

# The Use Of The Contra Actus Prinpiple In Dissolution Of Social Organizations From The Perspective Of The Democratic State.p df

*by Muh Risnain*

---

**Submission date:** 31-Aug-2021 01:16PM (UTC+0700)

**Submission ID:** 1638715934

**File name:** Actus\_Principle\_in\_Dissolution\_of\_Social\_Organizations\_from.pdf (651.37K)

**Word count:** 7214

**Character count:** 38748



## The Use of the Contra Actus Principle in Dissolution of Social Organizations from the Perspective of the Democratic State

Ahmad Mustarudin Efendi<sup>1</sup>; Zainal Asikin<sup>2</sup>; Muhammad Risnaini<sup>2</sup>

<sup>1</sup> Magister Law Study Program, Mataram University, Indonesia

<sup>2</sup> Lecture of Law Faculty, Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i6.1230>

### Abstract

This study examines the use of the contra actus principle in the dissolution of community-based organizations in Indonesia in the perspective of a democratic country. This study uses a normative method by discussing the laws and regulations related to developing legal issues. The results of the research prove that the application of the contrarius actus principle in the perspective of the Democratic Law State is actually enforced in order to carry out the function of government control over the establishment of community organizations, but in practice or application, the principle of contarius actus is used as a weapon or tool by the government to combat social organizations deemed incompatible with the ideology of Pancasila. Dissolution of CSOs should follow the formulation that has been formed based on the law by returning the control mechanism through the state administration lawsuit so as to prevent the government from unilaterally dissolving the organization until there is a lawsuit filing.

**Keywords:** Contra Actus; Dissolution; Social Organizations; Democratic State

### Introduction

One of the various problems of national and state life in 2017 was when President Joko Widodo imposed a Government Regulation in lieu of Law (Perppu) concerning changes to Law Number 17 of 2013 concerning Community Organizations. The arguments related to the issuance of Government Regulation in lieu of Law (Perppu), the essence is as follows:<sup>1</sup>

- a. The Perppu was issued in the context of the government's task to protect the entire nation and the bloodshed of Indonesia.
- b. Community organizations (CSOs) in Indonesia which currently reach 344,039 CSOs, have activities in all fields of life, both at the national and regional levels, must be empowered and nurtured, in order to make a positive contribution to national development.

<sup>1</sup> Sudjito, "Membaca "Kepentingan Politik" Dibalik Perppu Ormas dan Implikasi Sosiologisnya Terhadap Masyarakat", (Makalah disampaikan dalam Seminar Nasional Quo Vadis Perppu Ormas on October 19, 2017 at UII Yogyakarta), p. 1.

- 10
- c. The reality now is that there are social organization activities that are in conflict with the Pancasila and the 1945 Constitution of the Republic of Indonesia. This is a threat to the nation's existence, which has caused conflicts in the community.
  - d. Law Number 17 of 2013 concerning Social Organizations is no longer sufficient as a means to prevent the spread of ideologies that are in conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia, both from substantive aspects related to norms, prohibitions, and sanctions as well as existing legal procedures. Among other things, the non-fulfillment of the *contrario actus* administrative legal principle, namely the legal principle that the institution that issues permits or gives authorization is the institution that should have the authority to revoke or cancel it.
  - e. During this time, the notions of teachings and actions that are contrary to Pancasila are narrowly formulated, which is only limited to the teachings of Atheism, Marxism, and Leninism. Indonesian history proves that other teachings can also and are contrary to Pancasila.

Complementing the understanding of the issuance of the Perppu which in its material conditions mentions compelling urgency, the Constitutional Court as an interpreter of the constitution through Decision Number 138 / PUU-VII / 2009 also interprets the phrase urgency as in Article 22 of the 1945 Constitution with three conditions as follows:<sup>2</sup>

- 4
1. The existence of circumstances, namely the urgent need to resolve legal issues quickly based on applicable laws;
  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;
  3. The legal vacuum cannot be resolved by making the law in the usual procedure because it will require quite a long time while the urgent conditions need certainty to be resolved.

