

The Relationship Between Law and Politics in the Government Regulation in Lieu of Law (*Perppu*) on Social Organizations

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Abstract

Perppu Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social Organizations is an example of a legal product where there is a relationship between Law and Politics. With this Perppu, the government has disbanded one of the social organizations, namely Hizbut Tahrir Indonesia (HTI), which was deemed not in accordance with Pancasila and the 1945 Constitution and wanted to change the state's ideology. The Perppu on Social Organizations issued by the government was promulgated by the People's Representative Council (DPR) on November 22 2017, but there are several factions that still reject the law. After observed, it is known that the factions that agree to the promulgation of the Perppu are government parties and those that reject it are political parties. opposition. Apart from that, we know that social organizations are one of the wings of politics, which are very effectively used to boost the votes of

political parties and mobilize the masses. This research aims to examine legal and political relations in Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social Organizations. The research results show that there are several substances in the Perppu that have given rise to controversy in society regarding criminal sanctions and the dissolution of social organizations. All legal products, including this Perppu, are not neutral; rather, they contain interests and biases, highlighting the close relationship between law and politics.

Keywords

Law and Politics, Perppu, Social Organization, Policy-making

A. Introduction

The government's dissolution of Hizbut Tahrir Indonesia (HTI) gave rise to various debates and legal turmoil in society. This cannot be separated from the legal basis for its dissolution, namely based on Perppu Number 2 of 2017 which changes the provisions for the dissolution of social organizations regulated in Law Number 17 of 2013 on Social Organizations. According to Kurniawan, the Perppu gives complete authority to the government to disband a social organization that is deemed to conflict with Pancasila and the 1945 Constitution.¹ Previously, the dissolution of social organizations had to go through a judicial process first, so it was the authority of the Judicial body, but now it has shifted to Executive Power.

The Social Organization Law itself indirectly curbs a person's freedom of association. Because the initial principles for the formation of this law did not originate from the values developed by society at large when the Social organization Law was created, it only addressed current issues, as stated in the formulation of Law Number 2 of 2013. This law does not consider the procedures in the judicial process; when a social organization is deemed to conflict with the ideology of the Indonesian state,

¹ Kurniawan, M. Beni. "Konstitusionalitas Perppu nomor 2 tahun 2017 tentang Ormas ditinjau dari UUD 1945." *Jurnal Konstitusi* 15, no. 3 (2018): 455-479.

the organization can be immediately dissolved. This reflects the government's full power to impose its will in the interests of a select few or a specific group within the government.²

The issuance of a legal product is certainly based on certain reasons and objectives. Law and Politics have a very strong and close relationship, both are interdependent and influence each other. Sometimes law influences politics, where law can create or design a political script. Meanwhile, politics also greatly influences law, where many laws are political products. Politicians can make laws to achieve state goals or even to achieve their political agenda. Law is part of the results of political struggle, and as a political product, law is the crystallization, formalization, or legalization of competing political wills, either through political compromise or the domination of the largest political forces.³

One example of the relationship between politics and law is the dissolution of the Hizbut Tahrir Indonesia (HTI) Social organization as a series of events resulting from the issuance of Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social Organizations. The Community and Perppu had been promulgated by the DPR even though at that time there was resistance from several parties. So, through this Perppu on Social Organizations, the executive or government has more authority than before to control social organizations.

² Ismail, Mahsun. "Analisis Undang-Undang Nomor 2 Tahun 2017 tentang Organisasi Kemasyarakatan dalam Teori Negara Hukum." *Jurnal Hukum Ekonomi Syariah* 2.1 (2019): 1-18.

³ Mahfud MD, Moh. *Politik Hukum di Indonesia*. (Depok: Rajawali Pers, 2018), p. 5; Pratama, Nur Aji. "Analisis Pembubaran Ormas Tanpa Proses Peradilan Pasca Penetapan UU No. 16 Tahun 2017 Tentang Ormas." *Rechtenstudent* 1, no. 2 (2020): 166-178. *See also* Hamidah, Linda Tri. "The Role of Citizens in Preventing Radicalism and Terrorism in Indonesia." *Journal of Creativity Student* 4, no. 1 (2019): 49-70; Ginting, Jamin, and Patrick Talbot. "Fundraising Aspect of International Terrorism Organization in ASEAN: Legal and Political Aspects." *Lex Scientia Law Review* 7, no. 1 (2023): 1-30; Dyanata, Nandu, et al. "Model of Supervision of Unregistered Community Organisations in Order to Realise Legal Certainty in Indonesia." *Pandecta Research Law Journal* 19, no. 1 (2024): 93-116.

