

Coercive Urgency in Deactivation and Dissolution of Non-Government Organizations in Indonesia

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Abstract— Freedom of association is a right which is guaranteed in the 1945 Constitution of the Republic of Indonesia. That freedom is manifested in the formation of Non-Government Organizations (NGOs) in society. However, the establishment and work of the organization are also regulated by statutory provisions. For example, the existence of the right of the state to dissolve Non-Government Organizations that deviate from the ideology of Pancasila. The legal basis for deactivate and dissolving NGOs is Government Regulation in Lieu of Law (Perpu) Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Non-Government Organizations. That provision is published because there was a coercive urgency. The State has authority to control the work and activity from organization, in order to maintain the organization to not deviate from the principles of the rule of law and democracy. Coercive Urgency reason should not be used without objective consideration. This research examines how the coercive urgency is issued which is make the Perpu can be issued. Those problems are carried out with normative legal research. There is a threat to basic ideology can be considered as a coercive urgency. This can be accepted as long as the principle of Law in the deactivate and dissolution of NGOs carried out properly.

Keywords— Non-Government Organization (NGO), Coercive Urgency, Government Regulation in Lieu of Law (Perpu).

I. INTRODUCTION

1.1 Background

Freedom to associate is not only in terms of having the freedom to establish an organization / union only, but more than that is also guaranteed the implementation and purpose of the organization in accordance with the 1945 Constitution of the Republic of Indonesia. This is one form of organizing ideas, thoughts, and views in society that democratic through the formation of Non-Government Organization, a form of natural rights that is fundamental and inherent in the every aspect of life together with humanity.¹ As a social creature (*zoon politicon*), every human being will certainly not be separated from interaction and communication with other humans, and in the process of interaction, the behavior of each person to choose friends in social relationships is something that is natural. Without having to be forced or bothered by other parties, even in determining whether to associate or not associate with others. Thus, freedom of association and assembly is one form of

democracy in which democracy implies equality and freedom (liberty).

Freedom of association as part of democracy and human rights includes a right of association, which includes civil and political rights, economic rights and social rights as well as cultural rights which have two sides, namely protecting the right of every individual to join the other and also the side protects the freedom of the organization itself.

The Government put efforts to safeguard state sovereignty from ideological threats that are not in line with the Pancasila and the 1945 Constitution and efforts to reorganize the existence of Non-Government Organizations in Indonesia to be able to contribute to development. The government conducts curbing of NGOs through a discretion.² The Government through the Ministry of Coordination for Political Law and Human Rights issued Government

¹Jimly Asshiddiqie, *Freedom of Association, Dissolution of Political Parties, and the Constitutional Court*, (Jakarta: Konstitusi Press, 2005), p. 22.

²Article 1 Number 9 of Law Number 30 Year 2014 concerning *Government Administration* explains the notion of discretion as a decision and / or action determined and / or carried out by a government official to resolve concrete problems encountered in the administration of government in terms of laws and regulations that provide options, not regulating, incomplete or unclear, and / or government stagnation.

Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Non-Government Organizations (Perpu No. 2 of 2017). The issuance of Perpu No. 2 of 2017 is inseparable from the discourse that the Government takes a firm stand against mass organizations that are considered anti-Pancasila. Because such organizations are considered to be latent threats that need to be watched out for. This model organization is seen to undermine the building of the Unitary Republic of Indonesia.

The legal basis for the issuance of the Perpu, namely Article 12 of the 1945 Constitution, is the legitimacy of the Government to issue a legal norm or regulation relating to the state of danger or state of emergency, namely that *"the President declared a state of danger. The conditions and consequences of the state of danger are established by law"*. Article 22 paragraph (1), (2) and (3) of the 1945 Constitution states that *"in matters of urgency, force. The President has the right to set government regulations in lieu of laws; The Government Regulation must obtain the approval of the House of Representatives in the following trial; if it does not get approval, then the Government regulation must be revoked"*.

