

# The Role of Political Ideology on Devolution of State Objectives

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**Received:** 16/01/2019 | **Accepted:** 27/02/2019 | **Published:** 27/02/2019

## ABSTRACT

*The state objective is one of the contents of a constitution, the historical development of the theory of the state explains that the state objectives theory evolves to adjust the origin of the will of the formation of the state. Ideology as a foundation in a country is a factor that sometimes determines in preference in the formulation of the goals of a nation. This article is intended to discuss ideological evolution in the process of formulating state goals which ultimately affects the character of the constitution in a state.*

**Keywords:** state objectives, ideology, constitutions.

## 1. Introduction

The state can be interpreted into two definitions. First, the state is a society or region which forms a political entity.<sup>1</sup> Second, the state is a centralized institution that guarantees political unity, which organizes and controls the territory.<sup>2</sup> As a new artificial definition, a modern state that only emerged in the 18th Century in Europe and is a political institution created intentionally and rationally, grew into a dominant

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<sup>1</sup> Murray Forsyth. (1987). "State," pada *The Blackwell Encyclopedia of Political Thought*, ed. David Miller. Oxford: Basil Blackwell, p. 505

<sup>2</sup> Harold J. Laski. (1989). *The Grammar of Politics*. London: Oxford University Press, p. 61-62

political power, hegemonic, intervening, mobilizing society and overthrowing the social order at pre-existing politics era. The concept of sovereignty was born because in one region there was only one power that was recognized as the sole authority. Even though this in practice has experienced ups and downs, it turns out that modern countries cannot displace the existing original order. This continued for hundreds of years until other forces emerged that rivaled the dominance and hegemony of the modern state so that the power of monopoly gradually spread to other institutions outside the state.<sup>3</sup>

Several things cause the phenomena above. First, it is the inability of the state itself in carrying out and realizing its enormous power, which caused by the absence of public institutions. Second, the emergence of globalization. As is known that entering the 21st century, life order of humankind is undergoing changes rapidly due to globalization which have brought fundamental changes in both international relations and the politics with the global economic situation, which are characterized by the emergence of non-state actors and complex linkages between political and economic issues.<sup>4</sup> The development of transportation technology has given rise to the era of the end of geography because the movement of people and goods has become very fast and the capital movement between regions or countries has become more comfortable. Investment, both real and portfolio, no longer knows the national flag. The development of telecommunications technology gave birth to the era of the end of timelines because it has enabled a person or group of people from other to be able to connect with someone or a group from other parts of the world without the constraints of time, transportation, accommodation and significant costs. In addition, the simultaneity of communication through television media via satellite has made it possible for news to be accepted by all human beings throughout the world.

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<sup>3</sup> N.P. Barry. (1981). *An Introduction to Modern Political Theory*. London: Macmillan Press. p. 91

<sup>4</sup> Riant Nugroho Dwidjowijoto dan Marco P. Sumampouw (Ed.). (1997). *Manajemen Dalam Era Globalisasi*. Jakarta: PT Elex Media Komputindo, p. 153.

Meanwhile the development of tourism has led to an increase in human exchanges which erode social, cultural and political barriers.<sup>5</sup> In a world that seems to be smaller and without limits rises interdependence relation between nations or state. So, globalization defines nothing but competition. The global era has shifted from competition in the political sector to competition in the economic field. It is caused by political policies are increasingly pushed by the desires of the global market, which manifested in global organizations such as the WTO and the emergence of regionalization of new economic groups in various regions that integrate several countries into one such as NAFTA in North America, APEC in the Asia Pacific region, EU in Europe and AFTA in Southeast Asia.<sup>6</sup>

Economic globalization based on the market economy has led to global economic competition. In a situation like this, every country must compete vigorously as an effort to obtain capital. In addition, investments must produce products that are able to compete in the market, both domestic and international markets, because only high-quality products with the lowest prices are competitive on the market. In addition, in the global economy, the understanding of the origin of a product is blurred because the chain of production processes is in various parts of the world. Moreover, individual consumers no longer question the country where the product originates. So that in reality global economic competition no longer occurs between countries but between economic actors or companies.<sup>7</sup>

Actually, economic globalization which refers to the increasing economic integration among nations on the face of the earth, primarily through trade and financial flows, is a historical process which in essence is a process of sharing world

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<sup>5</sup> Arief Hidayat. (2010). Menegaskan Kembali Peran Negara di Tengah Melemahnya Kedaulatan Negara di era Global, dalam *Potret Penegakkan Hukum di Indonesia* Jakarta: Komisi Yudisial, p. 21-22

<sup>6</sup> Tanri Abeng. (2000). *Dari Meja Tanri Abeng: Managing atau Chaos?, Tantangan Globalisasi dan Ketidakpastian*. Jakarta: Pustaka Sinar Harapan, p. 99-100.

