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LIMITATIONS ON THE FREEDOM OF ASSOCIATION, GATHERING, AND EXPRESS OPINION IN INDONESIA'S STATE SYSTEM

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ABSTRACT

The purpose of this study is to explain the concept of the right to freedom of association, assembly and expression of human rights as outlined in Perppu No. 2 of 2017 concerning Community Organizations. The method used in this study is normative using the statutory approach, concept approach, and case approach. The results of the study revealed that the concept of human rights contained non -ograble rights and derogable rights, the government through the House of Representatives (DPR) ratified the Civil Society Organization Regulation into Law No. 16 of 2017 restricts the right to freedom of association, association, and issuing opinions based on certain conditions previously stated. This study will benefit restrictions on freedom of association, assembly, and issuing opinions in the constitutional system in Indonesia are regulated in government regulations in lieu of law (PERPPU) Number 2 of 2017 concerning social organizations. In Perppu No. 2 of 2017 Concerning CSOs, there are several provisions that limit the freedom of Indonesian citizens to exercise their rights, namely the right to associate, gather, and express opinions. The right to freedom of association, gathering, and issuing opinions is regulated in the Perppu on Civil Society Organizations, Law No. 16 of 2017 concerning the enactment of Civil Society Organization Regulation.

INTRODUCTION

In the history of the Old Order, human rights is legally stipulated in the Constitution of the Republic of Indonesia 1949 and the Provisional Basic Law (UUDS) 1950, but due to unstable political conditions, the two legal products were not

implemented properly so that human rights have not been fully actualized (Djaali & Saile, 2003). The development of human rights in the State of Indonesia continues, until the state ratified the ICCPR on October 28 2005 through the Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights/ICCPR (International Covenant on Civil and Political Rights). The right to freely associate, gather, and express opinions is one of the rights in the ICCPR which has been ratified by the Indonesian State (Hukum & Ham, 2016)

Freedom of thought and expression of opinion is incomplete without freedom of association. Freedom of associations means the freedom to do special and general meetings (Djaali & Saile, 2003). Developments in the rights of freedom of Union, association, and expressing opinions in the state of Indonesia are governed into a more detailed order, namely by the enactment of Law No. 17 of 2013 (State Gazette of the Republic of Indonesia No. 5480 year 2013) about the Community organization (hereinafter referred to as the Ormas Act). This Ormas Act regulates the foundation of the establishment of an Ormas which should not contradict the Pancasila and the 1945 Constituion of the Republic of Indonesia even to the goal of the Ormas itself in more detail governed in article 5 of the Ormas Act (Pratiwi, 2017).

With the issuance of government regulation in lieu of Law No. 2 of 2017 on societal organization (hereinafter referred to as Perppu Ormas) it will impact to Indonesian citizen incorporated in the organization Society, because the contents of the regulation has implications for limiting human rights of Indonesian citizen, especially the freedom of union rights, gathered, and issued opinions. In the regulation, there are several provisions that give restrictions on the rights of Union, gathering and issuing opinions. Here are some of the potentially limiting chapters, article 59 paragraph 4 letters c Perppu Ormas and article 61 para 3 Perppu Ormas. It is done by the State by the issuance of Perppu Ormas which violates freedom of union, assembly, and issuing opinions set forth in the 1945 Constitution (Prihandono & Relig, 2019).

LITERATURE REVIEW

Constitutional rights of citizens on unity, gathering and expressing opinions

In Indonesia, there have been provisions that provide constitutional guarantees for human rights of citizens stipulated in the 1945 Constitution. These provisions are governed by Chapter XA 1945 Constitution regarding human rights consisting of 10 articles, namely from chapters 28A to 28J. Of the 10 chapters can be categorized into 4 groups as follows, namely civil rights group and political Rights, economics, social and culture, special rights groups and development rights, and State responsibilities and human rights obligations can be It appears that the Indonesian constitution has set up the provisions respecting and ensuring human rights for Indonesian citizens (Asshiddiqie, 2010).

Implicated with the foundation of Human Rights Chapter XA in the 1945 Constitution, the country is required to actively provide assurance and protection of human rights in Indonesia. Another implication is human rights being the constitutional rights of citizens (Mahmud Marzuki, 2005). With human rights being the constitutional rights of citizens, the State must declare its obligation to respect (to respect), protect (to protect), and fulfill (to fulfil) the human rights of each of its citizens (Radjab, 2014).