Article 1 number (4) of Law Number 12 of 2011 concerning Formation of Regulations that read *"Government Regulations in lieu of Laws are Regulations that are stipulated by the President in matters of compulsion concerned"*. Therefore, from the stipulation, that the President's requirement to issue a Perpu is the existence of compulsive matters of concern.

Perpu No. 2 of 2017, the government textually indicates a compelling urgency so a Perpu must be formed. However, contextually there are problems, for example why Perpu No. 2 of 2017 must be formed. The various rejection of this Perpu also came from a number of levels of society and practitioners in Indonesia who considered the contents of the Perpu to be a setback and a bad precedent in the context of democracy and human rights in a legal country.³ One of the most crucial things in Perpu No. 2 of 2017, namely eliminating and revoking Article 70 of Law Number 17 of 2013 concerning Non-Government Organizations related to the mechanism of the judicial process in dissolving mass organizations.

This Perpu was then used as the basis for the Government to deactivate and dissolve the Indonesian

Hizbut-Tahrir (HTI) mass organization, which was considered to have deviated from the ideology of Pancasila and the 1945 Constitution. Perpu No. 2 of 2017 must examine objectively because the implications of deactivate and dissolution of a mass organization will have an impact on the existence and survival of other Non-Government Organizations in Indonesia. The reason for the urgency forced the issuance of Perpu No. 2 of 2017 triggered polemic from philosophical, juridical and sociological aspects. This problem is related to the material rules of an organization that meet the provisions so it is eligible to be inactive and dissolved. It also relates to the criteria for the presence of urgency to force the deactivate and dissolution process.

1.2 Research Problems

This study seeks to address the issue of how to determine the element of coercive urgency (urgency) regarding the deactivation and dissolution of Non-Government Organizations in Government Regulation in Lieu of Law (Perpu) Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Non-Government Organizations.

1.3. Theoretical Framework and Conceptual Framework

1.3.1 Rule of Law Theory

Plato explained in "the Statesman" and "the Law", what can be realized is the second best form that places the rule of law. The government that is able to prevent the decline of one's power is regulated by law. Aristotle asserted that to achieve the best life (the best life possible) can be achieved by the rule of law. Law is a form of collective wisdom of citizens (collective wisdom), so the role of citizens is needed in its formation.⁴

A state is said to be a state of law or *"rechtsstaat"*, when both the state and humans are subject to legal orders. *"A sovereign law, law above all things including the state"*.⁵ Stahl put forward the concept of the rule of law, which is referred to as *"rechtsstaat"*, including four important

⁴George H. Sabine, *"A History of Political Theory"*, Third Edition (New York-Chicago-San Francisco-Toronto-London; Holt, Rinehart and Winston, 1961), p. 35-86 and 88-105, see Jimly Asshiddiqie, *Constitutional Law and Pillars of Democracy; Law, Media, and Human Rights Thought* (Jakarta; Constitution Press, 2006), p. 147.

⁵ E. Utrecht, *The Introduction of Indonesian Law*, (Jakarta: PT. Ikhtisar Baru, 1989), P. 334.

³Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "Indonesia is a state of law".

elements, namely: Protection of human rights;⁶ Division of powers; Governance based on the law; and Judicial administration of the state.

A slightly different characteristic of the legal state was stated by AV Dicey to mention three important features of "The Rule of Law", namely:⁷ Supremacy of Law; Equality before the Law; and Due Process of Law. Furthermore, the International Commission of Jurist also determined the conditions of representative government under the rule of law: There are constitutional protections, there are free and impartial courts, there are free elections, there are freedom to express opinions and associations, there are opposition duties, and there is civic education.

