{14}\) Maria Farida Indrati S., \textit{Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi} (Yogyakarta: Kanisius, 2007), p. 263-264.

\(^{15}\) Hans Gribnau, “Legal Principles and Legislative Instrumentalism”, in Arend Soeteman, (ed.), \textit{Pluralism and Law: State, Nation, Community, Civil Society} (Stuttgart, Germany: Franz Steiner Verlag, 2003), p. 39.

\(^{16}\) Sanne Taekema, \textit{The Concept of Ideals in Legal Theory} (The Hague: Kluwer Law International, 2003), hlm. 57.

\(^{17}\) Panu Minkkinen, \textit{Thinking without Desire: A First Philosophy of Law} (Oxford and Portland, Oregon: Hart Publishing, 1999), p. 32.
rechtsssidee becomes the guardian of the legal character or in German, called Rechtsqualität.\(^{18}\)

Therefore, the ideal of law should contain the understanding that the nature of law as a rule of community behaviour is rooted in the ideas, tastes, intentions, inventions, and thoughts of the community itself. The ideal of law also pertains to law or perceptions of the meaning of the law, which in essence consists of justice, usefulness, and legal certainty.\(^{19}\) The ideal of the law is a unified product of worldviews, religious beliefs and social reality projected in the process of validating the behaviour of citizens who embody these three elements. In the dynamics of social life, the ideal of the law will function as a general principle. It serves as guidelines, norms of criticism (rules and evaluation), as well as motivating factors in the administration of law (formation, discovery, application) and legal behaviour.\(^{20}\)

Satjipto Rahardjo put the ideal of law as something that aims to achieve the ideals of the community. An ideal of law is beneficial because it can be a positive legal test instrument that applies, and the ideal of law can direct positive law towards justice and truth. In carrying out and enforcing the law, which consists of thousands of laws, it must refer to its source, namely the constitution and more specifically to the Preamble of the 1945 Constitution (Pancasila).\(^{21}\)

It is important to note that the ideal of the law, based on universal human rights and inviolable human dignity, is related to a human ideal which is free from fear and poverty.\(^{22}\) Furthermore, in the German legal thinking context, the concept of the ideal of law (rechtstaat) means that the state is limited by the realisation of the law or the ideal of law (rechtssidee).\(^{23}\)

Based on the previous explanation, it can be concluded that in the Indonesia context, Pancasila is the ideal of the state as well as the ideal of law.

D. The Flexibility of Pancasila as the Ideal of State and the Ideal of Law

The series of historical continuum, extending from the 1945 Constitution (18 August 1945), the republic of united states of Indonesia 1949 Constitution, 1950 Constitution, 1945 Constitution Post Presidential Decree 5 July 1959, to the 1945 Constitution Post-amendment, shows the robust adaptability of Pancasila to political, social, cultural changes, and the law. On the other hand, it also shows that the mindset of forming the constitution is dynamics.

\(^{18}\) Jochen von Bernstorff, *The Public International Law Theory of Hans Kelsen: Believing in Universal Law* (Cambridge: Cambridge University Press, 2010), p. 29.

\(^{19}\) Bernard Arief Sidarta, *Refleksi tentang Struktur Hukum Ilmu Hukum* (Bandung: Mandar Maju, 2009), p. 181.

\(^{20}\) *Ibid*.

\(^{21}\) Satjipto Rahardjo, *Mendudukkan UUD: Suatu Pembahasan dari Optik Ilmu Hukum* (Semarang: Penerbit Universitas Diponegoro, 2007), p. 30.

\(^{22}\) Wolfgang Kaleck, *et. al.*, *International Prosecution of Human Rights Crimes* (Berlin: Springer-Verlag, 2007), p. 11.

\(^{23}\) Gregory Leyh, *Legal Hermeneutics: History, Theory, and Practice* (University of California Press, 1992), p. 9.
As mentioned earlier, based on the opinions of AAH Struyken; JG Steenbeeck; and Rosco J. Tresolini and Martin Shapiro, it can be argued that Indonesia’s constitutions have crucial functions in the Indonesian constitutionality, including:

1. expression of the results of the nation’s political struggle in the past;
2. expression of the highest levels of development of the state administration;
3. expression of the national figures’ views which want to be realised both for the present and for the future;
4. expression of a desire which the development of national constitutional life is to be led;
5. expressions of guarantees on human rights and citizens;
6. expression of the stipulation of a fundamental constitutional arrangement;
7. expressions of distribution and limitation of constitutional tasks which are also fundamental;
8. expression of the framework or structure of government;
9. expression of a government authority; and limit the use of authority by government officials to protect certain individual rights.

Regarding the first research question in this study, “why one ideal of law (Pancasila) can formulate the regulation of different citizens’ rights in the Indonesian constitution”, the author will address this question by summarising several issues that have been described previously. The answers to this research question are Pancasila itself and the constitution-making.