<sup>7</sup> Arief Hidayat, *Op. Cit*, p. 24.

economic activities that hit all communities in various countries by taking three forms of activity namely international trade, foreign investment and capital market flows. In such circumstances, the state becomes increasingly difficult to maintain independent and autonomous economic policies. In addition, government intervention in the economic field is also increasingly tricky and unpopular economic policy — every country faced with the pressure to adopt liberal economic norms and democracy.<sup>8</sup> Every access to international economic institutions (such as the IMF and World Bank) is always associated with the success or failure of recipient countries to open up the domestic market and national economy for the international economy. It is an internationalization of states or a process in which a country's national economic policy must be adjusted to the demands and pressures of the international economy and other external actors.<sup>9</sup> Thus, in the end, the globalization forced the state to make adjustments with very limited choices. In other words, the word globalization is an integration of itself into a global economic liberal system.

Therefore, the situation proves that the state must indeed respond to all situations or circumstances that arise or occur that can cause deterioration in the quality of life. According with the ideology of welfare state that justifies the state to interfere in all areas of life to ensure prosperity its citizens. The state can no longer just be a “night watchman” (*nachtwakersstaat*) who is only tasked with maintaining order and security, so that the consequences that have been and will be caused by globalization (as before caused by industrialization also, such as creation striking wide gaps in society and social stratification) can be overcome and prevented or minimized the possibility of its occurrence. the economic field, the influence of information globalization and the economy in the political field is still seen with suspicious.<sup>10</sup> This is caused by two things. *First*, globalization has brought

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<sup>8</sup> *Ibid*, p 25.

<sup>9</sup> J.K. Bluntschill. (1985). *The Theory of the State*. Oxford: Oxford University Press, p. 20-22

<sup>10</sup> Otto von Gierke.( 1968). *Political Theories of the Middle Age*. Boston: Beacon Press, p 7–8

internationalization and the spread of democratic ideas and values, including human rights issues.<sup>11</sup> There is a suspicion that democratization and human rights are the efforts of major countries to pressure developing countries, even though in reality the spread of ideas of democracy and human rights cannot be blocked by the government. *Second*, implications of globalization diminishing ability to control and maintain loyalty of citizens, because information globalization and telecommunications have made individuals and groups move out of geographical boundaries.<sup>12</sup>

Globalization causes developing countries difficult to stand as high as developed countries.<sup>13</sup> Due to the hidden power behind globalization which is nothing but the "policies and controls" by developed countries, as Henry Veltmeyer stated that globalization is sponsored mainly by the USA, it is an embodiment of economic imperialism.<sup>14</sup> This is due to the three characteristics of imperialism and colonialism in the past. First, there is a gap in prosperity between the colonial state and the colonized country; second, relationships between colonizers and colonized people is an exploitative or oppressive relationship; and third, colonized countries, as weak parties, lose sovereignty in the broad sense.<sup>15</sup> As a result of this conception, the state in the current era will face what has been conveyed by Oswaldo de Rivero "declining power of the state", because of the majority of independent countries in the 19th century (like Latin American countries) gradually have lost the power they have ever had. Moreover, the countries on 20th century have just escaped from the shackles of colonialism (like most Asian countries except China, India, Pakistan, Taiwan and

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<sup>11</sup> Margaret A Boden (ed). ( 1996). "Introduction," in *The Philosophy of Artificial Life*. Oxford: Oxford University Press, p. 3

<sup>12</sup> Peter J. Steinberger. (2004). *The Idea of The State*. London: Cambridge University Press, p 331

<sup>13</sup> Hikmahanto Juwana. (2001). *Hukum Internasional Dalam Konflik Kepentingan Ekonomi Negara Berkembang Dan Negara Maju*. Inagurial Speech as Professor at Law of University of Indonesia, November 10<sup>th</sup>,) p. 9-10

<sup>14</sup> Kenneth H. F. Dyson. (1980). *The State Tradition in Europe: A Study of an Idea and Institution*. New York: Oxford University Press, p. 101-103

<sup>15</sup> Mohammad Amien Rais.(2008). *Agenda Mendesak Bangsa: Selamatkan Indonesia*. Yogyakarta: PPSK Press, p. 20-21.

South Korea, and Africa) turned out to be born without the national ability to develop.<sup>16</sup>

In addition, it turns out that over the past century there has been no change in power in the world. England, Japan, France, Germany, the United States, Russia and Italy have remained in the most influential country since the 19th century. Many countries experience defeat not only in historic race but also fail to develop and become part of the world power as well as losing national capability in facing challenges that arise in the global economy and technological advances. The most surprising thing is those who lost national power not only the weak countries but also the powerful one. Strategic stability during the Cold War era has become an era of very unstable world disorder or modern age. Socio-political conflicts that occur in various parts of the world no longer resolved at the point of nuclear weapons. The United States and the Soviet Union (which have broken into several countries) currently no longer have the power to control the conflicts that occur, which are usually carried out so that it does not turn into a direct confrontation between the two. Superpower countries have difficulty in carrying out military intervention to enforce the world order or do not care about the world order not because of the absence of political ambition, but rather because it is a consequence of world civilization, to attract respect from other nations and to protect their national vote. The current situation and condition of the world is a reflection or mirror of "policies without swords or intervention policies without victims" or waning policies based on strength from superpower countries. It proves the immersion of nation-states and superpowers.