Thomas Carothers explained the Rule of Law can be defined as a system in which laws are understood by the public, are clear in their meaning, and are applied equally to everyone. (Law) safeguarding and supporting civil and political freedoms which have gained status as universal human rights over the last half century. Specifically anyone suspected of a crime has the right to a fair hearing (prompt hearing) and the presumption of innocence until found guilty. The main institutions of the legal system, including the courts, prosecutors and the police, must be fair, competent, and efficient. Judges are impartial and independent, not influenced or manipulated by politics. Perhaps most important, the government is integrated into a comprehensive legal framework, its officials accept that the law will be applied to their own behavior, and the government seeks to obey the law.⁸

According to Sri Soemantri, the most important thing in the rule of law is that the government in carrying out its duties and obligations must be based on laws or regulations; There are guarantees of human rights (citizens); The distribution of power within the State; Supervision of judicial bodies (*rechterlijke controle*).⁹

The Southeast Asian and Pacific Jurists put forward the requirements of the rule of law as mentioned in the book entitled "The Dynamics of the Rule of Law in the Modern Age" that there are some appropriate elements, namely: the existence of constitutional protection in the sense that

constitutions other than rather than guaranteeing individual rights, must also determine ways or procedures to obtain protection for guaranteed rights; free and impartial judiciary; freedom to express opinions; free elections; freedom to organize and oppose; and civic education (citizenship).¹⁰

Jimly Asshiddiqie, provided the twelve principles, pillars, main supporting the founding of the rule of law, namely:¹¹ Supremacy of Law (Supremacy of Law); Equality in law (Equality before the Law); Principle of legality (Due Legal Process); Limitation of power; Independent supporting organs; Free and impartial justice; State Administrative Court; Constitutional Court (Constitutional Court); Protection of Human Rights; Be democratic (Democratische Rechtsstaat); Functioning as a means of realizing the purpose of statehood (Welfare Transparency); Transparency and social control.

1.3.2 The Theory of Democracy and the Freedom of Association

The concept of democracy was born from ancient Greece which was practiced in state life between the IV century BC to the VI century BC. The democracy that was practiced at that time was direct democracy, meaning that the people's right to make political decisions was carried out directly by all citizens or citizens.¹²

A democratic government is different from the form of government in which one person holds power, such as a monarchy, or a small group. Democracy means something different from a dictatorship or tyranny, so that it focuses on the opportunity for the people to control their leaders and overthrow them without the need for revolution.

There are several types of democracy, but there are only two basic forms. Both of them explain how all people carry out their wishes. The first form of democracy is direct democracy, where all citizens participate directly and actively in government decision making. In most modern democracies, all people are still one sovereign power but political power is exercised indirectly through representation; this is called representative democracy. The concept of representative democracy emerged from the ideas and

⁶Jimly Asshiddiqie, *Op-Cit*, p. 122.

⁷*Ibid*.

⁸Epsitema Institute, HuMa, *Indonesian Legal Figure Series, SatjiptoRaharjo and Progressive Law, Urgency and Criticism*, (Jakarta: Epsitema Institute, 2011), p. 150

⁹Fatkurohman, Dian Aminudin and Sirajudin, *Understanding the existence of the Constitutional Court in Indonesia*, (Bandung: Citra Aditya Bakti, 2004), p. 7.

¹⁰Abdul Aziz Hakim, *State of Law and Democracy in Indonesia, First Edition*, (Yogyakarta: Student Library, 2011), p. 172.

¹¹Jimly Asshiddiqie, *Constitutional Law and Pillars of Democracy, Third Matter*, (Jakarta: SinarGrafika, 2015), p. 131-132.

¹²Nur SayidSantosoKristeva, *Left Discourse Manifesto*, (Yogyakarta: Student Library, 2015), p. 74.

institutions that developed in the Middle Ages of Europe, the Enlightenment Era, and the Revolution of the United States and France.

The development of society towards democratization, symptoms of group activities and organizing grow rationally following the natural demands of everyone in society. The tendency to group and organize is a necessity and a natural need that is inevitable and cannot be limited by other parties. This is what is commonly referred to as organizational imperatives in human life in society. Power in an organization can be obtained based on religious legitimacy, elitist ideological legitimacy, or pragmatic legitimacy, which tends to be an absolute and authoritarian power because the ruling party has special authority and feels more knowledgeable in carrying out any organizational affairs.¹³

Democracy in a wider definition according to the writer can be interpreted also as equality in realizing ideas, ideals and will in the context of life as a nation, society and personally. According to W. Friedmann¹⁴ "In a formal and general sense of equality, is a postulate of justice. Aristotle's "distributive justice" demands the equal treatment of those equal before the law. This like any general formula of justice is however, applicable to any form of government or society; for it leaves it to a particular legal order to determine who are equal before the law. Quality in rights, as postulated by the extension of individual rights, this principle, to all citizens is distinct from a privileged minority".