First, Pancasila as the ideal of state (staatsidee) which also functions as an ideal of law (rechtsidee), philosophical basis (philosofische grondslag), fundamental state norms (staatsfundamentalnorm), and view of life (weltanschauung), are flexible ideologies. Marguerite S. Robinson in The Microfinance Revolution: Lessons from Indonesia stated that “Pancasila ... is a state of an ideology of great flexibility that can be pulled, pushed, and stretched to cover just about any situation.”

Thus, in Robinson’s perspectives, Pancasila is a very flexible state ideology that can be stretched, suppressed, and broadened to cover almost all circumstances. Besides, the basic principles of Pancasila also compile three important characteristics, namely (1) very universal; (2) widely agreed; and (3) not easily to openly denied. “The general principles of Pancasila incorporate three important characteristics. They are so universal that they are widely agreed on and cannot easily be openly opposed,” said Robinson.

The flexibility of Pancasila in this context is a positive connotation. In the sense that Pancasila as the ideals of state will continue to follow the pulse of the best changes in society, especially related to human rights or constitutional rights of citizens. However, Pancasila as a flexible ideal of state can also be used by authoritarian-

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24 Marguerite S. Robinson, The Microfinance Revolution: Lessons from Indonesia (Washington D.C.: World Bank Publication, 2002), p. 33.
25 Ibid, p. 34.
configured powers to provide interpretations that harm the human rights or constitutional rights of citizens. For example, in the 1945 Constitution period after the Presidential Decree of July 5, 1959 which produced a democratic government led by President Soekarno and Pancasila Democracy led by President Soeharto.

Second, the perspectives and mindset forming Constitution concerning human rights and the constitutional rights of citizens changed due to the changes in the attitudes of the worldview, internationalism, and cosmopolitanism. Worldview, in this context, is the basic direction of reasons including the overall knowledge and point of view of each individual or society. Included in this worldview are philosophy, principles, existential, normative propositions, values, emotions, and ethics. The term worldview in English is a calque or loan translation of a word weltanschauung in German that consist of the words "welt" (English: the world, Indonesia: dunia) and the word "anschauung" (English: view, Indonesia: pandangan).

Internationalism is a movement suggesting a broad scope of cooperation in politics and economy among countries to benefit the stakeholders theoretically. Internationalism is defined as a theory or practice regarding transnational or global cooperation. As a political view, internationalism is based on the belief that nationalism must be surpassed because the bonding involving various nations is stronger than an individual. Meanwhile, cosmopolitanism is an ideology in which all human ethnic groups have a single society which is based on similar morality. The followers of this principle are called cosmopolitan or cosmopolite.

The combination between Pancasila flexibility as ideal of state (staatside) and ideal of law (rechtsidee), fundamental philosophy (philosophische grondslag), fundamental state norm (staatsfundamentalnorm) and view of life (weltanschauung); and the perspective and mindset forming the constitution concerning human rights, constitution, and civilian constitutional rights have transformed, lead to rules formation different civilian rights in Indonesian constitution starting from 1945 constitution (August 18, 1945), Republic of United States of Indonesia 1949 constitution, 1950 temporary constitution, 1945 constitution after amendment. In this context, Pancasila can accommodate and even dynamize all mindsets and point of views to form constitution concerning human rights, constitution, and civilians constitutional rights that constantly change over time. Moreover, Pancasila is also a meeting point for various interests and ideas, forming a constitution related to human rights, constitution, and civilians rights that continue to grow gradually.

26 Gary B. Palmer, Toward a Theory of Cultural Linguistics (Austin, Texas: University of Texas Press, 1996), p. 114. The popularity of the term "Weltanschauung" peaks at the 20th-century, both among general society and academics. David K. Naugle, Worldview: The History of a Concept (Michigan: Wm. B. Eerdmans Publishing Co., 2002), p. 56.

27 Ibid.

28 Further explanation concerning the fundamental idea of internasionalism can be seen in, for example, N.D. Arora, Political Science (New Delhi: Tata McGraw-Hill Education Private Limited, 2011), p. 7, 13, 14, 22, dan37; Tom Nairn, Faces of Nationalism: Janus Rividited (London: Verso, 1997), p. 25, 27, 28, 29, 30, dan 32.

29 David Held interpreted cosmopolitanism as, “Cosmopolitanism elaborates a concern with the equal moral status of each and every human being and creates a bedrock of interest in what it is that human beings have in common, independently of their particular familial, ethical, national and religious affiliations.” David Held, Cosmopolitanism: Ideals and Realities (Cambridge: Polity Press, 2010).
Pancasila as staatside can accommodate and dynamize the mindset and point of views forming the constitution concerning human rights, constitution, and civilian constitutional rights. Pancasila also becomes the center of all different interests and ideas, forming the constitution regarding human rights, constitution, and civilian constitutional rights. In summary, the sila (principle) of Pancasila, mutatis mutandis, has equal flexibility.