The above situation is becoming a more serious concern because the DPR as a manifestation of people's voices accepts the presence of Perppu Number 2 of 2017.

2

As quoted from Kompas daily, the majority of the factions in the DPR received Perppu Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Community Organizations to be passed into law at the Plenary Meeting on Tuesday (10/24/2017). Seven factions received, namely PDI-P, Golkar, PKB, PPP, Nasdem, Hanura and Democrats. However, three of them, namely PPP, PKB, and Democrat, accepted with a note that the Perppu would be immediately revised after enactment.<sup>3</sup>

2

Seeing the state of legal politics at that time, the Government's steps by establishing Perppu Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Social Organizations drew a lot of criticism but also not a few who supported the Government's steps, as the DPR in the Plenary Session, in order to achieve peace in the nation and state.

In the hierarchy of statutory regulations in Indonesia, the position of the Perppu is equivalent to the law, but the Perppu can only be issued by the government if the country is in an emergency.<sup>4</sup> Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Social Organization which has now been ratified to become Law Number 16 of 2017 concerning Establishment of Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendment Law No. 17 of 2013 concerning Community Organizations Becoming a Law, was criticized

<sup>2</sup> Legal Considerations of the Panel of Judges in the Constitutional Court Decision Number 138 / PUU-VII / 2009 dated February 8, 2010 concerning Testing Perppu Number 4 of 2009 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK).

<sup>3</sup> Rakhmat Nur Hakim, "Tujuh Fraksi Menerima Perppu Ormas, Tiga Menolak", <http://nasional.kompas.com>, accessed 29 August 2019.

<sup>4</sup> Maria Farida Indrati S., 2007, "Ilmu Perundang-Undangan: Jenis Fungsi dan Materi Muatan", Kanisius, Yogyakarta, p. 30.

for limiting freedom of association and giving the government the opportunity to revoke the legal status of a social organization without passing a court decision.<sup>5</sup>

Revocation of the status of the legal entity should be through the court but on the contrary, the government uses the principle of *contrario actus* to revoke the status of community organizations while the *contrario actus* principle is one of the principles contained in state administration law. The principle of *contrario actus* is when a state administration body or official issues a state administration decision automatically by itself, the relevant administrative body or official who has the authority to cancel it.<sup>6</sup>

The use of the *contrario actus* principle in dissolving CBOs becomes a substance that receives sharp criticism because the dissolution of CBOs can be done by revoking the status of the legal entity, whereas in Law Number 17 of 2013 before being amended by Perppu No. 2 of 2017 the dissolution of CBOs cannot be directly carried out through revocation of status legal entity by the government but by a court decision.<sup>7</sup>

Based on the compilation of the arguments mentioned above, it is quite reasonable to conduct a legal research entitled "The Use of the *Contrarius Actus* Principle in Dissolution of Community Organizations Judging from the Perspective of the Democratic Law State".

The problems to be investigated concern the following matters:

1. How is the Application of the *Contrarius Actus* Principle in Dissolution of CSOs from the Perspective of Democratic Law Countries?
2. What are the Juridical Implications of the Use of the *Contrarius Actus* Principle in Dissolution of Civil Society Organizations Against Freedom of Association and Association?
3. What is the concept of freedom of dissolution of organization in a democratic rule of law?

### **Result and Discussion**

The dynamics of humans who live communally are experiencing renewal and improvement from time to time. Human Rights (HAM) which guarantees humans to speak (freedom of speech), the right to express ideas (freedom of expression), and the right to associate and gather (freedom of assembly), have a strategic place as the birth of the idea of a nation state. The state has a series of having to respect all the people of Indonesia, protect the entire Indonesian spill, fulfill (fulfill) its obligations as a state entity.