2.3 The Concept of Human Rights

Law Number 39 of 1999 concerning Human Rights in conjunction with Law Number 26 of 2000 concerning Human Rights Courts, states that Human Rights are a set of rights inherent in the nature and existence of human beings as God's creatures, the Almighty and His gifts. which must be respected, upheld and protected by the state, law, government and everyone, for the sake of honor and protection of human dignity.¹⁵ Thus, human rights are basic rights possessed by humans which they carry since birth

relating to their dignity and dignity as the creation of God Almighty that must not be violated, eliminated by anyone.¹⁶

The Indonesian Constitution regulates restrictions on human rights in Article 28J paragraph (2) of the 1945 Constitution. The article states: "In exercising their rights and freedoms, every person is obliged to submit to limitations imposed by law with the sole purpose of guaranteeing the recognition and respect for the right and the freedom of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society. "

There are no restrictions that can be imposed on the exercise of the right to assembly, unless such restrictions are imposed by law, and are needed in a democratic society in the interests of national security and public safety, public order, protection of the health or morals of the people, or protection of rights and freedoms other people.

Likewise with the right to association. Restrictions can only be made if based on law, and are needed in a democratic society in the interests of national security and public safety, public order, protection of the health or morals of the people, or protection of the rights and freedoms of others.

2.4 The Concept of Non-Government Organization

Building a nation can be achieved through a process that begins with the awareness of its people both individually or with groups of people who run with the same foundation and goals. The ideals in carrying out the objectives of the activity, and shared interests are built with awareness and groups that are believed to be able to solve common interests in a popular forum called the organization.¹⁷ NGOs are organizations that are established and formed by the community voluntarily based on shared aspirations, desires, needs, interests, activities and goals to participate in development for the achievement of the objectives of the Unitary Republic of Indonesia based on Pancasila and the 1945 Constitution of the Unitary State of the Republic of

¹³Franz Magnis-Suseno, *Political Ethics: Basic Moral Principles of Modern Statehood*, (Jakarta; PT. Gramedia Pustaka Utama, 1999), p. 30

¹⁴W. Friedmann, *The State and The Rule of Law in Mix Economy*, (London: Steven & Son, 1971), p. 385.

¹⁵Article 1 paragraph (1) of Law Number 39 of 1999 concerning *Human Rights* of Laws Number 26 of 2000 concerning Human Rights Courts.

¹⁶Didi Nazmi, *Law State Concept* (Padang: Angkasa Raya, 1992), p.50.

¹⁷Center for Research and Development of the National Legal System, National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia in 2011, *Report on Legal Studies on the Roles and Responsibilities of Community Organizations in Community Empowerment*, p. 2, available at <https://www.bphn.go.id/data/documents/pkj-2011-1.pdf>, (19th of April 2019).

Indonesia.¹⁸ Or in general terms defined as Non-Government Organizations, namely associations for certain purposes whose members are people who have the same profession.

2.5 The Concept of Dissolution of Non-Government Organizations

Democracy in practice is not something without limits, but these limitations must be in the corridor of the law. Because democracy is always on the side between authoritarianism and anarchism, a democracy that is too restricted will cause tyranny while democracy without boundaries will cause anarchism. Therefore, restrictions must be regulated in the rule of law and carried out solely to achieve goals in a democratic society, and restrictions must be really needed and proportional in accordance with social needs.¹⁹

In that context, at least it gives a picture that freedom of association as part of human rights, its existence must be protected in the implementation of a democratic state, it must also be applied in accordance with the principles of the rule of law. The involvement of the judiciary is one of the concrete manifestations of realizing this. Problems then arose after the issuance of Law Number 16 of 2017 concerning the Establishment of Government Regulations in lieu of Law Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Non-Government Organizations into Law.