There was a lot of debate and controversy over the issuance of the Perppu, many parties supported it but quite a few also rejected it. The opposing parties include Hizbut Tahrir Indonesia (HTI), Nusantara Kuasa Alliance, Afriady Putra Advocates, Alqonuni Sharia Law Foundation, and the Indonesian Islamic Da'wah Council. Apart from that, after the issuance of the Perppu on Social organizations, there were several actions carried out by opposing camps, one of which was the September 29 2017 Action or called Action 299 which was attended by around 50 thousand people.⁴

The DPR ratified the Perppu as Law of the Republic of Indonesia Number 16 of 2017 on the Determination of Government Regulations in Lieu of Law Number 2 of 2017. The decision-making meeting regarding the ratification of this Perppu took quite a long time, because the factions expressed different attitudes and opinions. At the meeting there were three groups of views expressed by the factions present. Namely agreeing, rejecting and agreeing with several notes. Fractions from PDIP, Golkar, NasDem, and Hanura agreed that the Perppu on Social organizations should be changed into law. Meanwhile, the Democratic Party, PKB, PPP, accepted the Ormas Perppu with the note that after it was promulgated, several articles would be immediately revised. And finally, Gerindra, PAN, and PKS expressed their refusal to ratify the Perppu as law.

The government feels it is necessary to issue a Perppu, one of which is because the old Social Organizations Law did not fully and completely regulate sanctions for Social organizations that conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia, resulting in a legal vacuum. However, as explained in the previous paragraph, the creation of a legal product can be to achieve state goals or even to achieve the political agenda of

⁴ Menkopolhukam. *Pemerintah Keluarkan Perppu No. 2/2017 tentang Perubahan atas Undang Undang Ormas*. Retrieved from <https://polkam.go.id/pemerintah-keluarkan-perppu-no-22017-tentang-perubahan-atas-undang-undang-ormas/>. See also Mangku, Dewa Gede Sudika, and Ni Putu Rai Yulianti. "Indonesia's Role in Combating Terrorism in Southeast Asia." *Unnes Law Journal* 7, no. 1 (2021): 89-114; Hamidah, Linda Tri. "The Role of Citizens in Preventing Radicalism and Terrorism in Indonesia." *Journal of Creativity Student* 4, no. 1 (2019): 49-70.

politicians and vice versa, that politics can be designed by a legal product, the birth of this Ormas Perppu is also inseparable from various goals and interests.

Therefore, from the descriptions above, this article will discuss further regarding Legal and Political Relations in the formation of Government Regulations in Lieu of Law (*Perppu*) Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social organizations.

The type of research used in this research is normative legal research, and the approach used is a statutory regulations approach and a case study approach. The legislative approach is to examine the laws or legal regulations that regulate the Ormas Perppu and other regulations that follow. The case study approach is to analyze cases that emerged because of the formation of this Perppu on social organizations, giving rise to controversy in society regarding criminal sanctions and the dissolution of social organizations. All legal products included in this case are Perppu, none of which is neutral, but contains interests and partialities, law and politics have a close relationship. like several social organizations that ultimately had to be disbanded.

The expected implication is to examine the existence of legal and political relations in Government Regulation in Lieu of Law (*Perppu*) Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social Organizations.

B. Pros and Cons of the Enactment of Perppu No. 2 of 2017 on Social Organizations

From a technocratic perspective, the enactment of Perppu No. 2 of 2017, also known as the Perppu on Social Organizations, initiated by the government, has sparked intense debate among the factions in the DPR. The use of voting as the final mechanism to decide whether the Perppu on Social Organizations should be ratified into law indicates a fundamental disagreement among the factions regarding the Perppu. The disagreements among the supporting and opposing factions can be mapped out into two main issues: first, whether the requirements for issuing a Perppu have been met, and second, whether there are guarantees for civil liberties and fair legal processes within it. Essentially, a

Perppu can only be issued if the country is in a state of emergency and such a situation is compelling.⁵ The conditions for a "compelling emergency" have been established by the Constitutional Court of the Republic of Indonesia through decision No. 138/PUU-VII/2009. The decision states that at least three conditions must be met for a situation to be categorized as a "compelling emergency."⁶

These conditions are *first*, there is an urgent need to resolve legal problems quickly based on the law. Second, there is no law intended to provide legal certainty regarding a situation, however, even if it did exist, the provisions of this law would not be sufficient. The third is that there is a legal vacuum that cannot be overcome by making laws through normal procedures because it will take quite a long time, while a situation requires certainty to be resolved immediately.⁷