These sets of rights are protected through universal and local legal protection.<sup>8</sup> Freedom of association and assembly are recognized rights both nationally and internationally as regulated in Article 28 and Article 28 E paragraph (3) of the 1945 Constitution of the Unitary State of Indonesia (1945 Constitution) and also regulated through international law such as the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). The above instrument is a legal basis and guarantees of protection of the right of people to gather and associate.

The history of the founding of social organizations in Indonesia, first began with the emergence of entities in the form of community groups. History records the first organization as "Boedi Oetomo" as a pioneer of national movements and organizations, which subsequently emerged organizations that had

<sup>5</sup> Sudjito, October 19, 2017, "Membaca „Kepentingan Politik“ Di Balik Perppu Ormas dan Implikasi Sosiologisnya Terhadap Masyarakat", Seminar Nasional Quo Vadis Perppu Ormas Universitas Islam Indonesia (UII), Yogyakarta.

<sup>6</sup> Maria Farida Indrati Soeprapto, 2006, "Ilmu Perundang-undangan: Dasar-Dasar dan Pembentukannya", Kanisius, Yogyakarta. 2006. p. 65.

<sup>7</sup> Fuady Munir, 2010. "Konsep Negara Demokrasi". Refika Aditama, Jakarta. p. 34.

<sup>8</sup> *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII), 2008). p. 32

different foundations such as the Sarekat Dagang Islam (SDI), Nahdlatul Ulama (NU), Muhammadiyah, etc. these community groups become associations and subsequently become more organized groups called "social organizations".

The activities carried out by HTI (Hisbut Tahrir Indonesia) are seen by the government as threatening the State's ideology. The fact was made by the government to issue Perppu Number 2 of 2017 concerning the amendment of Law Number 17 of 2013 concerning Social Organizations which was later stipulated to become Law 16 of 2017 concerning the Establishment of Perppu Number 2 of 2017 concerning amendment of Law Number 17 of 2013 concerning Social Organizations into Law Invite.

The issuance of the Perppu caused a polemic in the community. People who reject the Perppu consider that the presence of the Perppu is a form of government dictatorship that broadens the scope of meaning that is contrary to Pancasila and simplifies the process of dissolution of CSOs by eliminating the role of judicial institutions.<sup>9</sup> The government considers that Law Number 17 of 2013 is inadequate and takes too much time in the process of disbanding so that violating CSOs will be very difficult to dissolve. This is then the government's subjective view of the state of urgency as a condition for the issuance of Perppu No. 2 of 2017.

In one of the considerations considering Perppu Number 2 of 2017, there is a legal principle that the government uses as legitimacy, that the government is given the authority to dissolve CSOs without first going through a judicial process, the principle is known in the State Administrative Court as the *contrarius actus* principle, this principle This means that the State Administration Officer who has issued the permit is also entitled to revoke the permit.<sup>10</sup> The emergence of this principle is considered by some to be a setback from the democracy that has been achieved by the Indonesian people.

As a result, government actions that dissolve certain CSOs are a form of government abuse (abuse of power) which cannot be corrected by other institutions. This is contrary to the characteristics of the rule of law which, according to A.V. One of Dicey's is the Due Process of Law.

The authority of the government in exercising its power must be limited through court control in the context of the dissolution of CSOs through the State Administrative Court (PTUN) in order to avoid abuse of power / *ultra vires*.<sup>11</sup>

<sup>13</sup> The issuance of Government Regulation in Lieu of Law Number 2 of 2017 which is a response from the activities of several CSOs that are considered to cause conflict in the community because it is contrary to the Pancasila and the 1945 Constitution, thus issuing the Perppu as an extension of the definition contrary to the Pancasila. that Perppu is a form of law that is legal and is well known in the Indonesian legal system. Then after the issuance of the Perppu as an amendment to the old Law, if the Perppu becomes a Law then it must go through a mechanism to obtain the approval of the DPR (House of Representatives) so that it can be ratified into a Law and because the DPR approves it, then the Perppu is valid. Law No. 2 of 2017. However, there is a special note that makes this Act does not reflect a country that upholds democracy, namely the process of forming this Act is not democratic, although this Act is derived from the constitutional rights of the President, but it is still became a question mark because of the urgency of the birth of the Perppu which was then passed by the DPR into a law. Although passed by the DPR, it should pay attention to the idea of democracy which demands that every form of law and various decisions get the approval of the people's representatives and pay as much attention to the interests of the people as possible.