Civil and political Rights

Civil rights are the right to protect the integrity of individuals both psychic and physical to ensure that the individual is not a victim of discrimination and to obtain a fair trial. While political rights are the right to ensure that such individuals can participate fully in society, whether in the right to vote, the right to embrace religion, the right to participate in the government (Conte & Burchill, 2016), as well as the right Freedom of assembly is the power prescribed by the law to do together into one entity or group (Djaali & Saile, 2003); Union is the right to gather (freedom of association), which covers civil and political Rights, economic rights, social and cultural simultaneously that has two dimensions, namely protecting the rights of each individual to join others and also Protecting the freedom of the group itself; and expressed opinion is a complement of the freedom of thought that has not been considered perfect if in conveying public spaces both written and verbal (Djaali & Saile, 2003)

Human rights restriction theory

Non Derogable Rights are rights that should not be reduced under any circumstance. In the ICCPR included in the Non Derogable Rights are as follows, rights to life; Rights to be free from torture; The free right of slavery (Rights to be free from slavery); The right of free detention for failing to fulfill a covenant (debt); The free right of retroactive pipetting; Rights as legal subject; And the right to freedom of thought, belief, and religion (Oegroseno, 2009).

Derogable rights are rights that can be mitigated in terms of its fulfillment by the state. Against the rights that belong to the derogable rights of the state can reduce or prevent it. However, it should be noted that the deviation can only be done pursuant to article 19 clause (3) of ICCPR, i.e. (i) in proportion to the threat faced and not discriminatory, namely to maintain national security or public order or health or Common morality and (ii) respect the rights and freedoms of others (Dewita, 2011).

State in an emergency under article 4 of the ICCPR, it can be interpreted that there are rules that provide legality to the government to make restrictions on human rights if the state is in an emergency. The application of an emergency situation in a country is necessary for the principles or foundations that lubricated the legal

status of a state of emergency (Matompo, 2014). The principles applicable in conjunction with the enforcement of emergencies, i.e. the following are the principles of declarations, legality principles, communication principles, basic principles, fundamental threat privileges, proportionality principles, Intangibility principles, and Principle of supervision (Asshiddiqie, 2010).

Analysis of government regulation in lieu of law No. 2 years 2017 about community organizations

The President's authority in the establishment of government legislation substitutes. From the provisions of article 22 of the 1945 constitution it can be outlined 2 (two), namely first, the regulation is called government regulation in lieu of legislation. Secondly, the government regulation in lieu of the law itself is not the official name given by article 1945 constitution. This article on the president's Noodverordeningsrecht, in American legal language, is similar to the concept of "clear and present dangers", which is a situation of bright and pushy danger (Asshiddiqie, 2010). So according to explanation article 22 of the 1945 constitution, Perppu needs to be held so that the State security can be guaranteed government in a state of precarious (Simamora, 2010).

A discussion on the authority of the President is deemed necessary. In article 22 of paragraph (1) of the 1945 Constitution, it is explained that in the event of a crunch that forced, the president has the right to establish government regulations in lieu of the law. The regulation should only be established by the president if the requirement "very important situation" is fulfilled as it should. The condition should not be confused with the "state of danger" as determined by article 12 of the 1945 constitution (Asshiddiqie, 2010).

Urgency of establishment of government regulation in lieu of law No. 2 years 2017 about the community organization with the benchmark restrictions set by the Constitutional Court No. 138/PUU-VII/2009. It can be seen whether the urgency of the establishment Perppu. 2 years 2017 about the Ormas has qualified the objective and is no longer just the subjectivity of the president. These limitations include an urgency to quickly resolve legal issues based on the law; The required legislation does not exist until a legal void, or there is a law but is not adequate; And the vacancy is not resolved by means of making legislation in the usual procedure because it will take quite a long time while the urgent situation needs certainty to be resolved immediately (Resende Co, Hirsch, Toossi, Dietze, & Ribeiro-Rodrigues, 2007).

Legal Consequences of Government Regulation in Lieu of Law No. 2 year 2017 about Ormas against the law No. 17 year old 2013 about community organizations

Article Criminal sanctions provisions in the government regulation of the substitute law No. 2 of 2017 in Perppu Ormas added one article, namely article 82A on

criminal sanctions that can be imposed if it violates the provisions that have been set in Perppu Ormas. Between article 82 and article 83 are inserted 1 article 82A. Perppu Ormas provide additional criminal sanctions previously in the law of the Ormas that only governs the administrative sanctions against the Ormas that violate the provisions that have been regulated and the addition of criminal sanctions is one consideration of the points To 3 consideration (weighing) Perppu Ormas described "that Law No. 17 of 2013 on the community organization is urgent to change immediately because it has not set out comprehensively about the conflicting ormity With Pancasila and the 1945 constitution, so that there is a legal void in the case of effective application of sanctions". With the addition of criminal sanctions on Perppu Ormas then the government assumed it has applied effective sanctions against the Ormas that violate the provisions of the legislation (Svennerlind et al., 2010).

