

**Contesting Freedom With Unity and Order :
The Case Of Banning HTI dan FPI in Indonesia**

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Abstract

Reformasi in Indonesia has produced freedoms and opened opportunity for the rise of radical organizations. One of them is Hizbut Tahrir Indonesia. The organization promotes caliphate political system which threaten the unitary state of Indonesia. The government issued PERPPU No 2/2018 to ban HTI. The government efforts received wide controversies. The pros agree with the government as it would strengthen nationalism. The cons disagree with the government, arguing it ruins the freedoms of speech and the freedom of Association. This article seeks to dig out arguments the controversies. Using Qualitative approaches with multi methods for collecting data, the article agrees with the government effort to issue the PERPPU to ban HTI and other radical organization which might rise in the future and would endanger the integrity of the nation. The article argues that the issuance of Perppu does not endanger the freedom of speech and the freedom of association as they are still guaranteed by the constitutions and laws. It indeed restricts the freedom for the sake of strengthening nationalism. Such restriction has been in accordance with philosophical teachings, international, regional norms and Indonesian constitutions. Therefore, the implementation of Perppu No 2 /2017 can be complementary to other laws which stipulates sets of Freedom. The article hopefully contributes to the debate on the maintaining freedom promised by reformasi, on one hand, and strengthening nationalism as the un-negotiable agenda for the development of the state on the other hand . This contribution will be of significance now and the years to come .

Key Words: Freedom, Nationalism, Hizbut Tahrir Indonesia , Perppu

I. Introduction and Problem Statements

The outset of *reformation* was marked by just like two sides of coins trends. On one face, it produces sets of social, political, economic as well as cultural freedoms which pro-democracy Indonesians are dreamed of. Such freedom is manifested in the establishing political parties social organizations or associations, establishing media. On the other face, it has stimulated the rise of radical groups, which some of them have turned to terrorism. Others preach radical thoughts, but without violence. The latter have penetrated to government and education institution from lower level to university. One of the prominent groups in the latter category is Hizbut Tahrir Indonesia (HTI). Study by coordinating Ministry of Politics, Law and Security found that this trans-national organization has preached and implemented teachings which are against the development of national ideology. Therefore the minister proposed to ban HTI. As the Indonesian government found difficulty in banning HTI using existing Law number 19/2013 on social organization, the government then issued Perppu No 2/2017 which was then passed to Law No 16 /2017¹. The banning of HTI and the enactment of the law received wide controversies. Those agree with the banning argue that the government initiatives makes sense as it is to strengthen nationalism such by protecting national ideology of Pancasila and the integrity of unitary state of Indonesia (NKRI) which guarantee the unity in diversity (Bhineka Tunggal Ika) and is not against the state constitution (UUD NRI 1945). HTI is a radical organization whose teachings threaten the promotion of nationalism. Those disagree with banning of HTI and the making of the PERPPU argue that the making of Perppu would endanger civil liberty, freedom of speech and freedom of association. On top of that the government suffer from Islamophobia and discredit Islam. The paper seeks to dig out controversies by analyzing the contention over the paradox impact of banning HTI and the issuance of Perppu no 2 /2018. It analyzes the debate over the issue of strengthening nationalism *vis a vis* destroying freedom addressed to Perppu no 2/2017

Theoretical and Conceptual Frameworks

¹ Article 22 UUD NRI 1945 stipulate that DPR, Parliament accept of reject Perppu made by the government. On 24 October 2017, DPR with split decision passed Perppu No 2 /2017 on Social Organization becomes to law. 16/2017. 7 parties (Partai Demokrasi Indonesia Perjuangan, Partai Hanura, Partai Golkar, Partai Demokrat and Partai Kebangkitan Bangsa (PKB) with 314 members accepted the PERPPU, 3 political parties, Partai Gerindra, Partai Amanat Nasional and Partai Keadilan Sejahtera with 131 members rejected the Perppu (<https://www.liputan6.com/news/read/3139554/headline-dpr-sahkan-perppu-ormas-hti-tamat>) accessed 18 September 2018

Strengthening Nationalism

This paper uses conceptual frameworks of strengthening nationalism to label the government effort in making Perppu no 2/2017. Borrowing the combination of definitions developed by Mc. Lean and Co Build, the concept of nationalism in the article is defined as a system of belief or political ideology, materialized in the movement of the people to preserve collective sentiment hailed from common background of culture, language, ethnicity and historical continuity.² The operationalization of the concept at policy level takes the form of practicing four state consensus (4 Konsensus bangsa): Pancasila, 1945 state constitution (UUD Negara Republik 1945), The Unitary State Of Indonesia (Negara Kesatuan Republik Indonesia/NKRI) and Unity in Diversity (Bhineka Tunggal Ika).