There are several reasons underlying the issuance of this NGOs law. In juridical normative, at least it can be seen from the considerations written in the preamble points of this Perpu, namely the existence of Non-Government Organizations that violate the principles and objectives of Non-Government Organizations based on the Pancasila and the 1945 Constitution, where they are considered as very acts despicable in view of national morality. According to Sam Issacharoff as quoted by Muchamad Ali Safa'at, one form of restriction that can be justified and needed in a democratic country is the restriction on groups that threaten democracy, freedom, and society as a whole. The state can prohibit or dissolve an organization, including social / Non-Government Organizations, which is contrary to the basic objectives and

constitutional order. Democratic countries not only have rights, but also have a duty to guarantee and protect the principles of constitutional democracy.²⁰ Dissolution of Non-Government Organizations can be done in two stages: first, it is carried out directly, namely the dissolution of Non-Government Organizations that can be done without any mechanism of freezing in advance. Whereas second, the dissolution of Non-Government Organizations is carried out through the deactivation mechanism first. This means that before the social organization was dissolved there was a deactivate mechanism for the management and work of the organization.²¹

Dissolution must also fully refer to the principles of due process of law, as a pillar of the rule of law, where the court plays a key role in the process. The court must be held in an open and accountable manner, both the Government and the parties to the dissolution must have a balanced hearing (*audi et alteram partem*) and the verdict can be tested at a higher court level. Dissolution through the court can also only be taken after all other efforts have been made, from warnings, suspension of activities, administrative sanctions, to a temporary deactivate. This also applies to the provisions in Law Number 17 of 2013 concerning Non-Government Organizations.²²

II. METHOD

In accordance with the identification problem as described, the research method that the author uses in this study is the normative legal research method. This research method is used to find solutions to legal issues and problems that arise in them, so that the results to be achieved can then provide suggestions for better development. This research is prescriptive in nature, that is, research that provides a description of what needs to be done about what needs to be proven not to prove the truth. On this occasion, the author provides arguments for the legal issues discussed.

With regard to the nature of the analysis of legal material, the author will use an approach in analyzing legal

¹⁸Article 1 Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Community Organizations.

¹⁹ Janusz Symonides, *Human Rights: Concept and Standards*, (Aldershot-Burlington USA- Singapore-Sydney: UNESCO Publishing, 2000), p. 91.

²⁰Muchamad Ali Safa'at, *Dissolution of Political Parties: Arrangements and Practices of Dissolution of Political Parties in the Republic of Indonesia* (Jakarta: Rajawali Press, 2011), p. 25

²¹DodyNurAndriyan, *Dissolution of Community Organizations in the Unitary State of the Republic of Indonesia*, Papers, available at <http://www.legalitas.org/database/artikel/htn/PUBUBUBARAN> ORMAS, (21st of May 2018).

²²Article 60-78 of Law Number 17 Year 2013 concerning Community Organizations.

material. The approach used by the author is the statute approach and the comparative approach. The statute approach is an approach that is carried out by examining all laws and regulations relating to the legal issues being addressed. A comparative approach is carried out by multiplying a comparative study of law.²³ Comparative study of law is an activity to compare the law of a certain time with the law of another time

III. RESULTS AND DISCUSSION

Government Regulation in Lieu of Law (Perpu) is a statutory regulation established by the President in matters of compelling urgency. This is constitutionally regulated in Article 22 of the 1945 Constitution, which reads: 1) In the case of coercive matters, the President has the right to set government regulations in lieu of laws. 2) The government regulation must obtain DPR approval in the next trial. 3) If it does not get approval, the government regulation must be revoked.