Administrative sanctions provisions in government regulation in lieu of law No. 2 years 2017 on the provisions of administrative sanctions also there is a change in the Perppu Ormas as described below: Table 1. Differences in administrative sanctions Peppu No. 2 year 2017 and Regulation No. 17 year 2013 in outline Perppu Ormas contains material that converts 3 articles, removes or deletes 18 articles, and adds 1 article governing the administrative sanctions in Constitution No. 17 of 2013 about Ormas (Svennerlind et al., 2010).

Perppu No. 2 of 2017	**Law no. 17 of 2013**	**Description**
Provisions of Article 60 are amended, hence Article 77 reads as follows: Article 60 (1) of the Ormas which violates the provisions as referred to in article 21, article 51, and article 59 paragraph (1) and paragraph (2) shall be subject to administrative sanctions.	Article 60 (1) Government, or local government, in accordance with the scope of His authority imposed administrative sanctions on Ormas in violation of the provisions referred to in article 21 and article 59.	Article 60 which previously governs the role of the government and local governments in providing administrative sanctions and performing persuasive ways before dropping administrative sanctions is changed to direct sanctions if it violates some of the provisions set.

RESEARCH METHODOLOGY

The type of research used in this thesis is Legal Research or normative research, which is to find the legal rules according to the legal norm and whether the norm is the order or the prohibition in accordance with the principles of law, as well as the actions A person according to the legal norm (not just according to the law) or the legal principle. The approach used is a conceptual approach when researchers do not get into the rule of law. It is done because there is not or no rule of law for the

problem encountered; A statutory approach is an approach to using legislation and regulations that have been established by state agencies and authorized officials through procedures established by applicable laws and regulations; And the case approach of court ruling that has a fixed legal force, the decision of the Constitutional Court can also be used as a case approach (Mahmud Marzuki, 2005). Legal material and material collection procedures can be differentiated into 2 (two), namely primary and secondary source of law. (Marzuki, 2007). Using several ways to conduct literature studies identify statutory regulations; The collected legal material is then categorized into a specific classification that is adjusted to the subject matter which will be discussed in each chapter. The legal materials will be analyzed using Conceptual Analysis, which is to analyze the contents of the legislation as a general. After that, qualitative analysis is based on the contents of the statutory regulations or used to answer the problems discussed so as to obtain a conclusion as a problem solving effort (Ramadhan, 2018).

DATA ANALYSIS

The Concept Of Restrictions On Freedom Of Union Rights, Gathering, Expressing Opinions As A Part Of Human Rights. Limitation On Freedom Of Union, Assembly And Expressing Opinions

The Constitution of the state of Indonesia also regulates non derogable rights. It is contained in article 28I clause (1) of the 1945 constitution which reads "The right to life, the right to not be tortured, the right of freedom of mind and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right Not to be prosecuted on the basis of retroactive law is a human right that can not be reduced under any circumstances ". In that rule, it is seen that those included are the most fundamental rights of man itself, so it is impossible to be constrained under any circumstances as well (Prihandono & Relig, 2019).

While the rights not included in the provisions of the 28I subsection (1) the 1945 constitution may be categorized as derogable rights or rights which may be reduced or restricted due to certain conditions or times. This is in accordance to article 28J paragraph (2) of the 1945 constitution article 28J. According to the article this restriction is intended to ensure recognition and respect for the rights and freedoms of others, because in the excretion of ideas, aspirations, and beliefs sometimes also not in spite of violations of Rights of others who should also be legally respected (Najibi & Albright, 2005).

The explanation emphasized that the state of Indonesia is experiencing emergency by weighing the principle of hazard privileges, which is a condition that refers to the belief that the crisis is a real danger and is happening (Actual threats), or dangers that potentially threaten the community of living together. So, based on the views of the Indonesian government need to be made a rule in the Indonesian constitutional law system, in terms of the limitation of the Freedom of assembly,

Union, and expressing opinions. It is intended to be a real danger or a potential danger that threatens the sovereignty of the state of Indonesia can be prevented by the prevailing rules, namely by the issuance of Perppu Ormas (Asshiddiqie, 2010).

Limitation On The Rights Of The Union, Assembly, And Expressing Opinions In The Government Regulation Of The Substitute Law No. 2 Of 2017 On Community Organizations

Restriction of right through Perppu. 2 OF 2017 union, gathering, and expressing opinions

Restrictions on the rights of Union and Assembly also become a consequence of the issuance of Perppu Ormas, it can be seen from the provisions of article 61 and also article 80A which gives more authority to the minister who conducts the affairs Government in the field of law and human rights to be able to directly revoke the registered certificate or revocation of the status of the legal entity against Ormas that is considered infringing. When the revocation of legal entity status of an Ormas is done by the Minister then automatically the Ormas is declared dissolved (Prihandono & Relig, 2019).

