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Re-actualisation of Honesty as a Principle in Human Rights in the Nusantara Constitution

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ABSTRACT

The dynamics of regulations related to the principles of human rights in Indonesia are still faced with fundamental problems, as state authorities and human rights defenders tend to be orientated to the West and Middle East/Far East. Readings on human rights have been focussing on the UN Declaration of Human Rights, the Islamic Cairo Declaration of Human Rights and the constitution of modern countries. However, it appears that the human rights movement today has reached third generation, advocating, among others, the right to adequate information, a healthy environment and the protection of minorities. This paper elaborates, in particular, on the re-actualisation of human rights principles in the Classical Constitution of Nusantara using a research method of doctrinal legal research, in which legal documents become the main subjects of research, including Nusantara's classical manuscripts. Long before Indonesia's independence, Nusantara principles were explicitly incorporated into the classical constitutions of kingdoms and/or sultanates in Nusantara and in practice; these constitutions included the Constitution of Pagaruyung used by the Kingdom of Minangkabau in West Sumatra, the Kie Se Kolano Constitution used by the Sultanate of Tidore and the Book of Panji Salaten used by the Kingdom of Kutai Kartanegara. Accordingly, the People's Consultative Assembly or MPR should transpose these principle to law in the fifth amendment of the 1945 Constitution of the Republic of Indonesia

Keywords: Honesty principle, human rights, Nusantara constitution, Re-actualisation, the 1945 constitution

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INTRODUCTION

Atlantis (now called Nusantara) is a forerunner to the birth of world civilisation, according to research findings of Arysio

Santos (2010, p. 15), a geologist and expert on nuclear physics from Brazil, who conducted a 30-year research study in the region. This is in line with Plato's views from 2500 years ago in his book *Timaeus and Critias* (Santos, 2010, p. 13). Atlantis was a place described as a tropical "paradise" with beautiful scenery, exceptional wealth of natural resources (gold, silver and uranium), highly productive agricultural areas, and vast forests and oceans that held remarkable potential in oil, gas and fisheries (Dombrowski, 1981, p. 117–128). At that time, the region was believed to have crossed the two great oceans, the Pacific and the Atlantic Oceans, with Indonesia in the middle of the land mass (Santos, 2010, p. 549; Samanto, 2014, p. 3).

Santos' finding was strengthened by Stephen Oppenheimer's research, which was conducted over 10 years using DNA methodology. He concluded that the lost Atlantis was in Sundaland or Southeast Asia, and that it was a forerunner to ancient civilisations (Oppenheimer, 2012, pp. 140–143). From another perspective, genetically, Indonesians today and in the generations to come have inherited and will inherit positive traits of their ancestors. One of these positive traits is the talent of managing the state well. In the past, it was proven that in the Nusantara archipelago, now the Indonesian archipelago, was home to very large nations. Among them were the Kingdom of Tarumanagara, which lasted for 286 years (400-686 AD); the Kingdom of Srivijaya, which existed for 694 years (683-1377 AD); and the Kingdom of Majapahit, which lasted for 246 years (1293-1525 AD) (Minattur, 1966, pp. 185–187; Supangkat, 2005, p. 65).

Behind the secret of the glory of Nusantara may be that the ancestors of modern Indonesians conducted the affairs of life based on basic legal institutions, what we now call the Constitution (Stark, 1999, pp. 114–116). For example, the Kingdom of Pagaruyung based its law on the Constitution of Minangkabau customary law; the Kingdom of Majapahit used the legal Constitution of Negarakertagama; the Kingdom of Bugis Makassar used the legal constitution of Bugis customary law; the Kingdom of Kutai Kartanegara used the legal Constitution of Serat Nitipraja customary law; and the Sultanate of Tidore used the legal Constitution of Kie Se Kolano customary law (Rosyidi, 2015, p. 135). Based on the results of preliminary studies, those classical constitutions comprised the principles of human rights similar to the concept of human rights as we know them today, although at that time these principles were yet to be named thus (Karr, 2011, p. 582–584). This means that long before a theory of constitution or theories of law and human rights became popular, kings and sultans had implemented human rights principles in daily life, in particular, the principle of honesty, which was considered a fundamental value in social, economic, cultural, governmental and international relationships.