## 2. Ideology and Constitution

In principle, there are three main meanings of ideology, namely, first, ideology as a false consciousness; second, ideology in a neutral sense; and third, ideology in the

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<sup>16</sup> Oswaldo de Rivero. (2000). *Shaping Globalization*. Yogyakarta: Jendela, p. 55-56

sense of unscientific beliefs.<sup>17</sup> Ideology in the first sense usually used by philosophers and social scientists. Ideology is theories that are not truth-oriented but in the interests of those who propagate it. Ideology is also seen as a means of a particular class or social group that has the power to legitimize its power. The second, ideology in a neutral sense. In this case, ideology is the whole system of thinking, values, and the basic attitude of a particular social group or culture. This definition mainly found in countries that consider it essential to have a "state ideology". Called in a neutral sense because good or bad depends on the content of the ideology.<sup>18</sup> The third, ideology as an unscientific belief usually used in positivistic philosophy and social sciences. All thoughts that cannot be proven logically-mathematically or empirically are ideologies. All ethical and moral problems, normative assumptions, and metaphysical thoughts are included in the area of ideology.<sup>19</sup> Those three ideological meanings are meant in this discussion are ideologies in a neutral sense, namely as a system of thinking and the order of values of a group. Ideology in the neutral sense is found in its state ideology or nation's ideology. This relevance with discussion of Pancasila as the ideology of Indonesia.<sup>20</sup>

There are two types of ideology as the ideology of the state. Both models are (1) closed ideology and (2) open ideology. Closed ideology teaching philosophy that determines political and social goals and norms, which are ordained as truths that should not be questioned anymore, but must be accepted as something that has been made and must be obeyed. Closed ideology must not be disputed based on other moral values or principles. The contents are dogmatic and a priori so they cannot be changed or modified based on social experience. Therefore, this ideology does not tolerate worldviews or other values. One characteristic of a closed ideology is not

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<sup>17</sup> Martin Hewitt. (1992). *Welfare, Ideology and Need, Developing Perspectives on the Welfare State*. Maryland: Harvester Wheatsheaf, p. 1 and 8.

<sup>18</sup> Jimly Ashiddiqie, *Ideologi, Pancasila dan Konstitusi* (anonymous paper), p. 19

<sup>19</sup> *Ibid*, p. 20

<sup>20</sup> *Ibid*, p. 21

only determining the truth of values and basic principles, but also determining things that are concrete operational. The closed ideology does not recognize the right of each person to have their own beliefs and considerations. Closed ideology demands obedience without reserve.

Another feature of a closed ideology is not from the community, but from the elite mind that must be propagated to the public. On the contrary, the merits of the views that arise and develop in society are judged to be appropriate with the ideology. By itself, the closed ideology must be forced and obeyed by the community by certain elites, which means it is authoritarian and carried out in a totalitarian manner. The best example of closed ideology is Marxism-Leninism. This ideology developed from the thinking of Karl Marx which was continued by Vladimir Ilianov Lenin contained a system of thinking starting from the level of values and fundamental principles and evolved to be practically operational in the life of society, nation and state. The ideology of Marxism-Leninism includes the teachings of (a) the nature of natural reality in the form of the teachings of dialectical materialism and atheism; (b) teaching the meaning of history as historical materialism; (c) rigid norms on how society should be organized, even about how individuals must live; and (d) the legitimacy of a monopoly of power by a group of people on behalf of the proletariat.<sup>21</sup>

The second type is an open ideology. Open ideology only contains a basic orientation, while its translation into socio-political goals and norms can always be questioned and adjusted to the values and moral principles that develop in society. Operational ideals to be achieved cannot be determined a priori but must be agreed democratically. By itself, the open ideology is inclusive, not totalitarian and cannot

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<sup>21</sup> Levent Gonenc. (2006). *Prospects For Constitutionalism In Post-Communist Countries*. Kluwer: Martinus Nijhoff Publishers, p. 23



be used to legitimize the power of a group of people. Open ideology can only exist in a democratic system.

The term ideology of the state began to be widely used in conjunction with the development of the thinking of Karl Marx which was made as the ideology of several countries in the 18th century. However, in fact, the conception of ideology as a point of view or system of thinking of a nation based on certain values and basic principles existed before the birth of Marx himself. Even the beginning and core of Marx's teachings were criticisms and claims against exploitative systems and social structures based on capitalist ideology. Engels and Lenin later developed Karl Marx's idea then referred it as the ideology of socialism-communism. More socialism in the economic system that prioritizes collectivism with the extreme point on abolishing property rights, while communism refers to a political system that also prioritizes collective rights, not individual and political rights. The ideology is faced with capitalist liberalism which emphasizes individualism in terms of politics and economics.<sup>22</sup> These two great ideologies became the central ideology of the world after the second world war until the end of the cold war era. Nevertheless, both communism and capitalism have different colors in their application in each region. Ideology always adjusts to the field of experience of a nation and society. Soviet Communism was different from communism in Yugoslavia, China, North Korea, and several Latin American countries. Likewise, with capitalism which has a difference between those developing in Western Europe, the United States, and Asia.