<sup>9</sup> Mekanisme Peradilan Dihapus, Perppu Ormas Dinilai Sewenang-Wenang, accessed on October 13, 2019 at 10:00 pm.

<sup>10</sup> Philipus M Hadjon Tatiek, *Argumentasi Hukum*, Yogyakarta: Gadjah Mada University Press, 2009. p. 18.

<sup>11</sup> Parpworth Niel Hawke Niel, *Introduction to Administrative Law* (London: Cavendish Publishing Limited, The Glass House, Wharton Street, 1998. p. 30.

The application of the *contrarius actus* principle in addition to being contained in the Law society organizations can also be seen in the Government Administration law. When referring to the provisions of Article 33 paragraph (3) of Law Number 30 of 2014 concerning Government Administration (UU-AP) which states that "Decision on Decisions or Termination of Actions as referred to in paragraph (2) must be carried out by:

- a. Government bodies and / or officials that issue decisions and/ or actions; or
- b. the superior of the Agency and / or the Official of the Officer who issues the decision and/or action if at the stage of completion of the administrative effort.

Article 64 of the AP Law outlines certain criteria for state administration officials in the case of revoking a state administration decision that they issue, as a correction if there is a decision which has defects in the future. The criteria in Article 64 regulate in the event of a disability in authority, disability in procedure, disability in substance.

The presence of Law Number 16 Year 2017 concerning the Stipulation of Perppu Number 2 Year 2017 concerning the amendment of Law Number 17 Year 2013 concerning Social Organizations into Law, makes it a formal basis for the dissolution of mass organizations that are allegedly contrary to Pancasila. The issuance of Perppu Number 2 of 2017 concerning the amendment of Law Number 17 of 2013 concerning Social Organizations into the Law becomes the legal basis for the issuance of the Minister of Law and Human Rights Decree Number AHU-30.AH.01.08 of 2017 concerning the revocation of the Decree of the Minister of Law and Human Rights Number AHU-0028.60.10.2014 concerning the ratification of the establishment of a legal entity for the association of HTI.

The presence of Perppu Number 2 of 2017 which has now been ratified into Law Number 16 of 2017 concerning the Stipulation of Perppu Number 2 of 2017 concerning amendments to Law Number 17 of 2013 concerning Social Organization is inseparable from resistance both legally through judicial review. in the Constitutional Court, as well as politically through a number of factions that support and reject in the DPR.

Even though the Perppu has become law through a political mechanism in the DPR, the birth of the Perppu must be preceded by certain conditions as a precondition for the legal condition of the issuance of the Perppu as required by the Constitution in Article 22 paragraph (1), namely that "in the case of the seriousness involved" force, the President has the right to determine as a substitute for the law".<sup>12</sup> At its press conference on July 10, 2017, the Government, represented by Menkopolkam Wiranto, stated that there were several reasons for the issuance of Perppu No. 2 of 2017 concerning CBOs, the following are the main reasons:<sup>13</sup>

1. The Perppu was issued in the context of the government's duty to protect the entire nation and the bloodshed of Indonesia;
2. Community organizations in Indonesia, which currently has 344,039 mass organizations, which have been active in all fields of life, both at the national and regional levels, must be empowered and nurtured. So that it can make a positive contribution to national development;
3. The reality now is that there are social organization activities that are in conflict with Pancasila and the 1945 Constitution, which constitute a threat to the existence of the nation by causing conflicts in the community;
4. Law Number 17 of 2013 concerning Social Organizations is no longer sufficient as a means to prevent the spread of ideologies that are in conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia, both from substantive aspects related to norms, prohibitions and sanctions