Regarding the issue of whether or not the requirements for "compelling urgency" are met, when referring to the debate taking place in the DPR, the government believes that the issuance of the Perppu has fulfilled the three requirements of "compelling urgency" set by the Constitutional Court of the Republic of Indonesia. The government's belief is based on the following considerations. First, it is urgent to issue the Perppu on Social Organizations because there is a potential threat that will divide the life of the nation and state. This threat comes from anti-Pancasila social organizations, specifically social organizations that support the ideology of the Islamic caliphate. Second, the government believes that the Ormas Perppu is urgent to be issued because there is a legal vacuum. The legal vacuum in question is the limited scope of the law which only

⁵ Moza, Moza Dela Funika, Aryo Akbar Aryo, and Asri Muhammad Saleh Asri. "Tinjauan Yuridis Kedudukan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Dalam Menakar Negara Berada Dalam Ikhwal Kegentingan Memaksa Oleh Presiden." *Jurnal Panorama Hukum* 7, no. 2 (2022): 100-109.

⁶ Djalaluddin, Muhammad Mawardi, et al. "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 399-417.

⁷ Republic of Indonesia. *Penjelasan Pemerintah terhadap RUU Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2017 tentang Perubahan atas Undang-Undang Nomor 17 Tahun 2013 tentang Organisasi Kemasyarakatan menjadi Undang-Undang*, 2017

prohibits communism-Marxism-Leninism, while the ideology of the Islamic caliphate which has clearly emerged is not included in it. Therefore, the government believes that it is necessary to expand legal coverage for beliefs that conflict with Pancasila.

Apart from that, in terms of imposing sanctions, the government is of the opinion that so far there has been no law that effectively and efficiently regulates the imposition of sanctions against anti-Pancasila social organizations. In this case, Law no. 17 of 2003 is considered long-winded in regulating the imposition of sanctions on anti-Pancasila social organizations.⁸ Meanwhile, lastly or thirdly, in the government's view, the increasing intensity of activities of anti-Pancasila social organizations, specifically social organizations that support the ideology of the Islamic caliphate, means that the procedure for making laws and regulations cannot be carried out through the usual mechanism which will take quite a long time, therefore making laws must be taken through an extraordinary procedure, namely through a Perppu.

Assessing the reasons stated by the government above, several factions decided to support the Ormas Perppu so that it could be followed up into law. The factions that support the passing of the Ormas Perppu as law include F-PDIP, F-Golkar, F-Nasdem, and F-Hanura. In contrast to the government and the factions supporting the Perppu, the factions that reject the Ormas Perppu such as F-PKS, F-Gerindra, and F-PAN are of the view that the issuance of the Ormas Perppu basically cannot be said to fulfill the three requirements of "*compelling urgency*" set by Constitutional Court of the Republic of Indonesia. This view is based on the following opinions. Firstly, in the view of the factions above, the Perppu does not exist in situations or demands of urgent needs because national and state life in Indonesia is still in a normal state. Second, if the focus of the Perppu is on imposing sanctions on social organizations that are considered anti-Pancasila, then the issuance of the Perppu cannot be based on the reason of a legal vacuum because the

⁸ Republic of Indonesia. *Penjelasan Pemerintah terhadap RUU Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2017 tentang Perubahan atas Undang-Undang Nomor 17 Tahun 2013 tentang Organisasi Kemasyarakatan menjadi Undang-Undang*, 2017.

giving of sanctions against social organizations has been regulated in Law no. 17 of 2013. Thirdly, if there is a legal vacuum or the law is deemed inadequate, then the government can submit a draft amendment to law no. 17 of 2013 to the DPR and does not have to go through Perppu.

In contrast to the groups supporting the Perppu and those rejecting the Perppu, the factions that take the "*middle path*" or choose the option of accepting the Ormas Perppu with revised conditions such as F-PKB, F-PPP, F-Democrats do not seem to really care about whether or not the conditions for issuing a Perppu are fulfilled. The factions above actually focused their views on the substance of the Ormas Perppu, where these views were then included in the draft revision proposal. The second debate concerns the content or substance of the Perppu.

If we refer to the draft Perppu no. 2 of 2017 proposed by the government, in article 61 paragraph (1) it is explained that the mechanism for revoking the legal entity status of a social organization can be carried out by giving a written warning, stopping activities or directly revoking the legal entity status. As for the judicial mechanism, the judicial process can be carried out after the government has revoked the registration certificate or legal entity status.

In this case, the government considers that the imposition of the above sanctions is legal because it is based on the principle of *contrarius actus* where the official who has the authority to issue a statement or decision letter also has the authority to revoke it. Apart from regulating the mechanism for imposing administrative sanctions, the government also regulates the imposition of criminal sanctions as regulated in article 82 A paragraphs (2) and (3) which states that criminal provisions can be imposed on any person who is a member and/or administrator of a social organization who intentionally and directly or indirectly adhere to beliefs that are contrary to Pancasila ranging from imprisonment for a minimum of five years to a maximum of twenty years.