Honesty is the reigning spirit of human rights. The principle of honesty is an important value in every aspect of

human life. For example, human rights in the economic sphere emphasises the importance of honesty in trade transactions; in politics, it is recognised as openness of the government; and in technology, it is considered transparency. The four Classical Constitutions above were regulated based on their constitution as fundamental principles.

This paper attempted to answer the research question, "Why it is necessary to do a re-actualisation of the principles of human rights as embedded in the Classical Constitutions of Nusantara? In this context, re-actualisation is intended to resurrect classical constitutional values in real life today. From there, we will know the reasons that the law (*ratio legis*) might require such an exercise of re-actualisation. However, there are some legal issues that need to be stated beforehand. Do the Classical Constitutions of Nusantara qualify as modern constitutions? If they do, what parameters are to be used as a benchmark for a modern constitution? More importantly, what legal action needs to be taken to perform re-actualisation of human rights principles?

It is essential to raise these research questions and to consider these legal issues because it seems that the progress of Indonesia as a nation today is not consistent with the intent and will of its predecessors. Law facts indicate that the presence of the law in the field of human rights and its implementation, violations of human rights, especially the principles of human rights related to governance, economic life, political life and community participation.

THEORETICAL FRAMEWORK

Some theories used as analytical tools to answer the questions above include *volkgeist* (the spirit of the nation), 'living law', classical constitutional law, constitutional theory and the purpose of the state. Savigny formulated *volkgeist* as a general consciousness of the people or the spirit of the people. Savigny constructed his theory in an organic relationship between the law and the spirit or character of the people forming a nation (Gerenscer, 2007, p. 1). The law is simply a reflection of *volkgeist*. Therefore, customary law that grows and develops in the womb of *volkgeist* should be viewed as the true law of life. The true law is not created but found in the cross-history of the Constitution (Tanya, 2007, p. 120). This theory is important for visualising the dynamics of the history of the Constitution in the past, mainly to discover the principles of human rights contained in the Classical Constitutions of Nusantara.

As for 'living law', Eugen Ehrlich constructed a new approach for understanding the law within society in 1911. Ehrlich defined the 'living law' concept as "the law that dominates life itself, even though it has not been printed in legal propositions" (Ehrlich, 1936, p. 493). He asserted that society allows for the intermingling of normative and official associations that employ through an inner order a consideration to find 'living law' (Singh, 2010, p. 3). This notion goes beyond functionalism to rest on constructivism in identifying the 'law', regardless of the acceptance of the normative order by the

state, whereby, it challenges the state-centred traditionalism concept that proposes that "state law is … the expression of political power and not a legal phenomenon" (Ziegert, 1998, p. 250). The 'living law' may refer to the tri-partite import of organisational norm, namely (a) societal norms determine societal law and its inner order of association; (b) if the traditional values of a society intend to continue to be 'living law', the norms thereof must be effectively coordinated and combined with decision-making norms; (c) these values or organisational norms are able to confront the second order/superimposing state law with their full societal potential (Ziegert, 1998, p. 242). Accordingly, classical constitutional law, which had preserved the rule of the king, the empire and society for long periods of time, having survived the time and state law imposed by colonialists, ought to be regarded as truly 'living law' that conveys noble organisational norms/values afterwards, in particular, for its successors.

The theory of classical constitutional law, for example Serat Nitipraja, Kie Sekelano and Nagarakretagama, is also important in this study, as the object of this study is the human rights principles embedded in the Classical Constitutions of Nusantara (Hamidi et al., 2015, p. 15). One manifestation of classical constitutional law is the characteristic of deliberation. The principle of deliberation is necessary so that the state can carry out its duties to achieve social justice in accordance with the ideals of the people. Deliberation is a decision-making forum as well as a form of power restriction. The concept of deliberation has been known and practised in the Classical Constitutions of Nusantara. For instance, the results of deliberation in the election of Tidore's king must be discussed through a *Bubato*, the highest parliament of the state.

Soepomo stated that the distinctive character of the classical constitutional system of the Nusantara was:

> the original characteristics of Indonesian constitution, which can still be seen today in a village atmosphere in Java, and Sumatra and other Indonesian islands, then the state officials are the leaders who unite, uphold the spirit of unity and equality in the people. The village head, or the head of the people is required to enact justice for the people, and should always give shape (*Gestaltung*) to a sense of justice and ideals of the people (Hamidi, 2015, p. 25).