In article 17 of the human rights act which states "any person, without any discrimination, is entitled to justice by submitting application, filing and lawsuit, whether in criminal, civil, or administrative matters and judged through judicial processes Free and impartial, in accordance with the law of the event which guarantees an objective examination by an honest and fair judge to obtain a righteous and righteous judgment. " So the norm in Perppu Ormas that give more authority to the minister to revoke the status of the legal entity and when it has been revoked the status of the law is automatically the Ormas is declared dissolved is actually a form of limitation on The right to gather and congregate that have been governed by article 28E of the 1945 constitution. That thing that can be judged by criminal law is a concrete deed that arises in the form of action, not something that exists in the realm of intangible thoughts in action. The law cannot ensnare the mind because the law of proving is not possible to prove the accusation (Susilo, 2019).

Government regulation in lieu of law No. 2 of 2017 on community organizations have become law number 16 of 2017

Perppu Ormas passed into law No. 16 of 2017, but this does not automatically settle the previous problems. This is due to its formation, Perppu Ormas reaps many problems. This can be seen in some analysis in this thesis that still open opportunities for society or Ormas who feel harmed by the constitutional right to apply for material testing in the Constitutional Court (hereinafter will be called CC). The application for material testing in the COURT can be done because it is the authority of the CC that has been stipulated in article 24C clause (1) of NRI year 1945 which one of its authorities is conducting a test act on the 1945 constitution (Resende Co et al., 2007).

In the general explanation of the law of the Court, the duties and functions of the CC are to deal with the Constitutional Court or the specific constitutions in order to safeguard the Constitution to be implemented responsibly in accordance with the will of the people and Aspirations of democracy. In addition, the existence of the CC is also intended as a correction to the constitutional experience inflicted by double interpretation of the Constitution (Fadjar, 2006). Based on this background, there are at least 5 (five) functions attached to the existence of the CC and implemented through its authority, namely as the guardian of the Constitution The Constitution), protection of human rights (the Protector of human Rights), the protector of constitutional of citizens (the protector of the citizen's constitutional rights), and the Protector of Democracy (Constitusi, 2010).

Based on the explanation above, it can be understood further that the problem of various articles that have problems in Perppu Ormas that have been passed into law No. 16 years 2017, can be submitted as application for test material to the CC. It is done to fulfill the protection of human rights that are part of the constitutional rights of citizens as stipulated in the 1945 constitution. This, even has been done by the legal team of the national movement of the Fatwa Guards (GNPF) scholars who have formally registered a lawsuit for the test material against some chapters in Law No. 16 of 2017 concerning the determination of government regulation on surrogate legislation (Perppu) No. 2/2017 on the community organization to the CC (Prihandono & Relig, 2019).

CONCLUSION

In the limitation of the right of freedom of assembly, union and issuing opinions in the legal system in Indonesia which is regulated in Perppu Ormas has become law No. 16 of 2017 concerning the enactment of Civil Society Organization Regulation.

Limitation And Suggestions

Limitations of this study are about the limitation of this research is the concept of the right to freedom of association, assembly and exclusion opinion in human rights. Restrictions on the right to associate, gather, and issue opinions in Government Regulation in Lieu of Law No. 2 years 2017 about Community Organizations. Suggestions in this research are several articles which are contradictory to freedom of association, assembly and issuing of regulated opinions in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, including Article 61, Article 80A, and Article 82A paragraph (2) of Law Number 16 Year 2017 Regarding Determination of Civil Society Organization Regulation, judicial review requests can be submitted to the Constitutional Court. The DPR can revise several articles in the Act No. 16 of 2017 concerning Stipulation Perppu Ormas in the trial period Furthermore, by including the revision of Law No. 16 of 2017 into the 2018 National Legislation Program (Prolegnas) revised, inter alia, Article 61 and Article 80A regarding the revocation procedure the status of a legal entity of a mass organization without going through court procedures, through the

decision of the minister of law and human rights and Article 82A paragraph (2) which provide criminal sanctions in the thought process, due to the criminalization of the mind also contradicts the principle of legality in criminal law.

The Implications Of This Study And Findings

The right to freedom of association, gathering, and issuing opinions is regulated in the Perppu on Civil Society Organizations, Law No. 16 of 2017 concerning the enactment of Civil Society Organization Regulation. The results of the study revealed that the concept of human rights contained non -ograble rights and derogable rights, the government through the House of Representatives (DPR) ratified the Civil Society Organization Regulation into Law No. 16 of 2017 restricts the right to freedom of association, association, and issuing opinions based on certain conditions previously stated.

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