Responding to the content or substance of the Perppu above, debate between factions in the DPR became increasingly loud. Several factions that reject the Perppu on social organizations, such as F-PKS, F-GERINDRA, and FPAN, are of the opinion that it is not only the issue of the conditions for issuing

the Perppu that is considered problematic, but the content or substance of the Perppu is also considered problematic. Problems regarding the content or substance include the following:⁹

1. Direct revocation of legal entity status or registered certificates for social organizations that are deemed to adhere to, develop and spread teachings or understandings that conflict with Pancasila without prior judicial process is an action that is contrary to the principle of a just legal process (due process of law).
2. The existence of criminal provisions for members and/or administrators of social organizations who deliberately and directly or indirectly adhere to beliefs that conflict with Pancasila has the potential to become a new criminalization tool under the pretext of being anti-Pancasila.

In contrast to the factions that reject the Ormas Perppu, the factions supporting the Ormas Perppu such as F-Pdip, F-Golkar, F-Nasdem, and F-Hanura actually hold the opposite view. The views of the factions above are as follows:¹⁰

1. The accusation that the Ormas Perppu has negated the principle of a just legal process (due process of law) is not true. The Ormas Perppu does not in any way prevent legal proceedings for social organizations that have been subject to administrative sanctions in the form of revocation of registered certificates or legal entity status. For social organizations that have been disbanded, legal mechanisms can still be pursued through judicial challenges.
2. The accusation of criminal provisions as a means of criminalization in the Perppu on Social organizations is a baseless accusation because in the process of imposing criminal sanctions, this is entirely within the power of the judiciary. Therefore, accusations of criminal provisions as a tool for political criminalization are irrational.

⁹ Sukri, Mhd Alfahjri, Muhammad Hasan Syamsudin, and Kharisma Firdaus. "Dinamika Politik Disetujuinya Perppu No. 2 Tahun 2017 Tentang Organisasi Kemasyarakatan Menjadi Undang-Undang Nomor 16 Tahun 2017." *Jurnal Ilmu Sosial dan Ilmu Politik Malikussaleh (JSPM)* 4, no. 2 (2023): 408-422.

¹⁰ Sukri, et.al.

Meanwhile, the "middle way" factions such as F-PKB, F-PPP, and F-Democrats, which from the beginning chose the option of accepting the Perppu with revision conditions, objected to the process of dissolving social organizations that was regulated without going through a judicial mechanism first. Apart from that, the factions above also regret the criminal provisions in the Perppu. Therefore, the factions above included their objections in the proposed revision.

2. The Relationship between Law and Politics in the Government Regulation in Lieu of Law on Social Organizations

The existence of Social organizations (Ormas) in social and national life is a form of the state's commitment to realizing the freedom of association and assembly guaranteed in the constitution.¹¹ The state hopes that social organizations can participate in realizing national goals and policies within the framework of the Unitary State of the Republic of Indonesia which is based on Pancasila and statutory regulations.¹² Law is a political product so that each character of a legal product will be determined and colored by the balance of power or political configuration that gave birth to it. This is a fact where every legal product is a decision making, namely a political decision, so it can be seen that law is the crystallization of every political thought that interacts among officials or politicians.¹³

In the history of the formation of Perppu in Indonesia, the seven presidents who used their authority to create and form Perppu generally showed criteria including; is urgent due to time constraints, contains elements of a crisis, a legal vacuum. There are inadequate regulations that require improvement, as well as

¹¹ Trinanda, Desip. "Hak Asasi Manusia dan Perppu Ormas (Analisis Perlindungan Hukum Perspektif Siyash Syariyyah)." *IJTIHAD* 36, no. 2 (2020).

¹² Winata, Muhammad Reza. "Politik Hukum dan Konstitusionalitas Kewenangan Pembubaran Organisasi Kemasyarakatan Berbadan Hukum oleh Pemerintah." *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 445-464.

¹³ Mahfuz, Abdul Latif. "Faktor yang mempengaruhi politik hukum dalam suatu pembentukan undang-undang." *Jurnal Kepastian Hukum dan Keadilan* 1, no. 1 (2020): 43-57.

delays in the implementation of legal provisions.¹⁴ These criteria are not cumulative in the process of forming Perppu no. 2 of 2017 can be said and looked at the conditions. A country that may still be in a conducive situation in the context of organization and society. In this context, the government ignores aspects that are the principles for forming legislative regulations using a legally valid process.