The Freedom Of Speech, The Freedom Of Association And Their Restrictions

The Freedom of speech, the freedom thoughts and the freedom of association, as important components of Human Rights have been widely debated by great philosophers such as John Rawls. In his *political liberalism*, he views the freedom as the core idea developed from the concept of liberty of conscience. Freedom of thoughts and freedom of association are stipulated more detail in the Universal Declaration of Human Rights. Freedom of speech is defined as “liberty to express opinions and ideas without any constrains such as fear and punishment. (Mc Lean and Mc Alistair, 2019-210). Article 2 of the declaration stipulates universal freedom without any exception such as which pertain to race, skin color, gender, language, religion, politics, origins, property or other social status. Article 3 of the declaration guarantees individual freedom in addition to life and safety. Freedom of speech is clearly stipulated in article 18 and 19 and freedom of association is clearly stipulated in article 20 of the declaration. Article 19 guarantees that individual has the right of freedom of thought, conscience, follow, teach, practice and convert to other religion individually or collectively. Article 19 stresses on the freedom of thought and expression in any ways and methods without constraint. Article 20

² Ian Mc Lean and Alistair Mc Millan, *Concise Oxford Dictionary of Politics*, Oxford, Oxford University Press, 1996, p 364 and Cobuild, *English Dictionary For Advanced Learner*, Galgow, Harper Collins Publisher, 2001 p. 830).

guarantees that everyone has freedom to form association without violence and the prohibition of coercion to join group .

Nonetheless, philosophical teachings and international norms have shared the same ideas on the need of restriction in the implementation of freedom. At the philosophical level, John Stuart Mills in his *On Liberty* had limited the promotion of freedom to unite for any purpose without harms to others”. “ Citizen should have freedom to unite for any purposes not involving harms to others”. At the legal level, Article 20 of the Universal Declaration Human Rights has also stipulated the idea of restriction of freedom but should be by law aiming merely at respecting rights and freedom of others, morality, order and public welfare in a democratic society . Freedom of thoughts and freedom of following a religion are important components of non-derogable rights. State may enforce restriction on the rights on the cumulative conditions stipulated by the covenants such as the presence of emergency situation which threaten the existence of the state, the imposition of restriction to all citizens, regardless of race, religion, skin color, language and social origins and the restriction is to be reported to the United Nation. Freedom of association is part of derogable rights which is also subject to restriction by law aiming at furthering public prosperity in a democratic society

The restriction of the implementation of Human Rights take the form of modification, domestication or de-absolutization of its implementation as clearly addressed by ASEAN countries in the Declaration on Human Rights in the Bangkok in 1993. The forum recognizes the potential opposition between regional values with Human Rights and proposes to balance them, by recognizing national and regional distinctiveness based on their historical, cultural , religious background.

II. Method and Discussion

To answer the two questions, this paper uses qualitative approach, employing both primary data collections including legal analysis interview to government officers , documents collected from inter- government agency meeting, CSO FGDs, news from both off-line and on-line medias and analysis of video officially published by HTI or captured openly in social media. The research also benefits from secondary data collection including books and Journal analysis which have widely been published. The research uses interviews mainly to security officers to garner information on the HTI movements in number of locations and movement of social and Islamic

organizations which opposes HTI. The research use documents collected from meetings and focused groups discussion by inter-government agencies in time of banning HTI and following the implementation of Perppu No 2/2017. Off-line and On-line news are collected from ordinary media which can be publicly accessed. The research also benefits from videos on HTI sermon or preachings widely published in social media and information from HTI website.

Findings

Strengthenin Nationalism Vis a Vis Promoting Freedom

Reformasi has produced just like two sides of coins result. On one side, people have enjoyed sets of freedom such as establishing political parties, social organization and media. The Indonesian constitution and following regulations guarantee such freedom within democratic environment. The constitution and following regulations clearly address the freedom of speech, the freedom of thought and freedom of association. Article 28 of the constitution (UUD NRI 1945) stipulates such freedom as part of the implementation of Human Rights. Freedom of thoughts and expressions are clearly addressed in more detail in Law number 39 /1999 on human rights. Article 23 (verse 2) states that everyone has freedom to express his idea in accordance with his/her conscience orally or in written through printed and electronic media. Article 24 of the law stipulates the freedom to form organization, association, establish political parties and social organization .

The impact of promoting freedom is visible. During reformasi, political parties mushroomed. In the 1999 election or the first election in the refromasi time,141 political parties were established³, though their number decreases significantly in the following election. In 2004 election 41 Political parties were registered to join election. In 2019 general election which will take place in the same time as the direct presidential election, only 14 parties will join election . The parties can be categorized into more established parties or those which joined previous election such as :

³ Sri Yunanto And Ahmad Fauzi Abdul Hamid,Fragmentation And Conflict Among Islamic Political Parties In Indonesia During Reformasi Era (1998-2009): Anatomy, Factors And Implications “ *Journal Of Islam Indonesia*, Vol 7, No 2 (2013) pp.