The definition of Perpu is re-elaborated in Article 1 number 4 of Law No. 12 of 2011.²⁴ In Article 7 paragraph (1) of Law No. 12 of 2011 contains a hierarchy of legislation that includes: 1) The 1945 Constitution of the Republic of Indonesia; 2) Decree of the People's Consultative Assembly; 3) Government Act / Regulation in Lieu of Law; 4) Government Regulations; 5) Presidential Regulation; 6) Provincial Regulations; and 7) Regency / City Regional Regulations. Perpu in the hierarchy of the laws and regulations above, their position is in line with the law. Therefore, Perpu's loading material is the same as content material.²⁵

Perpu is an initiation of the President and is issued on the condition that there are compulsive matters of concern. According to Maria Farida Indrati Soeprapto, because this Perpu is a government regulation (PP) that replaces the position of the law, the material content is the same as the material content of the law.²⁶ In line with Maria Farida, Bagir Manan stated that what is meant by the

substitute for the law is that the material contained in the Perpu is the material contained in the law, or in normal circumstances (norms) must be regulated by law.²⁷

The contents of the Perpu are the same as those contained in the law.²⁸ Therefore, there are no material differences that can be regulated in Perpu or the law. This provision gives a very large space for the President to form an equal provision with the law and replace the existing law, so that it can be said as a dictatorial action from the President.²⁹ According to Bagir Manan, the statutory regulations based on the authority of the formation and binding capacity are divided into categories that are state administration and constitutional.³⁰

Based on these categories, the material governed by the Perpu should also be limited to only material within the scope of state administration, not within the scope of constitutional rules. For example, the Perpu does not regulate material related to the authority of other state institutions because this can be said to be one of the contents of the Constitution.³¹

According to Abdul Hamid Attamimi, the meaning of the word *noodverordeningsmacht* President is the authority of the President to form regulations that replace and therefore the level of the law and enact it before obtaining approval from the House of Representative (DPR).³² According to Herman Sihombing, Emergency State Administration Law is constitutional law in a state of danger or emergency, that is as a series of state and extraordinary and special state institutions, for the shortest possible time to eliminate a state of emergency or threatening danger, into ordinary life according to law and general and ordinary law.³³

²⁷Bagir Manan, *Fundamentals of Indonesian Legislation*, First Edition, (Jakarta: Ind-Hill-Co, 1992) p. 50.

²⁸Article 11 UU No 12 Year 2011.

²⁹Clinton Rositter, *Constitutional Dictatorship*, (New Jersey: Princeton University Press, 1948) p.9, in Rahayu Prasetyaningting, "Measuring the President's Power in Forming Legislation According to the 1945 Constitution", *Padjadjaran Journal of Legal Studies* Vol 4 No. 2 Year 2017, p. 272.

³⁰Bagir Manan, *Indonesian Positive Law (A Theoretical Study)*, (Yogyakarta: UII Press, 2004) p. 14.

³¹Ali Abdurahman, et.al., *Legislation*, (Textbook of the Faculty of Law, Padjadjaran University, Bandung: Kalam Science, 2015) p. 97-100.

³²Abdul Hamid Attamimi, "The Role of the Decree of the President of the Republic of Indonesia in Organizing State Government", (Dissertation, University of Indonesia, 1990) p. 220.

³³Herman Sihombing, *Emergency State Administration Law in Indonesia*, (Jakarta: Djambatan, 1996) p. 26.

²³Peter Mahmud Marzuki, *Legal Research, Third Edition* (Jakarta: Kencana Prenadamedia Grup, 2016), p. 173.

²⁴"Government Regulations in lieu of Laws are the Laws stipulated by the President in matters of coercive urgency."

²⁵Dian Kus Pratiwi, "Juridical Implications of Government Regulations Substituting Law Number 2 of 2017 Regarding Amendments to Law Number 17 of 2013 concerning Community Organizations in Indonesia", *PADJAJARAN Journal of Legal Studies* Vol. 4 No. 2 of 2017, p. 284.

²⁶Maria Farida Indrati Soeprapto, *Basic Law and its Development*, (Yogyakarta: Kanisius, 1998) p. 131.