Although the countries that adhere to the two ideological magnitudes face each other, the process of adjustment between the two ideologies is unavoidable. Capitalism, in its development, absorbs many elements of socialism. After experiencing a significant crisis in the 1920s (the great depression), the United States

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<sup>22</sup> Karl Mannheim. (1998). *Ideology and Utopia: An Introduction to the Sociology of Knowledge*. Jakarta: Penerbit Kanisius, p. xvii.

adopted many state intervention policies in the economic field to improve people's welfare. These policies then developed into separate state concepts; some even called them ideologies, called the welfare state which differs from classical capitalism. On the other hand, some communist countries which were initially very closed gradually opened up, especially in the form of recognition of civil and political rights. The democratization process took place slowly until the collapse of communist states which was marked by the scattering of the Soviet Union and Yugoslavia in the 1990s.<sup>23</sup> Some interpret that the collapse of the Soviet Union and Yugoslavia as the main pillars is the sign of the defeat of communism dealing with capitalism. Even Fukuyama once postulated this as the end of history which had been the stage of conflict between the two great ideologies. However, the conclusion seems too premature. The collapse of communism cannot be claimed as the victory of capitalism for two reasons; first, communism and capitalism never die; and second, the current capitalism has absorbed elements of socialism and communism. Communism remains alive, and indeed need to be studied as a means of criticizing developing social systems and policies. These ideas can also come back to life as a movement if modern capitalism begins to return to the libertarian position at an extreme point, causing a social crisis. Likewise, the democratization movements and the struggle for individual rights will emerge in a system that emphasizes communalism too much.<sup>24</sup>

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<sup>23</sup> Neil MacCormick, "Constitutionalism and Democracy", in *Theories and Concepts of Politics, An Introduction*. Richard Bellamy, (ed). (1993)., Manchester: Manchester University Press, p 124-147. Carl J. Friedrich. (1974). "Constitutionalism and Democracy", in *Limited Government, A Comparison*, (Prentice-Hall, Inc., Englewood Cliffs, New Jersey,), p 34-49. Walter F. Murphy, "Constitutions, Constitutionalism and Democracy", in *Constitutionalism and Democracy*, (Douglas Greenberg, Stanley N. Katz, Melianie Beth Oliviera, Steven C. Wheatley (eds). (1993). Oxford University Press, p. 3-25.

<sup>24</sup>Ulrich K. Preuss, "Democracy and Constitutionalism", in *Constitutionalism and Politics*, Irena Grudzinska Gross, (ed). (1994). Slovak Committee of the European Cultural Foundation, Bratislava, p. 72-88.

So, if we refer to Brian Thompson for answering a simple question, what is a constitution? It can be explained that "... a constitution is a document which contains the rules for the operation of an organization".<sup>25</sup> The organization has the form and complexity of its structure. The state as one form of the organization always has a text which is referred to as constitution. Only Britain and Israel have been known not to have one written constitution. The Constitution in these two countries was never created, but it grew into constitutional practice. However, some scholar mentions the existence of a constitution in the context of the convention of constitutions. The enactment of a constitution as fundamental law is based on the highest authority or the principle of sovereignty adopted in a country. If the country adheres to the people's sovereignty, then the source of the legitimacy of the constitution is the people. If the sovereignty of the king, then the king determines whether or not a constitution applies. This is what experts call constituent power which is an authority that is outside and at the same time over the system it regulates. Therefore, it is the people in democratic countries who are considered to determine the enactment of a constitution.<sup>26</sup> Constituent power precedes the constitution and precedes the government which are regulated and formed based on the constitution.

The definition of constituent power is also related to Hans Kelsen's hierarchy of legislation theory. The constitution is a higher or even the highest and most fundamental law because the constitution itself is a source of legitimacy or the basis for authorizing legal forms or other statutory regulations. In accordance with the principles of universally applicable law, so that regulations which are under the constitution can be applied and enforced, those regulations may not conflict with the higher law. The constitution is always related to the notion of constitutionalism.

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<sup>25</sup>Brian Thompson. (1997). *Textbook on Constitutional and Administrative Law*. London: Blackstone Press Ltd, p. 3.

<sup>26</sup>Cass R. Sunstein. "Constitutions and democracies: an epilogue", in *Constitutionalism and Democracy*, Jon Elster and Rune Slagstad, (eds). (1989). Cambridge: Cambridge University Press, p. 327-356.

Walton H. Hamilton stated, “Constitutionalism is the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order”.<sup>27</sup> For keep a government in order, such provision is needed, so that the dynamics of power in the governance process can be limited and controlled accordingly. The idea of regulating and limiting this power naturally arises because of the need to respond to the development of the relative role of power in human life.<sup>28</sup>

Today's constitutionalism is considered a necessary concept for every modern country. C.J. Friedrich stated, “constitutionalism is an institutionalized system of effective, regularized restraints upon governmental action”.<sup>29</sup> The basis general agreement or consensus among the majority of the people regarding idealized buildings relating to the state. The state organization is needed by citizens of the political community so that their shared interests can be protected or promoted through the establishment and use of a mechanism called the state. The key word is consensus or general agreement. If the general agreement collapses, then the legitimacy of the state collapses, and in turn, a civil war or revolution can occur. This, for example, is reflected in three major events in the history of humankind, namely the essential revolutions that took place in France in 1789, in America in 1776, and in Russia in 1917, or significant events in Indonesia in 1945, 1965 and 1998. The consensus that guarantees the upholding of constitutionalism in modern times is generally understood to rely on three elements of consensus, first, the general goals of society or general acceptance of the same philosophy of government. Second, agreement on the rule of law as the basis of government or state administration. Third, the forms of institutions and procedures.