Partai Amanat Nasional (PAN), Partai Golkar, Partai Hanura, Partai Gerindra, Partai Keadilan Sejahtera (PKS), Partai Kebangkitan Bangsa (PKB), Partai Nasional Demokrat (Nasdem), Partai Demokrat, Partai Demokrasi Indonesia Perjuangan (PDIP), Partai Peratuan Pembangunan (PPP) and Parkati Keadilan dan Persatuan Indonesia (PKPI). Other parties are considered as new parties and only join 2019 election for the first time such as Partai Perindo, Partai Garuda, Partai Berkarya and Partai Solidaritas Indonesia (PSI).

The freedom to establish association or social organization is manifested in Law number 17/2013 on social organization which amend law number 8 /1985 as it is considered as no longer relevant with the dynamic of the life of the people and the nation. The law regulates a relatively comprehensive aspects of social organization such as; characteristics, goal, foundation, scope, legal title, procedure of registration, rights and obligation, organizational structure, social organizations, code of conduct, empowerment, foreign social organization, conflict resolution, prohibition and its sanction. Article 9 of the law guarantees such freedom as it requires only minimum of 3 citizens to establish social organization without legal title. The law offers three ways in getting permits to establish social organization. The first is by registering to the Ministry of Law and Human right for those who needs legal status (Article 12 verse 2) or simply by registering to the Ministry of Home Affairs and regional governments for those only need registration number from the government (article 16 and 17) . Foreign Non-Government Organization (NGOs) wishing to operate in Indonesia needs permits from Ministry of Foreign Affairs.

Article 20 of the law stipulates that social organizations have the right to manage their organization self reliantly and openly and have the property right for their name and symbol. They are also given opportunity to accomplish the goal of the organizations and get legal protection, establish partnership with the government and other social organizations as a way to develop their organizations. In addition to having rights, social organization, as stated in Article 21, also have sets of obligations such as , conducting activities to achieve organizational goals, maintaining the integrity of the unitary state of Indonesia (NKRI), maintaining religious, cultural, moral values, ethic and norm and beneficial to people, public order and peace in society, and managing financial transparency, participating in the state development. It makes sense therefore, if law number 17/2013 is perceived as emphasizes more on the idea of freedom

evidently impacted by reformasi. People enjoy the freedom to establish social organizations which until now has numbered to 344.000 social organizations.

Likewise reformasi has also opened wide freedom of the press or Media. It commenced exactly after the second amendment of 1945 constitution. Article 28 F of the constitution emphasizes individual rights to garner information and develop their individuals and social environment and rights to see, find ,own, store , manage information and deliver information through any available channels. During reformasi, the government has abolished number of regulations which are against the freedom of the press such as Decree of Minister of Information number 1/1984 on the obtaining license on Press publication (SIUPP), Decree of Minister Of Information No 2 /1965 on general codes of conduct of journalists, Decree of Minister of Information No 214 on getting SIUPP and Ministerial Decree no 47 /1975 on the endorsement of the Indonesian Journalist Association and Organization of Press Publication Of Indonesia. The policy is much different from that of practiced in the New Order Time . In spite of the fact that Indonesia claimed to be a democratic state in the time , it enforced strong restriction to the freedom of the media. The government banned media considered as breaking laws or usually criticized government. The New Order government used Pres Permit or called SIUPP (Surat Izin Penerbitan Pers) to control the media.⁴

On the other hand , Reformasi also open the rise of radicalism which has resulted in multi-dimensional threats such as terrorism, anti nationalism and anti-pluralism. Since reformasi Indonesia has suffered more than one hundreds terror attacks. Until 2016, Indonesia suffered from 69 terror attacks.⁵ Since reformasi or exactly from 1998 to 2015, nearly 650 churches were restricted. 238 were attacked, destroyed or stones, 111 churches were threatened or rejected, 53 churches were sealed and other 241 were closed down or banned by local government. This number excludes worship places destroyed in Poso, Palu and Maluku conflicts and the ones attacked by terrorist in the year of 2000.⁶

⁴ <https://hukum.tempo.co/read/1059485/kebebasan-pers-di-indonesia>

⁵ <https://www.hukumonline.com/berita/baca/lt58080a29cf0fe/sejak-reformasi--69-kali-indonesia-alami-serangan-teror>

⁶ Angel Damayanti, Muslim-Christian Relationships In Indonesian Reform Era From Threat Perception to Worship Restriction Angel Damayanti unpublished paperp p.10