The essence of Soepomo's opinion above is that a village officer, working for the government, and a traditional village chief should have the same perception. What is meant by the same perception is that both should be in agreement regarding spatial planning, estates, legacies etc.

On the contrary, Yamin insisted that the principle of deliberation is the original nature of Indonesian civilisation, evident in the life of the people even before the advent of Islam:

> The principle of deliberation makes up the society and state administration based on the joint decision. Among all

> Islamic countries in the world, perhaps Indonesia [as a] nation is the one that highly expresses deliberation basis and gives distinctive colour to the implementation of deliberation. This is not coincidental, but related since it is corroborated by the nature of the original civilization. …" (Hamidi et al., 2015, p. 100).

The affirmation of the existence of classical constitutional law or that of a customary law community is set out in Article 18(b) of the 1945 Constitution of the Republic of Indonesia, as given below:

(1) The State shall recognize and respect the units of local government that are special and are regulated by law.

(2) The State shall recognize and respect units of customary law communities1 along with their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, which are regulated by law.

Recognition and respect for the local government units, for example, Nagari in West Sumatra, Desa in Java and Gampong in Sulawesi, that are special include the enactment of the customary constitutional law in accordance with the structure of the local community. The above is also the basis for the recognition of legal pluralism (Redi, 2014, p. 231) because, in addition to the laws made by the state, there are laws that live and grow within society.

Customary law, which survives and came from within society, is the original source of the constitutional system that is now used by Indonesia. It is also recognised by the founders of our nation. Customary laws, which are still alive and valid up to now, should be protected and cared for earnestly to preserve and honour their existence as the root of Indonesian history and as the pure source of Indonesian's classical constitutional law. History has proven that the Indonesian people lived by the tenets of a classical constitution long before the independence of Indonesia in 1945 gave them a modern constitution arranged by K.C. Wheare and C. F. Strong.

Wheare (1951, p. 44) divided the constitution into two senses, namely, a constitution in its broadest sense and constitution in its strict sense. Constitution in its broadest sense describes the entire system of governance as well as the collection of regulations that govern or direct the government. Constitution in the strict sense is a collection of written basic regulations or written basic laws contained in one document or several documents incorporating state governance (Thaib et al., 2013, p. 51). Strong the defined Constitution as "a collection of principles according to which the power of the government, the rights of the governed, and the relations between the two are adjusted" (1963, p. 78). The definition of Constitution according to Strong (1963, p. 80) is broader than the definition of Constitution proposed by Lord Bryce because it is not enough for a constitution to merely set the functions

and the authority of political and social framework for the State, including the state apparatus governed by law. It must also set the rights of the people and the relationship between them. A country or a political body is said to have a Constitution when the different parts of the nation and their functions have been arranged clearly and are not influenced by the behaviour of a tyrant.

The substance of a Constitution also guarantees the power of the state for proper governance and conduct, so it is necessary to set detailed rules that include (i) the limit of power owned by the head of state, (2) citizens' rights, (3) institutions exercising the authority of the state, (4) procedure for the formation of the Constitution, and (5) an independent judiciary. A Constitution is actually a social contract between the people as the sovereign owner with one person or a few people who are given the right to manage state authority (Manan, 2014, p. 76). Experts such as Bagir Manan, Dahlan Thaib, Jazim Hamidi, K. C. Wheare and C. F. Strong agree that the Constitution has always regulated issues on the principles of human rights. Our preliminary studies showed that the Classical Constitutions of Nusantara also established the principles of human rights.

Related to the purposes of the country, each constitution, classical and modern, also manages them, as in the Preamble of the 1945 Constitution of the Republic of Indonesia, paragraph 3, which states, "for the welfare of all the people of Indonesia." In the Traditional Constitution of the Bugis people, for instance, Article 23 lays out the duties of the leaders or Kings as being: (1) to prosper the people; (2) to teach integrity; (3) to actualise the people's welfare.