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<sup>27</sup> Jimly Asshiddiqie, *Op. Cit.*, p. 22

<sup>28</sup> Martin Hewitt. (1992). *Welfare, Ideology and Need, Developing Perspectives on the Welfare State*. Maryland: Harvester Wheatsheaf, p. 44

<sup>29</sup> Carl J. Friedrich. (1963). *Man and His Government*. New York: McGraw-Hill, p. 11

### 3. Indonesia's Case

The first consensus, which is with regard to shared ideals, determines the constitution and constitutionalism in a country. Because of the shared ideals that at the peak of abstraction are most likely to reflect similarities of interests among fellow citizens who in reality must live in the midst of pluralism or pluralism. Therefore, in a society to guarantee togetherness in the framework of state life, it is necessary to formulate goals or ideals together which are commonly referred to as state philosophy or state of mind that function as *grondslag philosophies* and common platforms or *kalimatun sawa* among fellow citizens.

In Indonesia, the philosophical underpinnings are what is commonly referred to Pancasila, which means five principles or five basic principles to achieve or realize the four objectives of the state. The five basic principles are (i) Godly State; (ii) Fair and Civilized Humanity; (iii) Unity; (iv) Democracy; and (v) Social Justice. The five precepts are used as a philosophical-ideological basis to realize the four goals or ideal ideals of the state, namely: (i) protecting the entire nation; (ii) increasing general welfare; (ii) educate the life of the nation; and (iv) participate in implementing world order based on independence, peace, and social justice.

The second agreement is an agreement that the basis of government is based on the constitution. This second agreement or consensus is also very principle because in there must be a shared belief that whatever is to be done in the context of state administration must be based on the rule of the game that is jointly determined. The term commonly used for this is the rule of law pioneered by A.V. Dicey. Even in the United States, this term was developed into jargon to describe the understanding of the legal entity that rules or leads in the state. The Rule of Law put the position of law is explained only merely in the form of instruments or tools, while leadership remains

in the hands of people or humans, namely the rule of man by law.<sup>30</sup> In this sense, the law can be viewed as a unitary system which at its peak has an understanding of basic law which is nothing but a constitution, both in the sense of a written text or in an unwritten sense. From this, we know the term constitutional state which is one of the essential characteristics of modern democracies. Therefore, agreement on the rule system is significant so that the constitution itself can be given the highest grip in deciding everything that must be based on law. Without such a consensus, the constitution will not be useful, because it will only function as a dead paper document, only semantic.

The third agreement is related to (a) building state organs and the procedures governing their power; (b) relations between the organs; and (c) relations between the organs and citizens. This agreement contents made constitution easily formulated because it genuinely reflects the shared desire for state institutions and state mechanisms to be developed within the framework of the constitutional state. These agreements are expressed in constitutional documents which are expected to be held together for an extended period. The role and formulation of the constitution should not be imagined, and even the constitutional text will often be changed in the near future. The Constitution is not the same as a law that can be more easily changed. For this reason, the mechanism for amending the constitution must not be changed as easy as changing the law. Of course, the inability mechanism to change the constitution should not cause the constitution to become too rigid. The constitution must also not be sacred from the possibility of change.<sup>31</sup>

The existence of Pancasila as a state or staatsidee (ide of state) in the first agreement on constitutionalism buffer shows the essence of Pancasila as an open ideology. The terminology of Pancasila as an open ideology has actually been

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<sup>30</sup> A.V. Dicey.( 1989). *an Introduction Study of Law and Constitutions*. London: Mcmillan Press, p. 445

<sup>31</sup> Saldi Isra. (2010). *Pergeseran kekuasaan Legislasi*. Jakarta: Rajdawali Press, p. 210

developed during the New Order era. However, in its implementation at that time, it was more indicative of Pancasila as a closed ideology. Pancasila is a tool of hegemony which is a priori determined by the power elite to curb freedom and legitimize power. The Pancasila truth at that time included not only basic ideas and values, but also included operational, practical policies that could not be questioned, but must be accepted and obeyed by the community. The consequence of Pancasila as an open ideology is to open up space to form community agreements on how to achieve these basic ideals and values. The agreement is the second and third agreement as a buffer for constitutionalism or an agreement on the rule of law as the basis of government or state administration and an agreement on the form of institutions and administrative procedures. These agreements are only possible if the system developed is a democratic system.