This paper has analyzed findings of surveys by organizations on the presence of serious radical trends which challenge the government and people effort to strengthen nationalism. Survey by Wahied foundation, as voiced out by Sinta Nuriyah, the wife of former President Abdurrahman Wahied, found that radical and intolerant movements have dominated the mindset of the Indonesian people. They spread hatred, provocation, betrayal to Indonesian people, using religion, notably Islam, as their symbol. The survey also highlights three worrying findings: first, only 11 percent of the surveyed respondents disagree with the idea of changing the state ideology or the majority of them (89%) agree to change the state ideology. Second, 59% of the respondents hate non-Muslims and other ethnics. Third, radical groups which use religion as their cover have penetrated education institution, without being suspected by school management.⁷ The finding gets confirmation by that of Pew Research Centers and (Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M)). PEW finding firmly declares that 10 millions of Indonesian people have been exposed to radicalism. Association for People and Pesantren Development (Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M)) uncovers that 21 of 37 state owned mosque, 8 of 28 mosques operated by government institution and 12 of 35 Mosques in the ministerial offices are exposed to radicalism.⁸

One of the radical organizations is Hizbuttahrir Indonesia (HTI). Having been established as an Islamic organization to fight against Israeli domination in Palestine, the trans-national organization came to Indonesia in 1983. Operating in Clandestine way in its initial operation, HTI developed its networks to 33 provinces and 300 regional areas (Kabupaten). Its members have developed from twenty activists in 1980 to around 4 millions now. They mainly grow in big state campuses and high schools. What makes HTI dangerous is its movement which promote Caliphahte system that would Pancasila as the political ideology of the state and ruins the Unity State of Indonesia (NKRI), Democracy and Human Rights. Its teaching and ideology, in fact, do not explicitly point out four state consensus as against its ideology, though, if one studies its “temporary constitution draft” (Rancangan Undang-Undang Sementara/RUUDS) and contents of the sermons by their leaders, one would quickly find that some verses in its constitution and contents of their sermons promote teachings which are against the nationalism

⁷ . <http://id.beritasatu.com/home/menristekdikti-penyebaran-paham-radikalisme-juga-lewat-medsos/176282>)

⁸ <https://www.nu.or.id/post/read/92631/56-persen-masjid-bumn-terindikasi-radikal> . accessed 15-September-2018

of Indonesia, democratic system practiced in Indonesia, Human Rights which teach the equality of political rights.

HTI teaching which are contrary to the promotion of the Unitary State of Indonesia can be found in its RUUDS which says 'Islamic State will unite its territory with new territory'. Afterwards, it would manage *dakwa* and other teachings to continue Islamic life in the entire Islamic territory". The top leader of HTI, Dr Rahmad Kurnia, in his Massive Sermon (*Tabligh Akbar*) in Senayan, interpreted the teachings when he said "ruin borders of nationalism which have separated us, appoint one caliph who will unite us".⁹ The teaching is implicitly against article 25 of 1945 constitution and article 5 Law no 43/2008. Article 24/UUD 1945 firmly stipulates that NKRI is an archipelagic state with the characteristic of Nusantara whose borders and territories will be regulated in a law. Article 5 of law number 43 /2008 determines that borders of Indonesia in land, sea and air are agreed in the bilateral or trilateral agreement with neighboring states.

HTI teachings which are contrary with the promotion of democratic system adopted by Indonesian constitution was preached by Dr. Rahmad Kurnia in 2013 who told HTI followers "change people sovereignty with Allah Sovereign, distance from Paganic Law (Hukum Jahiliyah) made by people, give authority to a caliph to make laws. Kurnia statement which was campaigned in front of thousands of HTI followers and sympathizers is against article 1 verse 2 of the UUD 1945 which firmly stipulates" Sovereignty belongs to people and is implemented in laws " HTI propaganda which threaten the principle of Unity in Diversity (*Bhineka Tunggal Ika*) which guarantees political and cultural pluralism and promote equal political, cultural and economic rights can be found in article 19 and article 26 of RUUDS HTI. Article 19 states" It is not legal for non man, unfree, immature (baligh), mentally unhealthy, unjust, incapable and non Muslims to occupy any positions of public officials". Article 26 clearly discriminates non-Muslims to have election right " every mature, mentally healthy male and female Muslims have the right to elect a caliph and ask him to take allegiance. Non Muslims don't". The article clearly discriminates women and non-muslims to occupy any positions of public officials. It is also contrary to article 6 and article 28 D (verse 3) of 1945 constitution and article 7 (verse 1) law number 10/2016 which guarantee any Indonesian citizen, regardless of gender, religion,

⁹ Content of Sermon by Dr. Rahmad Kurnia held in Senayan in 2013 and was broadcasted by TVRI

ethnics to have equal rights in government positions and run for political leadership such as president, governors, head of regional government, mayors and their vices.