For instance, the second sila of "Kemanusiaan yang Adil dan Beradab (Justice and civilized humanity)". It means that Indonesia acknowledges, honours, and offers equal rights and freedom to all the people to implement human rights. However, freedom should respect others. This attitude is a part of a national concept which is embraced and developed by Indonesia. It provides freedom in expressing human rights yet consider and honor peoples' rights to strengthen tolerance and collaboration.

In practice, the second sila can also be interpreted based on the development and requirement of the mindset and views, forming constitutions concerning human rights, constitution, and civilians constitutional rights. Consequently, the formulation of the clauses related to civilians constitutional rights in the 1945 constitution (August 18, 1945), the Republic of United States of Indonesia 1949 constitution, temporary 1950 constitution, 1945 constitution post president decree on July 5, 1959, and 1945 constitution after amendment, are different. However, they are under the same staatsidee, namely Pancasila.

E. The Preference of Human Rights Theory of the Second Amendment to the 1945 Constitution

Discussing the preferences of the human rights theory forming the amendment of the 1945 Constitution, especially the second amendment legalized on August 18, 2000, means addressing the trends, choices, priorities, or preferences of the constitutional amendments concerning the human rights theory in creating the articles regulating the constitutional rights (the civilian rights in the constitution). These human rights theories include natural rights theory, positivist theory, and cultural relativist theory.

Natural rights theory suggests that human rights are the rights of people at all times and in all places because they are born as human beings. These rights include the right to life, freedom and property as proposed by John Locke. This theory suggests that the acknowledgement is not required for human rights, either from the government or a legal system, because human rights have universal characteristics. Thus, the source of human rights originates solely from humans themselves.30

On the other hand, the positivist theory argues that rights should come from or be granted by the constitution, law, or contract. Jeremy Bentham, for example, stated that rights are the 'children' of law; the real rights will be born from the real law, and imaginary rights will be born from imaginary laws. Bentham believed that natural rights are nonsense31. Positivist theory rejected the theory of natural rights because the sources of natural rights are considered to be unclear. The positivist theory argued that a right should come from a clear source, such as from laws or constitutions established by the state. The proponents of natural rights argued that their ideas are from God, reason or prior moral presuppositions, while positivists argued that rights could only be derived from state law.32

30 Todung Mulya Lubis, In search of Human Rights Legal-Political Dilemmas of Indonesia’s New Order, 1966-1990 (Jakarta: Gramedia, 1993), p. 15-16.
31 Lubis, op. cit., p. 18.
32 Scott Davidson, Hak Asasi Manusia, Sejarah, Teori dan Praktek dalam Pergaulan Internasional (Jakarta: Grafiti, 1994), p. 40.
The last theory discussed in this study is the cultural relativism theory. This theory arose as a reaction to natural rights theory viewing the theory of natural rights and its emphasis on universality as coercion of culture against another culture, called cultural imperialism. The proponents of this theory offer the contextualization of human rights in a way as stated by the American Anthropological Association before the UN Human Rights Commission when this Commission was preparing the draft Universal Declaration of Human Rights. The statement basically triggers a question in devising the Declaration to solve a problem, such as: How the declaration will be applicable to all people, instead of a statement of rights that only reflects common values found in Western European and American countries.

Principally, the amendment of the 1945 Constitution adheres to balance the civil and political rights on the one hand as well as economic, social and cultural rights on the other. This political law was chosen to maintain the balance between the two. Economic, social and cultural rights are regulated in the constitution to provide a basis for the defence and balancing of the civil and political rights which concern with individual freedom.

The political law of human rights of those who designed the amendment to the 1945 constitution emphasized the ideal of state and the ideal of the Pancasila law, considering kinship society as something important. The kinship society has acknowledged social institution concerning the rights and obligations of community members. The social institution consists of a religious institution that recognizes humans as God’s creation entitled with all the rights and obligations; a family system as a place for humans to live together and grow the offspring to maintain their existence; an economic institution as human efforts to improve their welfare; educational and teaching institutions to develop human intelligence and personality; information and communication institutions to broaden insight and open-mindedness; law and justice institutions to guarantee the order and harmony in life; a security institution to ensure the safety of every human being. Hence, the substances of human rights comprise the right to life; the rights to marriage and family; the right to develop oneself; the right to justice; the right to independence; the right to communication; the right to security; and the right to welfare.

Therefore, in this context, the ideal of state and the ideal of Pancasila are interpreted based on the context of the era, namely the reform era started in 1998 that conveyed multiple agendas, including human rights.