RESEARCH METHOD

This study was based on normative legal research with several approaches i.e. philosophical, historical, comparative and legislative. The relevant philosophical approach was used in this study because of the search for the principles of human rights. The use of the philosophical approach in this study was right because examining fundamental values is important for social life. The historical approach meant by the author is the historical illustration of the Classical Constitutions of Nusantara. The pilot project was the Kingdom of Pagaruyung-Minangkabau in West Sumatra, the Kingdom of Kutai Kartanegara in East Kalimantan, the Kingdom of Bugis in South Sulawesi and the Sultanate of Tidore in North Maluku. To strengthen this assessment, a comparative approach to studying the regulation of human rights principles, which rests on the principle of honesty as concerning the four constitutions above, was also conducted to know the similarities and differences between the Constitutions of the four kingdoms. The legislative approach emphasised whether the Classical Constitutions of the kingdoms/sultanates could be qualified as modern constitutions. All legal materials were collected and then analysed using prescriptive analytics.

FINDINGS

The temporary result is that the *Serat* or book from the four kingdoms/sultanates can be qualified as a modern constitution, since classical constitutions existed long before modern constitutional theory itself was born (Wheare, 1952, p. 30; Strong, 1963, p. 25). The modern indicators stated by Wheare (1952, p. 30) and Strong (1963, p. 25) are fulfilled in Nusantara's Classical Constitutions. Meanwhile, it is important to actualise the value of human rights principles disclosed in the four Classical Constitutions of Nusantara through legal and constitutional reform in the future.

The evidence that the four Nusantara Classical Constitutions can be qualified i.e. they have fulfilled the indicators as a modern constitution stated by K. C. Wheare (1952, p. 30) and C. F. Strong (1963, p.25) is documented in Table 1 below.

Table 1
Qualification of modern constitution for Nusantara constitution

No.	Characteristic of Modern Constitution	Name of Classical Constitution *a quo*			
		Minang-kabau	*Serat Niti Praja*	Bugis	*Kie Se Kolano*
1	The limit of authority of state government	✓	✓	✓	✓
2	Citizen rights (such as human rights)	✓	✓	✓	✓
3	State institutions	✓	✓	✓	✓
4	Procedure for constitution change	✓	✓	✓	✓
5	The presence of an independent judiciary	✓	✓	✓	✓
6	Functions and the authority of political society framework (state)	✓	✓	✓	✓

Table 1 indicates the modern criteria of the constitution that are also seen in the classical Nusantara Constitutions, proving their relevance as modern constitutions.

DISCUSSION

The following discussion outlines the human rights principles embedded in the Classical Constitutions of Nusantara.

Qualification of Classical Constitution of the Nusantara

Referring to the theory of constitution and the substance of a constitution as described above, the author argues that a classical constitution can qualify as a modern constitution when it clearly regulates issues concerning the limit of the authority of the state government,

citizen rights, state institutions, procedure for constitution change and the presence of an independent judiciary. A classical constitution also indirectly regulates the principles of human rights. The principles of human rights embedded in each Classical Constitution of Nusantara are discussed below (Rosyidi, 2015, pp. 76–87).

Human Rights Principles in Minangkabau Classical Constitution

The Minangkabau Classical Constitution focusses on the regulation of morality because the authority of the country, which ranges from the highest (the King) to the lowest servant, is required to have a deep sense of love for the state, citizens, scholars, religious leaders, parents, professionals in various fields, traditional leaders and people who are always honest. Below is a translation of the norms that govern it.

> Paragraph 28.16. "At that time Datuk Perpatih Sebatang had a message for all people to hold or comply with his words (command), which consisted of eight injunctions. The first was love for the country, the second was love for everything belonging to the country, the third was love for the pious, the fourth was love for scholars, the fifth was love for parents, the sixth was love for craftsmen, the seventh was love for leaders, and the eighth was love for those who keep their word or honest people. These are primary or main in nature or the kingdom and primary in the *nagari* (villages). Do not alter these injunctions after I am gone so that your efforts will endure forever. . . ."

The constitutional norm, which commands people to act fairly and honestly, according to the desire of their ancestors, places things in order and provides appropriate sanctions for wrongdoing. The Minangkabau had a proverb that encapsulated the essence of justice: "If you want to pound rice it must be in a mortar, but if you want to cook rice it must be in a pot." The proverb implies that if the reverse were done i.e. if rice were pound in a pot and cooked in a mortar, which is a metaphor for referring to twisting the truth, the country will suffer as a consequence.