The Indonesian government preceding Jokowi had been ambiguous in synchronizing between promoting nationalism and tackling radicalism. On one hand, it echoed its commitment to defend Unitary State of Indonesia (NKRI) “ as the un-negotiable Indonesian political system . On the other hand it opened opportunity for the rise of radical trans-national Islamic organization whose ideology is to ruin Pancasila and the legal culture of Indonesia.¹⁰ It was in the Susilo Bambang Yudhoyono reign, HTI got its legal permit as the basis for operation in Indonesia. Jokowi and Jusuf Kalla who came to power in 2014, have been aware with the issue of the rise of radicalism when they stipulated 3 serious problems faced by Indonesian people which include the decreasing state integrity and state character , the increasing intolerance and strengthening fundamentalism, conservatisms and the emergence of religious violence which threaten state integrity.¹¹

In solving the problems, Jokowi-JK offer political platform, known as Nawa Cita. Platform no 8 says that they would bring revolution of the state character by restructuring the curriculum of the national education and would bring nationalism back in. Platform number 9 stipulates Jokowi_JK commitment in strengthening unity in diversity as taught by Pancasila and would deliver peace to citizens.¹² In realizing the mission, Jokowi will seriously ban social organizations which are against Pancasila and other state fundamental values of the Indonesian people¹³. However the government face difficulties in tackling social organizations (Ormas) which promote radicalism. The freedom on the establishing social organization comes with loose procedure in enforcing sanction to social organizations which breach the law as the levels of sanctions are too complicated, long and winding, starting from administrative to penal and its implementation are ineffective:

¹⁰Adjie Suradji,“ Ancaman Radikalisme
<https://nasional.kompas.com/read/2016/11/24/08520891/ancaman.radikalisme24/11/2016>

¹¹ Visi-Misi Jokowi –JK hal 40

¹² Nawa Cita 9 Agenda Prioritas Jokowi-JK p.1-13

¹³ <http://national.kompas.com/read/2017/05/19/17264751/jokowi.ormas.anti-pancasila.dan.komunis.kit.gebuk.kita.tendang>

- 1) If a social organization is identified to breach the law, as stipulated in article 62 of the law number 17/ 2013, the government enforce administrative sanction, which comprised from, persuasion, 3 times written reminder in 30 days interval.
- 2) If a social organization fails to comply the law after 3 times reminder, the government must stop donation or grant
- 3) If a social organization continues its activity after its donation being stopped , the government must proceed to temporarily stop its activity. In doing so, the government must request recommendation from the supreme court. (article 65). The temporary stop of the operation can take 6 six months. The social organization can operate again if it has complied with the reminder
- 4) If somehow, the social organization fails to comply the sanction of temporary stopping, the government can proceed to dissolve its legal status. In dissolving the registered social organization , regional government must request consideration from the Supreme Court. In dissolving social organization with legal status, the Ministry of Law and Human Rights must bring the case to tribunal. The dissolution applies after the verdict.

The government views that the law has some weaknesses in tackling radical organizations. first, it has long and winding administrative procedures and could not be used effectively to ban the problematic social organization. Second, the law has no clear legal penalties for punishment. Third, it has a narrow definition of anti-Pancasila ideology which specifically addressed to communism, Marxism, Leninism and atheism. Indeed in the past, Indonesian history had experienced with separatist movement which promote Islamic State , an ideology contrary to Pancasila. Currently some other radical organizations like ISIS and HTI which promote Caliphate ideology and is surely anti-Pancasila also rose, but are not categorized as against Pancasila , using the definition in the law number 17/2013. Forth, Law number 17/2013 stipulates no *contrarius actus* principle of Administrative Law , that is the principle which requires the same government institution which has an authority to issue legal permit and dissolve the social organization. The law is against the principle of *contrarius actus*, as it

stipulates Ministry Of Law and Human Right to give permit in the establishment of social organization, but court which has an authority for banning it.¹⁴

The government views the situation is already in emergency, given the vibrant rise of radicalism any the walks of Indonesian life. In particular, HTI which was established in 1983 has developed its organization to 2 Million members, spread out to 300 branches in sub-regions in 30 provinces. HTI adopts and develops ideology which seek to ruin 4 national consensus. The only way the President as the state and the head of the government can do is making Government Regulation Replacing Law (Peraturan Pemerintah Pengganti Undang-Undang/PERPPU). As stipulated in article 22 (verse 1) of 1945 constitution, The President of The Republic Of Indonesia has the authority to make PERPPU on the ground of forced emergency situation (Kegentingan Yang Memaksa). The Constitutional Court (Mahkamah Konstitusi) issues decree no 138/PUU-VII/2009 which formulate three indices of the forced emergency: the problem needs fast solution, the existing laws are not sufficient to be used as a legal instrument to solve the problems, the making or the amendment of the current law would need longer or exhausting time as it needs political process to make new law which will deal with the urgent problems.