Pancasila as the ideology has a difference with the liberal-capitalist system as well as communist-socialism. Pancasila recognizes and protects both individual rights and community rights both in the economic and political fields. Thus, the ideology identifies in harmony both collectivism and individualism. Democracy is developed, not mere political democracy as in liberal-capitalist ideology, but also economic democracy. In the basic liberal capitalist system, the economy is not a joint effort and kinship, but individual freedom to strive. Whereas in the system of etatism, the state dominates the economy, not citizens both as individuals and together with other citizens.<sup>32</sup>

The amendments to the 1945 Constitution were then carried out in stages and became one of the MPR Annual Session agendas from 1999 to the fourth amendment to the 2002 MPR Annual Session together with the agreement to establish a Constitutional Commission tasked with conducting a comprehensive review of the amendment to the 1945 Constitution I / MPR / 2002 concerning the Establishment of

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<sup>32</sup> Denny Indrayana. (2007). *UUD 1945: Antara Mitos dan Pembongkaran*. Jakarta: Mizan, p. 109

a Constitutional Commission. The First Amendment was made in the 1999 MPR Annual Session whose direction was to limit the President's power and strengthen the position of the House of Representatives (DPR) as a legislative body.<sup>33</sup> The Second Amendment was carried out at the annual session of the MPR in 2000 covering the problems of the territory of the country and the division of regional government, perfecting the first changes in terms of strengthening the position of the DPR, and detailed provisions on human rights.<sup>34</sup> The Third Amendment stipulated at the MPR Annual Session in 2001 includes provisions on the principles of state foundation, state institutions and relations between state institutions, and provisions concerning General Elections.<sup>35</sup> The fourth amendment was made at the MPR Annual Session in 2002. Material changes to the Fourth Amendment were provisions on state institutions and relations between state institutions, the abolition of the Supreme Advisory Council (DPA), provisions on education and culture, provisions on the economy and social welfare, and transitional rules and additional rules.<sup>36</sup>

The changes above cover almost the entire material of the 1945 Constitution. If the original text of the 1945 Constitution contains 71 items, then after four changes, the material contained in the 1945 Constitution includes 199 points. However, in accordance with the MPR agreement which later became an attachment to the Decree of the MPR No. IX/MPR/ 1999, Opening of the 1945 Constitution will not be amended. The opening of the 1945 Constitution contains the common ideals as the culmination of abstractions that reflect commonalities of interests among fellow citizens who in reality must live in the midst of pluralism or poverty. The opening of the 1945 Constitution also contains common goals or ideals which are commonly referred to as state or state philosophy (ideals of the state) that function as grondslag

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<sup>33</sup> Zainal Arifin Mochtar.( 2012). *Penataan Lembaga Independen di Indonesia* (Disertasi Pada Fakultas Hukum Universitas Gadjah Mada,) p. 456

<sup>34</sup> Fajrul Falakh. (2015). *Model dan Pertumbuhan Konstitusi*. Yogyakarta: UGM Press, p. 22

<sup>35</sup> Jimly Asshiddiqie. (2006). *Konstitusi dan Konstitusionalisme*, Jakarta: Konpress, p. 88

<sup>36</sup> *Ibid.*, p. 89



philosophies and common platforms or sentences among fellow citizens in the context of state life. This is what William G. Andrews called the first consensus.

Pancasila as philosophical foundations is found in the Preamble of the 1945 Constitution which is the first agreement. By unchanging the Preamble of the 1945 Constitution, the position of Pancasila has not changed as the philosophical foundations of the building of the Republic of Indonesia. What changes is systems and institutions to realize ideals based on Pancasila values? This is in accordance with the meaning of Pancasila as an open ideology that can only be carried out in a democratic system and touch with the values and development of society. Apart from being a means of legitimacy and concretization of state goals, in the Indonesian context, Pancasila is also positioned as a means of the direction of legal development. When using Hans Kelsen's theory as his theoretical foundation, Pancasila can be based on the fundamental norm of the state (*Staatsfundamentalnorm*). Hans Kelsen's theory that gets much attention is the hierarchy of legal norms and chains of validity that make up the legal pyramid (*stufentheorie*).<sup>37</sup> *Staatsfundamentalnorm* is a norm that is the basis for the formation of a constitution or Basic Law (*staatsverfassung*) of a country. The legal position of a *Staatsfundamentalnorm* is a condition for the enactment of a constitution. *Staatsfundamentalnorm* comes first from the constitution of a country. According to Nawiasky, the highest norm that Kelsen refers to as a basic norm in a country should not be called a *staatsgrundnorm* but *Staatsfundamentalnorm*, or the fundamental norm of the state. *Grundnorm* basically does not change, while the highest norms change for example using coups or revolutions. Based on the Nawiaky theory, A. Hamid S. Attamimi compared it to Kelsen's theory and applied it to the structure of the legal system in Indonesia.

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<sup>37</sup>A. Hamid Attamimi. (1990). *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara; Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I–Pelita IV*. Dissertation on University of Indonesia. Jakarta, p. 111

Attamimi shows the structure of the hierarchy of Indonesian legal systems using the Nawiasky theory.<sup>38</sup>

Notonagoro first delivered the placement of Pancasila as *Staatsfundamentalnorm*.<sup>39</sup> Pancasila is seen as the ideal of law (*rechtsidee*) as a guiding star. The position requires the establishment of positive law to achieve ideas in Pancasila and can be used to test the Law. By put Pancasila as a *Staatsfundamentalnorm*, the formation of law, implementation and implementation cannot be separated from the values of Pancasila. However, the placement of Pancasila as a *Staatsfundamental* means to place it above the Constitution. If so, Pancasila is not included in the definition of the constitution, because it is above the constitution. By discussing it, the problem can be done by tracing back the conception of basic norms and the constitution according to Kelsen and the developments made by Nawiasky, and seeing the relationship between Pancasila and the 1945 Constitution. Kelsen discusses the validity of legal norms by describing them as a chain of validity that culminates in the state constitution. Finally reaching several constitutions up to the first constitution stipulated by individuals or a kind of assembly. The validity of the first constitution is the final presupposition, the last postulate, where the validity of all norms in the rule of law depends. Documents which constitute the form of the first constitution are actual constitutions, a binding norm, only in conditions presupposed as valid. This presupposition is called the transcendental term - logical press position.