The success recipe for managing the authority of a state is very clearly and completely set out in the Minangkabau customary Constitution, as highlighted in the following excerpt (in translation): "Paragraph 46.6 'Keep yourself on the right path, do not worry if people abandon you. Do not turn [away] because of praise and reproach and do not be afraid of anyone other than Allah". This article specifies the norm that guides citizens and leaders towards practising noble moral standards. Commendable moral standards have a very important role in physical development. Yet, constitutional norm similar to this is not found in the 1945 Constitution of the Republic of Indonesia. Paragraph 46.6 contains matters about Human Rights, such as the values of openness, integrity and truth. The value of truth, openness and integrity are part of the third wave of Human Rights' values.

Human Rights Principles in Serat Nitipraja Classical Constitution

The Customary Constitution of Serat Nitipraja from the Kingdom of Kutai Kartanegara in Kalimantan stipulates three kinds of behaviour for a king and/or *Patih*. The first is directed at a king and/or *Patih* who displays bad/despicable behaviour. The sentence below in Serat Nitipraja describes the behaviour of a king and/or *Patih* who behaves badly or despicably:

> Article 10: If you are destined to be a king, there is a piece of advice in Niti Praja about contemptible and dishonourable character or action, moderate character or action and prime character or action. Contemptible character is displayed by one who does not understand Niti Praja until the enemy comes, or is too busy making merry, enveloped by lust or acts cowardly, and [this] is because one is controlled by his own lust.

On the other hand, a king who is moderate in character is described as a king who is careful, obeys orders and *Angger-Angger* (legislation), has strong belief, follows the example of previous great leaders, has no personal interest, loves the weak and strives for the social welfare of his citizens. These parameters are stipulated in the Serat Nitipraja Constitution.

Human Rights Principles in Bugis Customary Constitution

There are 14 morality traits that should be displayed by the King of Bone as one who holds state authority, as given in the Bugis Customary Constitution. These include (1) having a strong and sturdy heart and not feeling afraid and nervous or showing doubt; (2) feeling shame at unsatisfactory achievement; (3) having a high level of honesty; (4) thinking constantly of improving the people's welfare; (5) being generous; (6) being able to set a good example and give good advice; (7) being open to investors from outside; (8) being willing to make difficult decisions; (9) not leaving the state and nation in difficult circumstances; (10) continuing to build political communication with the people as the initial owner of sovereignty; (11) prioritising populist economic development, among others, in the field of agriculture; (12) having the courage to face a variety of threats, challenges, obstacles and interference; (13) showing appreciation for the people who contribute to the state; and (14) having high empathy for people who are weak and helpless. The prime morality traits are suitably and rigidly regulated in the Bugis Customary Constitution, as given below.

> Article 23. There are fourteen moral traits that a leader (King) and his subordinates (state administrators) must possess, namely: First, his heart does not flinch when he hears about the strength of neighbouring countries but he should be ashamed when he hears of the prosperity of neighbouring countries; Second, he cultivates honesty in himself and honesty to God (Allah); Third, he always thinks about the good

> of his country and the welfare of his people in order to be on par with to the glory of neighbouring countries; Fourth, he is generous towards his subordinates; Fifth, he gives advice to people; Sixth, he shows pity upon people who visit his region to make a living, and extends the same treatment to the natives; Seventh, he dares to make difficult decisions; Eighth, he does not leave his country for his own good; Ninth, he likes to hold discussions with the people; Tenth, he gives priority to development and agricultural development; Eleventh, he does not flinch when he hears bad news or receives threats from other countries; Twelfth, he is not afraid to face an opponent; Thirteenth, he respects brave people; Fourteenth, he takes pity on the needy and slaves, because if these meet an opponent or an enemy they too try hard to fight their enemy.

The noble values enshrined in Article 23 above reflect the ideals of human rights in as practised in the economic, political, social and cultural aspects of modern life today.