To tackle the vibrant rise of radicalism in general and the problem of HTI in particular, the President of the Republic of Indonesia made PERPPU No 2 /2017 which replaces the Law No 17/2013 on Social Organization . Using the Perppu, Ministry Of Law and Human Right banned HTI by dissolving its legal registration permit number AHU.00282.60.10.2014 which means also banning the organization. Responding to the dissolution, HTI appealed to Administrative Court of East Jakarta, but was rejected.

In general, the PERPPU only change certain parts of the law such as in the consideration, purpose, enforcing sanction (article 60). In the consideration part, the PERPPU emphasizes on the obligation of the state to protect national sovereignty, the absence of regulation as law no 17/2013 does not regulate social organizations which threaten four national consensus and the law adopts no *contrarius actus* principle. In the purpose of the establishment of organization part, the PERPPU adds the phrase of 1945 constitution on that purpose of the establishment of social organization that is, to participate in the national development to accomplish the goal of

¹⁴ Dr. Sri Yunanto, Menata Ormas, Memperkuat Bangsa pp 154-156

the state . In the enforcing sanction, the PERPPU change certain articles as described in the below table:

Table 1

The Amendment Of Enforcing Sanction Procedure To Social Organizations in the Perppu number 2/2017

Law No 7/2013	Perppu No 2/2017(Passed to Law 16/2017)
The Definition Of The Administrative Sanction	
Written reminder, stopping grant , stopping activity temporarily. dissolving legal tittle or registration status (Art 61, verse 1)	Written reminder, stopping activity temporarily and dissolving legal tittle and registration status (Stopping grant is abolished) (Article 60, verse 1)
Frequency Of Administrative Sanction Or Written Reminder	
The written reminders are in 3 levels , each takes 30 days	Reminder only once in 7 days
The Appeal On The Banning Of Social Organization To Court is abolished	
The abolishment of legal status of social organization means the banning of the organization (added)	
Penal sanction article 82 A (Added)	
	Individuals becomes members of organizations or serves in the organization structure in purpose, directly or indirectly involves in the separatism, conducts violence will be sentenced 6 months-1 year punishment), conducts hatred and enmity on the ground of SARA , conducts religious blasphemy, follows, develops, preaches teachings which are contrary to Pancasila be sentenced long – life punishment of , 5years or 20 years

The issuance of Perppu no 2/2017 which replaces Law Number 17/2013 has invited wide controversies in the public. The government argues that the principle of forced emergency legitimizes state to “take measures derogating from their obligation” in the situation which “threatens the life of the nation and the existence of which is officially proclaimed. The principle is in line with philosophical foundations, international norms and national regulations which allow restriction, modification, domestication or de absolutisation of freedom in the implementation of Human Rights. As discussed in above aforementioned, Mills teach Philosophical pretext on the presence of danger or “harms to others” as the exclusion for the practices of freedom. Consistent with Mill’s argument, Universal Declaration of Human Rights also stipulates detail norms which allow restriction. International Covenant on Civil and Political Rights (ICCPR) allows state to carry out its obligation to protect Human Rights in the specific situation. The Emergency situation which threaten the life of the nation as referred by the law is the activity of social organization which conduct enmity by disseminating or extend provocation orally or in written thought printed, electronic and social media which created hatred to people and government officers and potentially cause conflicts and chaos in the society. ASEAN countries also proposes balance policy between universal, international or even western norm with national and regional background based on countries distinctiveness.

Indonesia is a member of the United Nations which signs the Universal Declaration of Human Rights and thus is committed for its implementation. Indonesia, as a prominent member of ASEAN, also agrees with the ASEAN declaration of Human Rights. While Indonesian constitution and following regulations, as discussed above aforementioned, also stipulates restrictions to balance such freedom . Article 28 J of the UUD 1945, stipulates restriction by law, with the aimed at respecting rights and freedom of others and fulfilling the justice in accordance to morality, religious values , security, public orders in a democratic societies ¹⁵ for the sake of order of the life people and state integrity. The restriction is again stressed out in Law Number 39/1999 On Human Rights. Article 23 Verse 2 which implicitly inserts religious values, norm, order, public interest and state integrity which restrict such freedom. The

¹⁵ Further detail, please also see, Penjelasan atas Peraturan Pemerintah Pengganti Undang-Undang No 2 Tahun 2017 Tentang Perubahan at Undang-Undang No 17 tahun 2013 tentang Organisasi Kemasyarakatan

restriction of forming social organization is implicitly stipulated in article 24, verse 2 law number 39/1999) which requires social organization to promote peace, protection and partaking in the government and law enforcement. Other idea of restricting freedom as important component Human Rights in Indonesia, as stated in Law No 23/1959 on Emergency Situation, is in balancing between the implementation of Human Rights in normal situation and emergency situation which deserves exception. In sum, the implementation of freedom in Indonesia, like that of practiced in other countries, especially in ASEAN countries, is not absolute. It considers the balance between universal or Western liberal principle and Indonesian local distinctiveness based on historical background.