In the term *staatsnoodrecht*, the state is in a state of emergency (coercive urgency) so the applicable law is the law that is intended to apply in an emergency.³⁴ According to M. Bakri there are no strict and uniform criteria / benchmarks regarding the circumstances and conditions behind the enactment of the Perpu (in matters of coercive urgency).³⁵ The background to the emergence of the Perpu was not because of attacks that came from within (rebellion) or from outside (attacks from other countries), but because according to the President's consideration, it was necessary to immediately enact legislation at the level of the law. So, at any time under any circumstances, at any time the President can enact a Perpu as long as the President considers it is necessary to immediately enact legislation at the level of the law.³⁶

The President's subjectivity in interpreting "matters of coercive urgency" which is the basis of the issuance of the Perpu, will be assessed by the Parliament whether the coercive urgency actually happened or will occur. This House of Representative's approval should be interpreted as giving or not giving approval (refusing). According to Yuli Harsono, interpreting a coercive urgency is from the subjectivity of the President. This is the condition for the stipulation of a Perpu by the President.³⁷

According to Jimly Asshiddiqie, the position of Perpu as a subjective norm:³⁸ Article 22 authorizes the President to subjectively assess the state or matters relating to the state which cause a law cannot be formed immediately, while the need for material arrangements regarding matters that need to be regulated is very urgent so Article 22 of the 1945 Constitution gives authority to the President to establish government regulations in lieu of law (Perpu).

The Constitutional Court (MK) through Decision Number 138 / PUU-VII / 2009 concerning Testing Government Regulations Submitting Act Number 4 of 2009 concerning Amendments to Law Number 30 of 2002

concerning the Corruption Eradication Commission which was pronounced on Monday, On February 18, 2010, the decision gave an objective measure of the issuance of a Perpu which was formulated in 3 parameters for the existence of a 'coercive urgency' for the president to stipulate a Perpu, namely:³⁹ 1. There are circumstances namely the urgent need to resolve legal issues quickly based on the Law; 2. The required law does not yet exist so that there is a legal vacuum, or there is a law but it is not adequate; and 3. The legal vacuum cannot be overcome by making the Act procedurally biased because it will take quite a long time while the urgent situation needs to be resolved.

In practice the matter of coercive is a subjective interpretation of the President so that it can be called an emergency law (subjective to *staatsnoodrecht*).⁴⁰ In Perpu No. 2 of 2017 it certainly contains philosophical and juridical foundations, especially relating to freedom of association as regulated in Article 28 of the 1945 Constitution, and explained the explanation of Article 28J of the 1945 Constitution,⁴¹ namely:⁴² In exercising their rights and freedoms, every person is obliged to submit to their limitations determined by law with the sole purpose of ensuring recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society. Perpu No. 2 of 2017 emphasizes the attitude of the government that serious protecting Indonesia.⁴³ Previously, President Joko Widodo also issued a harsh statement about the "thump" of organizations that were trying to disrupt Indonesia.⁴⁴ In this case, Perpu No. 2 of 2017 has a subjective reason that there are certain social organizations whose activities are not in line with the principles of Non-Government Organizations in accordance with the articles of association of social organizations that

³⁹Legal Considerations Point 3.10. RI Constitutional Court Decision Number 138 / PUU-VII / 2009, p. 20.

⁴⁰Jimly Asshiddiqie, *Emergency State Administration Law*, (Jakarta: Raja Grafindo Persada, 2007) p. 23.

⁴¹Imam Mahdi, *Dissolution of "Radical" Community Organizations in the Legislative Perspective (Perppu Special Study No. 02 Year 2017)*, Nuance Vol X, No. 2 December 2017, <http://ejournal.iainbengkulu.ac.id/index.php/nuansa/article/view/648/558> (accessed on 8 July 2019), p. 136.

⁴²General Explanation of Perppu No. 2 of 2017, p. 2.

⁴³Dian Kus Pratiwi, *Juridical Implications of Government Regulations Substituting Law Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Community Organizations in Indonesia*", (Padjajaran Journal of Legal Studies Vol. 4, No. 2 of 2017) p. 286.

⁴⁴*Ibid.*

³⁴Kabul Arifin, Sutjipto and Sujiwo, *Government Regulations in Lieu of Law on Dangerous Conditions as Positive Emergency State Administrative Law and Background*, (Jakarta: Central Bappit, Permata, 1960) p. 28-29.