The interpretation of compelling urgency in a Perppu is generally the president's right and subjectivity and this is a problem in determining the parameters for interpreting it.¹⁵ In fact, some Perppu do not fulfill the urgency of legal needs. The issuance of Perppu No. 2 of 2017 on Amendments to Law No. 17 of 2013 on Social Organizations indirectly gave rise to many opinions and questions or statements regarding whether Perppu No. 2 of 2017 was issued to dissolve one of the social organizations that the government considered to be deviating from the principles and objectives of its establishment in Indonesia, in this case HTI.

The dissolution of Hizbut Tahir Indonesia (HTI), which is increasingly being brought closer to discussions of dissolution with the Perppu among the government and in the community, is certainly something that is considered very worrying for all social organizations in Indonesia. Because, looking at the substance of the articles of amendment to the contents of this Perppu, there are multiple interpretations, namely that the targets and objectives are not only aimed at groups that are contrary to Pancasila, such as radicalism, terrorism and Marxism, but can also target other groups of social organizations with good goals in social life because the government can dissolve it

¹⁴ Patty, Johny Harry Isabela. "Kegentingan yang Memaksa dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Nomor 1 Tahun 2022: Studi Mengenai Pemilihan Umum di Papua." *Jurnal Hukum Caraka Justitia* 3, no. 1 (2023): 66-80.

¹⁵ Siddiq, Muhammad. "Kegentingan Memaksa Atau Kepentingan Penguasa (Analisis Terhadap Pembentukan Peraturan Pemerintah Pengganti Undang-Undang (PERPPU))." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 48, no. 1 (2014); Marwan HSB, Ali. "Kegentingan Yang Memaksa Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang (Compelling Circumstances of the Enactment Government Regulation In Lieu of Law)." *Jurnal Legalislasi Indonesia* 4, no. 1 (2017): 109-122.

unilaterally and for various reasons become the basis for its dissolution. Apart from that, this political configuration was also seen in the session held by the People's Representative Council (DPR) to approve and/or reject this Perppu. With two options to approve or reject this Perppu, it is an inseparable part in relation to legal politics, a policy of two institutions with different duties and authorities.

If observed critically, the emergence of the Perppu on Social organizations began with a strategic topic, namely radicalism. The issue of the development of radicalism spread by a number of social organizations has prompted the Indonesian government to act decisively. In this case, radicalism is defined as a view that wants to make fundamental changes in accordance with the ideology it adheres to, accompanied by acts of violence as a form of rejection. Some indicators of radicalism include the hatred of a certain group towards the legitimate government because it does not carry out religious orders, namely implementing Islamic law. Another indicator is the refusal of certain social organizations to sing the national anthem and honor the Red and White Flag.¹⁶

The issue of radicalism above then moves the government as a policy formulator to formulate what policies should be taken to resolve this problem. After an issue arises and receives a response from the government, public policy making begins to enter the initial stage, namely the policy formulation stage. Policy formulation or formulation is a very complex and dynamic process where various components make different contributions to it. The formulation stage itself includes several processes. The first is the stage of collecting and analyzing issues, because not all issues can be processed into public policy. Next is the stage of considerations and agenda preparation. After that, planning and problem formulation are carried out and then decisions are made regarding the context of public policy, in the form of selection and details of objectives, means, time sequence and activities.

This formulation stage is the stage most laden with political elements. This public policy is formulated amidst various

¹⁶ Sanur, Debora. "Pengesahan Perppu Tentang Organisasi Masyarakat Menjadi Undang-Undang dalam Perspektif Politik." *Majalah Info Singkat Pemerintahan Dalam Negeri* 9 (2017)

existing political forces, such as the power of political parties, interest groups, the press, NGOs, and others. These political forces try to influence the content of public policies that will be made by the government.¹⁷

It is at this stage that various political forces, in this case political parties, try to defend the interests of their group. According to Miriam Budiardjo (2011), political parties are organized groups whose members have the same orientation, values and ideals.¹⁸ The goal of this group is to gain political power and seize political position by constitutional means to implement its program. One of the functions of political parties is to combine interests, which are then processed in the formulation of interests. Without aggregation and articulation, these opinions will be confused and conflict with each other. Aggregation in a broad sense is one of the functions of party communication. The party then formulates it into policy proposals. These policy proposals are included in the party program which is then fought for through parliament to become general policy so that the demands and interests of the community can be conveyed to the government through political parties.

In this case, it is the interests of the community or group that then become the basis for the attitude of political parties in responding to the government's proposal that the Perppu on Social Organizations be made into law. The analysis was carried out by looking at the dynamics of the formulation of the Perppu based on two things, first is the mass base of political parties and second is based on the position of the political party, whether they support or oppose the government.