The making of PERPU No 2 to ban HTI has received wide controversies in the Indonesian society. It received massive support from politicians and moderate religious leaders, such as leaders of 14 Islamic organizations from Lembaga Persahabatan Ormas Islam (LPOI) and youth moderate or traditional Islamic groups from Nahdlatul Ulama such as Barisan Serbaguna or Banser, GP Anshor, other youth wings of NU such as Ikatan Pemuda NU (IPPNU), Muslimat NU, Persatuan Mahasiswa Islam Indonesia (PMII) and other youth nationalist organizations such as Pagarnusa, Pemuda Pancasila (PP), Kosgoro, Komite Nasional Pemuda Indonesia (KNPI), Forum Komunikasi Putra Putri Abri (FKPPI). The groups posit their support with the following arguments. First, HTI adopts caliphate political system which is against the promotion of nationalism. Second, the issuance of Perppu No 2/2017 to ban HTI is not against the state constitution¹⁶ as it is to protect Pancasila and the integrity of the “non-negotiable Unitary State of Indonesia (NKRI Harga Mati)”. In other words, HTI movement has threatened the promotion nationalism of Indonesia.¹⁷ The president decision to issue PERPPU no 2/2017 is a correct step to deal with the worrying trend of the rise of radicalism.

The contra group or those oppose with the banning HTI and the issuance of Perppu no 2/2017 consists of politicians from the political party of opposition and leaders of social and Islamic organizations such as Fachry Hamzah and Shohibul Iman from Partai Keadilan Sejahtera

¹⁶ The fourteen Islamic organizations are : PBNU, Al Irsyad, {ersatuan Umat Islam, Persatuan Islam (PERSIS), Persatuan Tarbiyah Islam (PERTI), Mathlaul Anwar, Yayasan Az Zkra, Al Ittihadiyah, Ikatan Dai Indonesia, Rabithah Alawiyah, Persatuan Islam Tionghoa, (PITI), Nahdlatul Wathan, Himpunan Bina Mualaf Indonesia (HBMI). <http://nasional.com/red/2017/07/07/20330571/14.ormas.islam.desa.pemerintah.percepat.pembubran.hti>

¹⁷ Dr. Sri Yunanto Menata Ormas, Memperkuat Bangsa, Langkah Pemerintah Dalam Membubarkan Hizbut Tahri Indonesia, MIM, Penerbit Multi Inovasi Mandiri Jakarta 2018, pp.115- 122

(PKS), Fadli Zon, Ahmad Muzani from Partai Gerindra, Amin Rais and Yandri Susanto from Partai Amanat Nasional (PAN), Hinca Panjaitan from Partai Demokrat. Leaders of social organization comprised from religious leaders and human right activists. They posit their critiques in the following arguments: first, in general, they are objected with the abolishment of tribunal Process in the PERPPU . Second, they view that empirical evident of the forced emergency is insufficient. Human Rights activists argue that it is just insufficient to point out to promoting Caliphate as one indices of forced emergency, as promoting Caliphate is still in the domain of freedom of expression and speech, guaranteed by the Constitution. Third, the implementation of Perppu would lead to a new type of dictatorship as the government would enjoy unlimited authority and might use the Perppu to criminalize social organizations. Forth, in banning HTI ,the government suffers from Islamophobia and avoid dialog before banning. Fifth, the Perppu, as has been voiced by Human Right activists would threaten the freedom of speech, freedom of organization, freedom of expression, driving excessive control of the state over social organizations, violating privacy right, hurting minority groups and spoiling de-radicalization efforts. ¹⁸

The paper agrees with the government decision to issue Perppu no 2 /2017 which has been used to ban HTI . It lays out five argument to support the theses. First, the government Of Indonesia is subject to the obligation to protect the integrity and the sovereignty of the state. HTI, as it claims, is not a sermon organization, nor academic group. It is a political organization which promote caliphate system to change current unitary state of Indonesia. Therefore it is arguably that promoting caliphate system is not only manifestation of freedom of expression. In stead it has turned to social movement which threatens the life of the nation. Second, the democratization in Indonesia has produced such excessive freedom which results in the rise of radicalism and thus worry people. State needs to exercise proportional control in order not to endanger state integrity. Third, Issuing the PERPPU is the subjective authority of the president. AS Jimly Assidqy argues, it is only the President who has the authority to interpret the concept of forced emergency with the indices stipulated by constitutional courts. In other words, the president has subjective authority to interpret ‘forced emergency ’, the DPR , as people representatives, has the obligation to accept (legitimize) or reject (delegitimize) the Perppu. This means that people