<sup>12</sup> Article 22 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

<sup>13</sup> Asshiddiqie Jimly, *Hukum Tata Negara Darurat*, Jakarta: PT. Raja Grafindo Persada, 2007.

and existing legal procedures. Among other things, the non-fulfillment of the *contrario actus* administrative law principle, namely the principle of law that the institution that issues permits or gives authorization is an institution that should have the authority to revoke or cancel it;

In the Constitutional Court's decision No. 138 / PUU-VII / 2007, the Constitutional Court considered that such objective conditions were the subjective rights of the president. In this decision, the authority to determine a state of emergency is an 'absolute' authority of the president granted by the 1945 Constitution of the Republic of Indonesia, including the authority to determine the state of state emergency. However, the mechanism and implications for the enactment of the Perppu were criticized by Victor Imanuel W. Nalle, he revealed that such a mechanism creates confusion from the basic concept of the state of emergency, because the applied emergency law should apply only in certain periods, but differs with the enactment of the Perppu after accepted as applicable law without time limit.

Legal Implications of the Application of the *Contrarius Actus* Principle as Government Control of Freedom of Association and Association in the Unitary State of the Republic of Indonesia.

### ***Dissemination of CBOs from Contrarius Actus to Due Process of Law***

Law Number 16 Year 2017 concerning Stipulation of Government Regulation in Lieu of Law (Perppu) Number 2 Year 2017 concerning Amendment to Law (Law) Number 17 Year 2013 concerning Community Organizations (Perppu Dissolution of Civil Society Organizations), promulgated on November 22, 2017.

In consideration of the Act it was stated that there was a legal vacuum because the 4-year-old Law (Law) had not yet comprehensively regulated the norms that conflicted with *Pancasila* and the 1945 Constitution of the Republic of Indonesia.<sup>14</sup>

In Law Number 16 Year 2017 concerning the Establishment of Civil Society Organization Regulation, no substance of the Perppu has been changed. Law Number 16 Year 2017 contains all the provisions regulated in the Perppu Ormas. This can be seen from the systematics of Law Number 16 Year 2017 which only consists of two articles. Article 1 regulates that the enactment of Civil Society Organization Regulation becomes law and its attachments are an inseparable part of this Law. And Article 2 which states the enactment of this Act when enacted.<sup>15</sup>

In the attachment of Law Number 16 Year 2017 concerning Stipulation of Perppu Number 2 Year 2017 Article 1 changes the understanding of CBOs to be more strict than before. According to this regulation, CSOs have the understanding: Community Organizations, hereinafter referred to as CSOs, are organizations that are established and formed by the community voluntarily based on shared aspirations, wishes, needs, interests, activities, and goals to participate in development for the achievement of the objectives of the Unitary Republic of Indonesia which based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia.<sup>16</sup>

The definition of CBOs in the Perppu becomes firmer if previously in Law Number 17 of 2013 it reads that CBOs 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 in order

<sup>14</sup> Soedarmedi, *Perppu Ormas Lurus Kenapa Harus Takut*, <https://seword.com/politik/inilah-isi-perppu-ormas-nomor-2-tahun-2017-isinya-luar-biasa-fpidan-sejenisnya-apa-kabar-nanti/>, accessed 11 November 2019.

<sup>15</sup> Indonesia, Law on Stipulation of Perppu on Community Organizations, Law Number 16 Year 2017, LN Number 239 Year 2017, TLN number 6139. Ps. 1-2.

<sup>16</sup> Indonesia, Perppu on Community Organizations, Perppu Number 2 of 2017, LN Number 138 of 2017, TLN number 6084. Ps. 1.

to achieve goals Unitary State of the Republic of Indonesia based on Pancasila. Now it is emphasized with “and the 1945 Constitution of the Republic of Indonesia.” This means that CBOs must comply with the 1945 Constitution, final. Other laws or the Jakarta Charter cannot.