If we examine the journey of this Perppu, it began when the Indonesian government under the leadership of President Joko Widodo on July 10, 2017, issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social Organizations. The Coordinating Minister for Political, Legal and Security Affairs who was in office at that time, Wiranto, in a press release (12/7/2017) at the office of the Coordinating Ministry for Political, Legal and Security

¹⁷ Nugroho, Riant. *Public Policy*, (Jakarta: PT Gramedia Pustaka Utama, 2018).

¹⁸ Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. (Jakarta: Bintang Tiga, 2011).

Affairs in Jakarta, gave various arguments regarding the issuance of the Perppu which, if we draw conclusions, are as follows:¹⁹

1. This Perppu was issued within the framework of the government's duty to protect the entire nation and the bloodshed of Indonesia.
2. Social organizations (CSOs) in Indonesia, which currently reach 344,039 social organizations, have activities in all areas of life from the national to regional level, they must receive guidance so they can contribute positively to national development.
3. In reality, currently, there are many activities of social organizations (ormas) that conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia which could threaten the nation and state.
4. It is felt that Law Number 17 of 2013 on Social Organizations has not been effective in preventing the spread of ideology that is contrary to Pancasila and the 1945 Constitution, both in terms of substance regarding norms, prohibitions and sanctions as well as existing legal procedures. One of them is that there is no principle that the institution that issues the permit or provides approval is the institution that has the authority to revoke or cancel it (*contrario actus*).
5. So far, the understanding of teachings and actions that are contrary to Pancasila has been formulated narrowly, namely only limited to the teachings of Atheism, Marxism and Leninism. Even though there are other teachings that also conflict with Pancasila and the 1945 Constitution.

Based on the reasons above, the government considers it necessary to issue a Perppu. In Perppu Number 2 of 2017, 5 articles in the previous Law on Social Organizations were revised and 18 articles were deleted. The 5 articles in Law Number 17 of 2013 on Social Organizations which were revised by this Perppu are Articles 1, 59, 60, 61 and 62. The substance that has been debated by several parties, one of which is Article 61 of the old Law on Social organizations, namely Law Number 17 of 2013 states that sanctions against social organizations that commit violations are carried out in stages starting from written

¹⁹ Menkoplhukam. *Pemerintah Keluarkan Perppu No. 2/2017 tentang Perubahan atas Undang Undang Ormas.*

warnings, termination of aid/or grants, temporary suspension of activities, and finally revocation of registered certificates or revocation of legal entity status. In the old Law on Social Organizations in article 68 it was stated that the dissolution of a social organization could only be carried out after a court decision had permanent legal force. The aim is so that there is no arbitrariness on the part of the government in dissolving a social organization.

However, Perppu Number 2 of 2017 abolished the mechanism for imposing sanctions on social organizations contained in Law Number 17 of 2013. This can be seen in Articles 61 and 62 of the Perppu. Article 62 paragraph (3) states "Ministers who carry out government affairs in the field of Law and Human Rights are in accordance with the authority to revoke the status of legal entities". Then in Article 80 A it is emphasized that the revocation referred to in article 61 also constitutes the dissolution of social organizations. This provision shows that the dissolution of a social organization is within the full authority of the government. So, it is very possible that the dissolution of an organization is only based on a government political decision based on the interests of some parties to achieve certain political goals.

This could have a negative impact on freedom of association and assembly in Indonesia. The authority to disband social organizations which are centralized in executive power will create a state of power, not a state of law. In fact, in the concept of a legal state, the exercise of power by the government should not be centralized. The rule of law (*rechtsstaat*) itself is characterized by limitations on executive power. Apart from that, freedom of association which is included in Human Rights (Freedom of Association), namely protecting the right of every individual to gather and join with other people to form an organization and also protecting the freedom of the group will be lost.²⁰

Testing of the Perppu on Social organizations to the Constitutional Court has also been carried out by several parties, but none of the requests were accepted by the Constitutional

²⁰ Nasution, Adnan Buyung. *Instrumen International Pokok Hak-Hak Asasi Manusia*. (Jakarta: Yayasan Obor Indonesia, 1997).