¹⁸ Ibid pp.197-2001.

representatives turn subjective interpretation by the president to objective interpretation of the forced emergency. By accepting the PERPPU No 2/2017 which then passed to Law number 17/2016, the political burden has shifted from President to DPR.¹⁹

In addition, PERPPU no 2 /2017 does not threaten the freedom of speech and the freedom of association as they are still guaranteed by the constitution and laws as has been previously discussed. Other articles in law number 17/2013 and following regulations which serve as the implementation of freedom enjoyed by social organizations remain in force so long as they are not contrary to the implementation of Perppu No 2/2017 (Article 80 A). In other words, articles which regulate social organization other than the ones which state the enforcement penalty such as the ease in registration , rights and obligation, organization structure, social organizations, code of conduct, empowerment, foreign social organization, conflict resolution, prohibition and its sanction still apply. **Remains in tact**

Rather it restricts the freedom granted to social organizations in order not to advocate violence using Ethnic, Religion, Race and Groups (SARA) issues, disseminating and advocating separatism mission, acting like law enforcement agencies, speaking which contain religious blasphemy and practicing, disseminating , teachings or ideology which are contrary to state ideology or Pancasila. Such restriction is justified by international and regional norms. To prohibit social organizations from doing such illegal activities , the law stipulates straight forward and strict punishment to those conducting such prohibition. It is true that the PERPPU abolishes tribunal procedure in the process of banning “problematic social organizations” for the sake of effectiveness, though, the banned organizations still have right to appeal to administrative court (Pengadilan Tata Usaha Negara/PTUN), as has been done by HTI. Therefore, the legal system in Indonesia still grant opportunity for the banned organization to struggle for justice in the administrative court. Therefore the tribunal procedure in banning problematic social organizations shifted to the post banning not the pre-banning.

Forth, this article theorizes that law no 17/2013 serves like “ accelerator pedal” as it emphasizes more on the freedom or acceleration especially in establishing social organizations. Law no 16/2017 serves like “brake pedal” as emphasizes more on the restriction. Fifth, president

¹⁹ <https://news.detik.com/berita/d-3564505/mk-kegentingan-yang-memaksa-penilaian-subjektif-presiden>

decision to make Perppu number 2 is still in domain of democratic system as it is subject to “Checks and balances’ principles which involve legislative and judicative branches. The Perppu needs parliament consent to pass as a law. It is also open opportunity for appeal in the constitutional court (Mahkamah Konstitusi). It is exaggerative to evaluate the Perppu as the new type of dictatorship.

IV. Conclusion

Indonesia experiences reformasi which produces favorable as well as unfavorable impacts . Its favorable impacts take the form of the freedom of establishing political parties, social organizations and media. Its unfavorable impacts in terms of the rise of the vibrant radical organization which threaten the life of the people and the nation. One of the radical organizations is Hizbut Tahrir Indonesia. Its caliphate ideology threatens the integrity of the state. Therefore the government ban the organization. However, in banning HTI and other radical organization which might rise in the future, the government find difficult as the existing law number 17/2013 on Social organization is not effective as it has long, winding procedures. Therefore the President Of the Republic Of Indonesia makes PERPPU no 2/2017 which was then passed by the parliament to Law no 16/2017. The issuance of PERPPU no 2/2017 and the banning of HTI received wide controversies. In sum those support government effort argue that the issuance of PERPPU is to strengthen nationalism by tackling organizations which threaten nationalism such as HTI. Those criticized the government argue that the PERPPU no 2/2017 threaten the freedom of expression and the freedom of establishing association and organization.

The author of this article agrees with the government position and argue that issuance PERPPU is required to strengthen nationalism. It is not a peril for freedom of speech and freedom of association as they are still guaranteed by constitution and other laws. The PERPPU does not destroy such freedom but limit or restrict it for the sake of strengthening nationalism of the Indonesian people . Such restriction has its philosophical ground and has justification from in international Human Rights covenant as well as state constitution. In the contest, promoting un absolute freedom can race together against strengthening nationalism as articles which are not amended by Law no 16/2017 which pass PERPPU no 2 /2019 still apply. The article will contribute to the debate on the current democratization in Indonesia which produces paradox outcomes; freedom of expression, speech and organization, on one hand, yet open space for the

rise vibrant radical groups which disseminate anti-nationalism, on the other hand. The case of banning HTI has been important efforts due to large number of their follower and touch religion as one important element of political identity. The debate on the issue has been of significance in the context of Indonesia whose history has been burdened by political identity widely, known as SARA (tribes, religion, race and group). In the future, this issue will still be of significance as they become dominant variables to take into account in the state building.

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