F. Conclusion

Pancasila as the ideal of state (staatsidee) which also functions as an ideal of law (rechtsidee), philosophical basis (philosofische grondslag), fundamental state norms (staatsfundamentalnorm), and view of life (weltanschauung), are flexible ideologies.

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33 Andrey Sujatmoko, “Sejarah, Teori, Prinsip dan Kontroversi HAM”, paper presented in Training Metode Pendekatan Pengajaran, Penelitian, Penulisan Disertasi dan Pencarian Bahan Hukum HAM bagi Dosen-Dosen Hukum HAM, organized by Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (Pusham-UII) in collaboration with Norsk Senter for Menneskerettigheter (Norwegian Centre for Human Rights), Yogyakarta 12-13 Maret 2009, p. 8.

34 Ibid.
that can be drawn, pressed, and broaden to cover almost all circumstances. The perspective and mindset forming the constitution concerning human rights, and citizen constitutional rights had changed due to the changes in worldview attitudes, internationalism, and cosmopolitanism about human and constitutional rights.

The preference of the human rights theory in the amendment of the 1945 constitution, the view natural rights theory, tended to weaken its influence because of some reasons. First, there is a motivation to regulate human rights guarantees in the constitution or more comprehensive citizen constitutional rights. Second, there is an antithesis to the previous practice of constitutionalization concerning human rights that only briefly regulated human rights. Third, the perspective on human rights is considered as part of the value of whether a country is civilized or not in international relations.

The perspective of the amendments to the 1945 Constitution using the positivist theory framework tended to strengthen for the following reasons. First, there is a motivation to develop modern constitutions and constitutions that accommodate the principles of constitutionalism and universal democratic principles by regulating human rights guarantees in the constitution or more comprehensive citizen constitutional rights. Second, there is an attitude that is the antithesis of the previous practice of constitutionalization of human rights that only briefly regulated human rights and was dominated by ideas rejecting the inclusion of human rights in the constitution due to the rejection of liberalism and individualism. Third, the perspective on human rights is considered as part of the value of whether a country is civilized or not in international relations.

In addition, the perspective of the amendments to the 1945 Constitution employing the framework of cultural relativist theory tended to strengthen, because it carried the motivation of the People’s Consultative Assembly (MPR) in establishing the MPR Decree No. XVII / MPR / 1998 concerning human rights. It was the initial consideration of Article 28J of the Second Amendment to the 1945 Constitution, in which the views and attitudes of the Indonesian people concerning human rights are originated from the religious teachings, universal moral values, and noble values of the nation’s culture, Pancasila and the 1945 Constitution.

The amendment of the 1945 Constitution observed to balance the civil and political rights on the one hand as well as economic, social and cultural rights on the other. The economic, social and cultural rights that are regulated in the constitution provide a basis for the defence and balancing of the civil and political rights which concern with individual freedom.

The amendment of the 1945 Constitution balanced the civil and political rights as well as economic, social and cultural rights because the political law of human rights behind the amendment to the 1945 constitution emphasized the ideal of state and the ideal of the Pancasila law, considering kinship society as something important. The kinship society has acknowledged social institution concerning the rights and obligations of community members. The social institution consists of a religious institution that recognizes humans as God’s creation entitled with all the rights and obligations; a family system as a place for humans to live together and grow the offspring to maintain their existence; an economic institution as human efforts to improve their welfare; educational and teaching institutions to develop human intelligence and personality; information and communication institutions to broaden insight and open-mindedness; law and justice institutions to guarantee the order and harmony in life; a security institution to ensure the
safety of every human being. Hence, the substances of human rights comprise the right to life; the rights to marriage and family; the right to develop oneself; the right to justice; the right to independence; the right to communication; the right to security; and the right to welfare.

An important note concerning the flexibility of the Pancasila is that Moerdiono, the Minister of State Secretariat in the New Order era, proposed an idea of "Pancasila as an open ideology" emphasizing that ideology was literally interpreted as a "system of ideas" whose consistency must be maintained between the basic, instrumental, and praxis values. The factors supporting the idea of "Pancasila as an open ideology" included: (1) not all solution for daily life problems can be found ideologically in previous ideologies; (2) the collapse of closed ideologies, such as Marxism-Leninism-Communism; (3) the experience of Indonesia’s political history with the influence of exclusive Communism; and (4) a determination to establish Pancasila as the only principle of life for the society, nation and state.35

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35 Moerdiono, “Pancasila sebagai Ideologi Terbuka”, in Oetojo Oesman dan Alfian, (eds.), Pancasila sebagai Ideologi dalam Berbagai Bidang Kehidupan Bermasyarakat, Berbangsa, dan Bernegara (Jakarta: BP-7 Pusat, 1992), p. 399.
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