All legal norms belong to the same legal rules because their validity can be traced back, directly or indirectly, to the constitution. That the constitution is a binding legal norm is something that is prepared, and the formulation of the proposition is the basic norm. The last sentence clearly shows the existence of two things, namely the basic norm is the presupposition of the validity of the constitution.

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<sup>38</sup> *Ibid.*, p. 112

<sup>39</sup> Nugroho Notoesanto. (1985). *Tercapainya Konsensus Nasional 1966-1969*. Jakarta: Balai Pustaka, p. 14

Basic norms are not made in legal procedures by law-making organs. This norm is valid not because it is made by means of legal action, but is valid because it is presuppositionally valid, and presuppositionally accurate because without this presupposition no human activity can be interpreted as law, precisely the norms of lawmakers. The Kelsen logic is often misunderstood by confusing the presupposition of validity and constitution, which is the *grundnorm*? Nawiasky then solved this by distinguishing between *staatsfundamental*-norms with *staatsgrundgesetz* or *grundnorm* on the grounds that *grundnorm* does not change while *staatsfundamentalnorm* can change as through coups or revolutions.

Nawiasky's opinion is actually in line with Kelsen's view. Kelsen also stated that the constitution was indeed made difficult to change because it thus became different from ordinary legal norms. In addition, Kelsen also noted that a legal system loses its overall validity in the event of an effective coup de etat or revolution.<sup>40</sup> Coup de etat or revolution is a change in the rule of law other than in a manner determined by the law itself. Coups or revolutions are a fact of the loss of the presupposition of the validity of the first constitution and replaced by other presuppositions. The applicable legal system is a new legal system even with the same material as the old legal system. Based on the description between Kelsen's and Nawiasky's views, it can be concluded that the *staats-fundament* proposed by Nawiasky is the presupposition of the first constitutional validity offered by Kelsen as the basic norm whereas Nawiasky's *staats-grundgesetz* is a constitution in Kelsen's view. Pancasila was born and formulated in the trial of the Indonesian Independence Preparatory Investigation Agency (BPUPK) when discussing the basis of the state, especially in Soekarno's speech on June 1, 1945.<sup>41</sup> Sukarno called the foundation of the state as the

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<sup>40</sup> Jimly Ashiddiqie, *Ideologi, Pancasila dan.....Op. Cit*, p. 31

<sup>41</sup> RM.A.B. Kusuma. (2004). *Lahirnya Undang-Undang Dasar: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha<sup>2</sup> Persiapan Kemerdekaan*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, p. 1

*Philosofische* grondslag as the most profound foundation on philosophy established Indonesian state buildings.

Soekarno also called it the term *Weltanschauung* or an outlook on life. The speech delivered by Soekarno at that time was a series of BPUPKI trials which discussed the primary state. Besides Soekarno, other members also expressed their opinions both verbally and in writing. From the various views expressed in the trial, the drafting team consisted of eight people, namely: Ir. Soekarno, Drs. M. Hatta, Mr M. Yamin, M. Soetardjo Kartohadikoesoemo, R. Otto Iskandardinata, Mr A. Maramis, Ki Bagoes Hadikoesoemo, and K.H. Wachid Hasjim.

The team produced a formula which became known as the Jakarta Charter and was received by BPUPKI on July 10th, 1945. This document became the Opening of the 1945 Constitution after a compromise with the writing of seven words occurred. Although Soekarno's influence was quite considerable in the formulation of this document, this document was the result of the formulation of the BPUPK which automatically represented various thoughts of BPUPK members. This document in addition to containing the five primary states proposed by Sukarno also contains other points of thought. If Soekarno mentioned the fundamental problems of the state as *Philosofische* grondslag or *Weltanschauung*, then the results of these trials, namely the Jakarta Charter which subsequently became and referred to as the Preamble of the 1945 Constitution, which was the *Philosofische* grondslag and *Weltanschauung* of the Indonesian nation. All values and principles in the Preamble of the 1945 Constitution are the basis of the Indonesian state, including Pancasila.