Court so this Perppu remains in effect and no articles have been changed or deleted. Several parties who submitted requests for material and formal review to the Constitutional Court included the Alqonuni Sharia Law Foundation, represented by Chandra Furna Irawan, who in their petition stated that Perpu Number 2 of 2017 was implemented without any urgent legal issues and without any legal vacuum that occurred due to the absence of law and if this Perpu was drafted due to a legal vacuum, then the President can still take other measures, including submitting a draft amendment to Law Number 17 of 2013 on Social Organizations to the House of Representatives of the Republic of Indonesia.²¹

Apart from that, the parties who submitted the petition to the Constitutional Court were Herdiansyah and Ali Hakim Lubis. The reason for the Petitioners to submit a formal review was because according to the Petitioners the stipulation of the Perppu by the President did not meet the requirements of a compelling urgency so that the formation of the Perppu did not meet the requirements according to the 1945 Constitution and therefore had to be declared to be contradictory and have no binding legal force. Apart from that, the Perppu removes Article 68 of Law Number 17 of 2013 on Social Organizations which results in the loss of the role of the courts in imposing sanctions on social organizations that are deemed to violate.²²

The Indonesian Islamic Da'wah Council, the Inter-Religious Silaturrahim Forum Foundation, the Indonesian Muslim Youth Association, the Hidayatullah Association, H. Munarman, S.H are also parties that oppose the Perppu and are testing it with the Constitutional Court. They feel that they have constitutional rights as stated in Article 1 paragraph (3), Article 28, Article 28C, Article 28D paragraph (1), and Article 28G paragraph (1) of the 1945 Constitution are impaired by the enactment of the norms of Article 1 points 6 to 21, the phrase "or other understanding" in the explanation of Article 59 paragraph (4) letter c, Article 62 paragraph (3), Article 80A, Article 82A paragraph (1) and

²¹ Constitutional Court of the Republic of Indonesia. *Ikhtisar Putusan Perkara Nomor 48/PUU-XV/2017*.

²² Constitutional Court of the Republic of Indonesia. *Ikhtisar Putusan Perkara Nomor 52/PUU-XV/2017*.

paragraph (2) of the Social organization Law (Summary of Case Decisions Number 2/PUU-XVI/2018). Apart from that, there are also Drs. Tatang Budiman Soelaim and Zainal Abidin, SHI, who are the General Chair and secretary of the Central Leadership Council of the Nusantara Alliance, feel very disadvantaged by the issuance of the Ormas Perpu, because it hampers the means for education and community empowerment; Formally, the issuance of the Ormas Perpu does not meet the urgency of the crisis that forced it to be issued.²³

Ir. H. Ismail Yusanto, MM, who is the spokesperson for HTI, explained that the enactment of the Ormas Perpu, especially Article 59 paragraph (4) letter c, Article 61 paragraph (3), Article 62, Article 80, and Article 82 A had harmed their constitutional rights. Apart from that, the issuance of the Perppu on Social Organizations is not in accordance with the formal requirements, namely in this case there are no urgent and compelling circumstances, where arbitrariness in the use of the compelling and urgent conditions causes the HTI organization that the Petitioner founded to be disbanded without prior judicial proceedings along with all sanctions. others followed suit.²⁴

All requests for review to the Constitutional Court were not granted, among the reasons are:

1. Because the House of Representatives in its Plenary Session on 24 October 2017 has approved the Government Regulation in Lieu of Law Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Social Organizations into Law. So, the Petitioners' petition has lost its object.
2. However, apart from that, for reasons of rejection of the review of the law which ratifies the Perppu, according to the Constitutional Court, the authority to grant legal entity status to a social organization is the authority of the Minister who carries out affairs in the field of law and human rights in accordance with the principle of *contrario actus*, that The minister also has the authority to revoke the legal entity status of a social organization that commits violations.

²³ Constitutional Court of the Republic of Indonesia. *Ikhtisar Putusan Perkara Nomor 41/PUU-XV/2017*

²⁴ Constitutional Court of the Republic of Indonesia. *Ikhtisar Putusan Perkara Nomor 39/PUU-XV/2017*

3. Whereas Article 80A of the Social Organizations Law actually provides fair legal certainty and equal treatment before the law for any social organization that violates the prohibitions as regulated in other provisions in the Social organizations Law so that its legal entity status is revoked. This provides legal certainty, especially to the public. Because, by simultaneously dissolving a social organization whose legal entity status has been revoked, the public will not be confused about whether the social organization still exists or not. Apart from that, for social organizations that have been revoked but not disbanded, it is unfair to other social organizations, because they can still carry out their activities like social organizations that have not committed violations.

According to M. Beni Kurniawan, procedurally the issuance of the Perppu on Social Organizations is in accordance with the requirements for the issuance of the Perppu based on the Constitutional Court's interpretation of the "phrase of compelling urgency". In the old Social Organizations Law, the dissolution of a Social organization took a long time, up to years, from a written warning to a court decision. This mechanism is not effective if used to disband a social organization that could threaten the sovereignty of the Unitary State of the Republic of Indonesia. However, Article 61 and Article 62 of Perppu Number 2 of 2017 allows the government to revoke the legal entity status of social organizations unilaterally and without prior examination in court. This will give rise to a dictatorial government.²⁵