³⁵M. Bakri, *Introduction to Indonesian Law (Indonesian Legal System in the Reformation Era)*, Volume 1, (Malang: UB Press, 2011), p. 58-59.

³⁶*Ibid.*

³⁷*Ibid.*

³⁸Ibnu Sina Chandranegara, *"Testing of Perppu Regarding Constitutional Authority Disputes Between State Institutions: Study of MK Decision No. 138 / PUU-Vi / 2009*, Judicial Journal, Vol. 5 No. April 1, 2012.

have been registered and authorized by the Government, and even factually proven there are social organization principles and its activities are contrary to Pancasila and the 1945 Constitution.⁴⁵

The reason that the government issued the NGOs Perpu is because there are situations and conditions that are urgent and emergency because the presence of Non-Government Organizations are considered to be in conflict with Pancasila and embracing radicalism so that it endangers the integrity of the state. In addition, the government's reason for issuing Perpu No. 2 of 2017 is because Law No. 17 of 2013 is considered to be no longer sufficient to prevent the spread of ideologies that are contrary to the Pancasila and the 1945 Constitution.⁴⁶

Dissolution of Non-Government Organizations carried out without going through court proceedings reminds us of the process of dissolution of Non-Government Organizations in the New Order regime. The New Order regime used Law No. 8 of 1985 to dissolve the Indonesian Islamic Student Organization (PII) and the Marhanis Youth Movement (GMP) without going through a court process because it did not want to submit to the single principle, Pancasila. PII at that time did not want to change their principle from the Islamic principle while the GPM was also reluctant to change its principle from the principle of Marhaanism to Pancasila.⁴⁷

The consequence of the issuance of the Perpu of Non-Government Organizations was the dissolution of Hizb ut-Tahrir Indonesia (HTI). On July 19, 2017, the Director General of AHU of the Ministry of Law and Human Rights, Freddy Harris, announced the disbanding of HTI through revocation of legal entity status based on the Decree of the Minister of Law and Human Rights Number AHU-30.AH.01.08 in 2017 concerning the revocation of the Decree of the Minister of Law and Human Rights number AHU-0028.60.10.2014 regarding the ratification of the establishment of the legal body HTI association law.⁴⁸

⁴⁵Considering the letter d Perppu No. 2 of 2017.

⁴⁶Detiknews, "This Is the Reason for the Government to Issue NGO Perpu", (Online) <https://news.detik.com/berita/d-3557090/ini-alasan-pemerintah-terburkan-perppu-ormas> (12th of July 2019)

⁴⁷FransiscaFitri, "Criticizing the Non-Government Organization Bill and the Potential of Human Rights Violations", (Online) <https://yappika-actionaid.or.id/ruu-ormas-dan-p-potency-pel-violation-ham/> (12th of July 2019)

⁴⁸Kompas.com, "HTI is Officially Disbanded by the Government", (Online)

While the objective reason for Perpu No. 2 of 2017 is that Law No. 17 of 2013 urges immediate changes to be made because it has not comprehensively regulated the norms that are in conflict with the Pancasila and the 1945 Constitution so that there is a legal vacuum in the application of effective sanctions.⁴⁹ In addition, the *contrario actus* principle has not been adopted in Law No. 17/2013, it is not effective to impose sanctions on NGOs that adhere to, develop, and spread teachings or understandings that are in conflict with the Pancasila and the 1945 Constitution.

IV. CONCLUSION

The objective nature of Perpu No. 2 of 2017 is not yet regulate(*vacuum recht*) the effective sanctions against NGOs that are in conflict with Pancasila and the 1945 Constitution and the *contrario actus* principle has not been adopted in Law No. 17 of 2013. While the subjective nature of Perpu No. 2 of 2017 is the assertive action that the government is protecting Indonesia against Non-Government Organizations that are not in line or conflict with the Pancasila and the 1945 Constitution. The existence of threats to the basic ideology of the State is what the government considers as a coercive urgency. This can be understood as long as the principles of the rule of law in the deactivation and dissolution of NGOs are carried out properly.

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