In addition to Pancasila, there have been many known points of mind for the Preamble of the 1945 Constitution, namely; (1) that the State of Indonesia is a country that protects and encompasses all the Indonesian people and all the bloodshed of Indonesia, and covers all understandings of groups and understandings of individuals; (2) that the State of Indonesia wants to realize social justice for all its

citizens; (3) that the Indonesian State adheres to the people's sovereignty. The state is formed and organized based on popular sovereignty, and (4) that the State of Indonesia is a country which has the Supreme Godhead on the basis of just and civilized humanity. If we look at the Preamble of the 1945 Constitution, each alenia also contains lofty and philosophical ideals that must inspire the whole system of thinking about the material of the Constitution. The first paragraph affirms the belief of the Indonesian people that independence is a human right of all nations, and therefore all forms of occupation over the world must be abolished because it is not in accordance with humanity and justice. The second paragraph describes the long and painful process of the Indonesian nation's struggle which finally succeeded in bringing the Indonesian people to the front of the gate of an independent, united, sovereign, just and prosperous Indonesia. The third paragraph affirms the recognition of the Indonesian people for the Almighty of the Supreme Lord, who gives spiritual encouragement to all nations to fight for the realization of his noble ideals so that the Indonesian people declare their independence. Finally, the fourth paragraph describes the vision of the Indonesian people regarding state buildings that are to be formed and organized in order to institutionalize the overall ideals of the nation for independence, unity, sovereignty, justice and prosperity in the context of the State of Indonesia. In the fourth paragraph, the state and state goals are mentioned.

The whole opening of the 1945 Constitution which contains the background of independence, a view of life, the purpose of the state, and the foundation of the state in the form of thoughts as described above is what in the Soekarno language is called the *Philosofische grondslag* or state basis in general. It is clear that the Preamble of the 1945 Constitution as an ideology of the nation does not only contain Pancasila. In political science, the opening of the 1945 Constitution can be referred to as the ideology of the Indonesian nation. The placement of the Preamble of the 1945 Constitution as part of the Constitution at the same time places it as an abstract norm which can be used as a standard for the lower constitutionality of legal norms. It can

even be used as principles in interpreting the constitution. By the position of the Preamble of the 1945 Constitution as part of the constitution, the main points of thought contained in it, including the Pancasila, can genuinely be considered as a basis for the development of the Indonesian legal system.<sup>42</sup>

#### 4. Conclusion

The theory of state's objective always occupies the state as a conception of a legal entity that seems to be separate from the purpose of the personification that is inside, and therefore ideology and the constitution have the capability to internalize state goals both to legal order and other social subsystems. If examined further, it would be difficult if the Indonesian people were not founded on a purpose and method that was jointly established, considering that geographically, sociologically, and historical approach consisted of various kinds of cultures, tribes, social systems and other diversity, so it is truly wise if the founder of the country is very tough to formulate the basis of the state. In addition, implementation of public welfare also makes it an important factor why the Indonesian state needs to form a state foundation because, without a state basis, it is difficult to create a climate of togetherness and brotherhood. It could be, if the state's basis is not formulated for the first time, then the values of individualism, liberalism, and capitalism will invade national values, which even though this country is not established for that. Therefore, Sukarno's ideas about Pancasila that we know today actually have a specific purpose which should be understood when the Indonesian state experiences a loss of direction like today. The door to democracy that is wide open and which directly gives a high level of participation in the administration of the state does not reflect a just and civilized humanity, horizontal conflict which increasingly shows that there is no unity, and democracy as if it is only a clear goal has alienated the Pancasila from the reality of

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<sup>42</sup> RM. AB Kusuma. (2011). *Sistem Pemerintahan Negara "Pendiri negara" versus Sistem Presidensial "Orde Reformasi"*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, p. 19-20

nationality and national unity.<sup>43</sup> Clifford Geertz in his writings on primordial sentiments in new countries said that new nation states are usually faced with a dilemma between integration and democracy.<sup>44</sup> Mentioned as a dilemma is because the two spectrums between democracy and integration are two opposing characters. Clearly characterized democracy opens the tap of freedom so that all aspirations are channelled, described integration wants to shackle so that strong unity.

The basis of the state that uses Pancasila as such gives rise to a distinctive system as an Indonesian legal system which is generally referred to as the Pancasila legal system. The legal system or orderly law itself can be interpreted as a condition of legal norms in a society not mutually isolated. The norms are side by side with each other and together form a unity.<sup>45</sup> Then the legal system based on Pancasila will produce guiding rules in national legal politics. The most common signs are prohibitions for the emergence of laws that are contrary to the values of Pancasila. There must be no law that contradicts the values of divinity and civilization neither to human values. A law must not be born that has the potential to damage the integrity of the ideology and territory of the nation and state of Indonesia, and no law must be violated the principle of popular sovereignty and the most important is the law that violates the values of social justice. Thus, a nation with a high level of the plurality is required to manage well and carefully so that democracy and integration can work without negating each other. Therefore, the role of the Pancasila is needed because with these five basic principles, democratic values and integration can be glued together when the demands of the times require globalization and mobilization.

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<sup>43</sup> Ibnu Sina Chandranegara. (2012). *Konsep Kedaulatan Rakyat Indonesia*. Jakarta: Barometer, p. 44

<sup>44</sup> Clifford Geertz. (1971). "The Integrative Revolution, Primordial Sentiments and Civil Politics in The New States" dalam Jason L. Finkle dan Richard W. Gable, *Political Development and Social Change*, (John & Sons Inc,) p. 91

<sup>45</sup> Roeslan Saleh. (1996). *Pembinaan Cita Hukum dan Asas-Asas Hukum Nasional*. CV Karya Dunia Fikir, p. 28