Several backgrounds for the issuance of this Perppu on social organizations have been outlined in the previous discussion. According to Prof. Mahfud MD on the Rosi show on Kompas TV on September 28, 2017, the emergence of this Perppu on social organizations is similar to the situation when Law Number 17 of 2013 on Social Organizations was enacted. In 2013, there was a need to disband a certain anarchist organization, but it couldn't be disbanded, so a law was created

²⁵ Kurniawan, M. Beni. "Konstitusionalitas Perppu nomor 2 tahun 2017 tentang Ormas ditinjau dari UUD 1945." *Jurnal Konstitusi* 15, no. 3 (2018): 455-479.

to provide for the issuance of a first, second, and third warning before the organization could ultimately be dissolved. This situation mirrors the current scenario, where there is an organization that must be disbanded, in this case, Hizbut Tahrir Indonesia (HTI), because its movement was ideologically driven. Since its movement concerns ideology, disbanding it under the old Social Organizations Law was not feasible as its regulations were inadequate. Therefore, the government considered the country to be in an emergency due to the massive infiltration of HTI's doctrine, which is contrary to Pancasila, and thus the Perppu on social organizations was issued to revise the old Social Organizations Law.

The Perppu on Social Organizations issued by the government was enacted by the House of Representatives (DPR) on November 22, 2017. However, several factions, including Gerindra, PAN, and PKS, rejected the law. On the other hand, factions that supported the Perppu and its enactment included PDIP, GOLKAR, NASDEM, and HANURA, while PKB, PPP, and Demokrat agreed to the enactment but with some notes.

It can be observed that the factions agreeing to the Perppu's enactment were government parties, while those rejecting it were opposition parties. Additionally, it is known that social organizations (Ormas) serve as one of the political wings, effectively used to boost political party votes and mobilize masses. Evidently, religious issues, especially Islamic doctrines, remain popular. It is possible that the enactment of this Perppu aimed to anticipate the general elections at the time, to prevent the proliferation of radical organizations. HTI, which was disbanded, might join one of the opposition parties rejecting the Perppu or even establish its own party. All legal products, including the Perppu, are not neutral but contain interests and partiality towards the strong and powerful factions.

As previously explained, law and politics have a close relationship. In this Perppu on social organizations, there is also a connection between politics and law. The background for the creation of this Perppu is that, according to the government, the old Social Organizations Law did not comprehensively regulate effective sanctions for social organizations that contradict Pancasila and the 1945 Constitution of the Republic of Indonesia, resulting in a legal vacuum. Moreover, there are certain social

organizations whose activities contradict the principles outlined in their articles of association and bylaws previously registered and approved by the government and contradict Pancasila and the 1945 Constitution.

One organization deemed contrary to Pancasila and the 1945 Constitution is Hizbut Tahrir Indonesia (HTI), which can be disbanded by the government. According to Prof. Sudjito, SH., M.Si (2017), "The issuance of Perppu Number 2 of 2017 can be categorized as the formalization of law, which is an effort to rationalize and legitimize the actions of the ruling elite against other parties deemed to 'disturb' their political interests. As with HTI or other similar organizations, they can be classified as such other parties."

C. Conclusion

Perppu Number 2 of 2017, which amends Law Number 17 of 2013 on Social Organizations, exemplifies the intersection of law and politics. Through this regulation, the government dissolved Hizbut Tahrir Indonesia (HTI), a social organization deemed incompatible with Pancasila and the 1945 Constitution, with the aim of altering the state ideology. The Perppu, which was later enacted by the House of Representatives (DPR) on November 22, 2017, faced significant opposition from political factions such as Gerindra, PAN, and PKS, while it gained support from government-aligned parties including PDIP, Golkar, Nasdem, and Hanura. PKB, PPP, and Demokrat supported the Perppu's enactment with certain reservations.

The political divisions surrounding the Perppu clearly reflect the alignment of government parties in favor of its enactment, and opposition parties against it. Social organizations, which often serve as political wings to strengthen party support and mobilize mass votes, are particularly central in this context. The Perppu's provisions, particularly Articles 62 paragraph (3) and 80A, provoked public controversy, with critics raising concerns over the criminal sanctions and the authority granted to the government to dissolve organizations. These provisions, which are highly subjective and open to interpretation, endow the government with considerable power to disband organizations without judicial oversight, raising the

potential risk of authoritarian governance rather than a rule-of-law state.

It is clear that legal instruments like the Perppu are not neutral; they reflect the interests and biases of dominant political factions. As discussed, law and politics are inextricably linked, and the issuance of Perppu Number 2 of 2017 serves to legitimize the actions of the ruling elite against political groups or organizations perceived as threats to their power. HTI, and similar organizations, are positioned as such threats, highlighting the politicized nature of this legal response.

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