Human Rights Principles in *Kie Se Kolano* Customary Constitution

Legal norms based on the principles of honesty in the legislation of the Sultanate of Tidore are regulated in two legal manuscripts or law codices, namely *Bobeto* (customary oath) and *Kie Se Kolano* (constitution) as well as in the rule of the Sultanate of Tidore. The instruction to act honestly in managing state authority in the Sultanate of Tidore is regulated in *Bobeto* (customary oath). In *Bobeto* (customary oath) formula, there is a threat of sanctions in the form of a curse from God. If the Sultan and his servants are not honest in managing the government, they must be willing to be punished by God so that they "cannot make a living adequately both on land and at sea." The complete customary oath of the Sultanate of Tidore is as follows:

> You are really the best child/son with a duty to keep a secret, hold the mandate and protect the truth and *Sharia*. You deserve to sit on the throne of the Sultanate of Tidore. You stand and hold the power of the kingdom of Tidore. Remember, remember, remember, always keep honesty and truth. If it is wrong, say it is wrong, and if it is right, say it is right. If you say right to what is wrong and you say wrong to what is right, you are doomed not to be able to make a living. If you go to the land, the forests will be dry and burnt and you will be prey for wild animals. Similarly, if you go to the sea, the ocean will be dry and you will be prey for the fish of the sea. If you act honestly and uprightly, you will live long and happily in this world and in the hereafter. Your children and all the people will be healthy and prosperous.

Besides being enshrined in the customary oath (*Bobeto*), the practice of honesty is also upheld in the Constitution of the Sultanate of Tidore, the *Kie Se Kolano*. The *Kie Se Kolano* Constitution was drafted on

3 Muharram 1285 H or 25 April 1868 M during the reign of Sultan Ahmad Shah's Fatahuddin Kaicil Jauhar Nur Alam, the 34th Sultan of the kingdom. Honesty is upheld in the following: "Anything spoken in a conversation and which has become a joint decision, I, Sri Sultan the Majesty, accept it well, and the holders of 12 books should tell one another so that each holder can take note of this in his own book."

The Sultan's authority in managing the country is also limited by the basic 10 principles of the Sultanate of Tidore, which are:

(1) To display a sense of shame and fear of Allah

(2) To display trust and belief

(3) To display humility and closeness to the people

(4) To display courtesy of behaviour and speech

(5) To display honesty, fairness and uprightness of behaviour

(6) To display unity between the leader and subordinates and unity between the various aspects of the nation

(7) To display civility towards others

(8) To display delegation of authority to subordinate regions

(9) To display sharing of revenue submitted to Nyili government or subordinate government

(10) To display priority in seeking deliberation and consensus

Generally, the 10 principles of the *Kie Se Kolano* manuscript above can be categorised as human rights concerning political behaviour (shame, trust, integrity and deliberation), the law (acting fairly and uprightly, acting in submission to authority), economic responsibility (the power distribution in the economic field) and social and cultural behaviour (humanizing).

The conclusions that can be drawn from this examination of Classical Constitutions of the four ancient kingdoms in the Nusantara archipelago are: (1) The formulation of legal norms in those times was very clear and complete; (2) The legal norms were expressed using vocabulary that was easily understood; (3) The legal norms outlined both positive and negative effects of honest or dishonest deeds; (4) The legal norms were expressed through metaphors; (5) The legal norms contained reference to supernatural consequences for failure to uphold them such as receiving severe penalties both from God and from the country; (6) The legal norms were open formulation of norms; and (7) The legal norms allowed changes to be made easily.

The question now is, "How is this model or structure of legal norm formulation based on the principle of honesty to be transposed to the 1945 Constitution of the Republic of Indonesia?" The existing constitution, namely the Constitution of the Republic of Indonesia 1945, is an integral part of the development of Indonesian legal system of the past.

CONCLUSION AND RECOMMENDATIONS

To answer the question posed in the last section, the following conclusions made as a result of this study may be helpful:

(a) In terms of history, meaning and a parameter for changes to a modern constitution, the four Classical Constitutions of the kingdoms/ sultanates studied in this research can qualify as modern constitutions.

(b) The four Classical Constitutions of ancient Nusantara equally regulate the principles of human rights, especially the principle of ***honesty***.

(c) The principle of honesty is the main spirit behind human rights.

The President, the House of Representatives (DPR), the Regional Representative Council (DPD), the Regional House of Representatives (DPRD) and the judges of the courts of Indonesia have a strong *ratio legis* to conduct a re-actualisation exercise of human rights principles as stipulated in the Classical Constitutions of Nusantara. The concrete manifestation of re-actualisation efforts can be channelled through the Fifth Amendment of the 1945 Constitution of the Republic of Indonesia, through the amendment of various laws and through the decisions of the judges.

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