CSOs are also prohibited from conducting separatist activities which threaten the sovereignty of the Republic of Indonesia, and / or adhere to, develop, and spread teachings or understandings that are contrary to Pancasila. Regarding the mechanism of dissolution of CSOs. In the attachment of Law Number 16 Year 2017 concerning Stipulation of Perppu Number 2 Year 2017 Concerning CSOs, it contains two kinds of sanctions namely administrative and criminal sanctions.

The administrative sanctions referred to, according to this Perppu, consist of:

- a. Written warning;
- b. Termination of activities; and/ or
- c. Revocation of registered certificate or revocation of legal entity status.

Article 62 states that the written warning, in this Perppu explained, is given only 1 (one) time within a period of 7 (seven) working days from the date the warning was issued. If CBOs do not comply with written warnings within the period referred to, the Minister and the minister who carries out government affairs in the field of law and human rights in accordance with their authority impose sanctions to stop the activity.<sup>17</sup>

Violations in article 59 paragraph 3 letters c and d are: carrying out acts of violence, disturbing public order and order, or damaging public and social facilities; and carry out activities that are the duty and authority of law enforcement in accordance with statutory provisions.

In addition, every person who is a member and / or administrator of a Community Organization who intentionally and directly or indirectly violates the provisions referred to violates Article 59 paragraph (3) letter a, and letter b, and paragraph (4), convicted with criminal life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years.

Violations of Article 59 paragraph (3) letters a and b are: carrying out acts of hostility towards ethnicity, religion, race or class; abuse, defamation, or defamation of the religion practiced in Indonesia.

There are several substances in the regulation that give rise to controversy in the community regarding criminal sanctions and dissolution of mass organizations. Article 62 paragraph 3 which gives full authority to the Executive to revoke the legal entity of CSOs, which in Article 80 A is confirmed as the dissolution of CSOs. This provision is very subjective and has the potential to be a rubber article and gives absolute authority to the government to provide interpretation, legal verdict, and revoke and dissolve without a judicial mechanism.

The promulgation of Law Number 16 of 2017 on November 22, 2017 as a form of ratification of Perppu Number 2 of 2017 concerning Mass Organizations. In Law Number 16 Year 2017 all articles in Perppu Number 2 Year 2017 are endorsed as listed in the attachment to the Act.

Some Articles in Law Number 16 Year 2017 concerning Stipulation of Perppu Number 2 Year 2017 which when viewed from the 1945 Constitution are unconstitutional. Article 61 and Article 62 of the regulation allows the government to unilaterally revoke the legal entity status of CSOs without being preceded by an examination in the Court. The elimination of due process of law in the dissolution of CSOs will certainly direct the government to the dictatorial Government. This is contrary to Article 1 paragraph 3 of the 1945 Constitution that the State of Indonesia is a State of Law.

<sup>17</sup> *Ibid.*, Ps. 62.



As for A. V. Dicey also mentioned three important characteristics “The Rule of Law” has the characteristics of Supremacy of Law, Equality before the Law, Due Process of Law.<sup>18</sup> Based on this view, it appears that due process of law can be interpreted as fair law enforcement is one of the essential elements in the administration of the rule of law. So, when the principle of fair law enforcement is violated, it will also violate the principles of the rule of law.

The provisions for dissolution of CSOs contained in Article 61 of Law Number 16 Year 2017 concerning the Establishment of Perppu Number 2 of 2017 constitute a step backwards because this regulation eliminates the due process of law, and the distribution of power, whereby the executive monopolizes all mechanisms in dissolving a CBO. This arrangement is of course contrary to the concept of the rule of law mentioned by Stahl and Dicey.<sup>19</sup>

CSOs as important instruments that play a role in democracy and as a form of freedom of association, the freezing and dissolution must be decided through the due process of law mechanism by an independent court. This legal process becomes very important, because the dissolution that can be carried out by the executive alone will lead to arbitrariness as happened in the New Order and Old Order governments.

It is also feared that the government will be able to freeze and dissolve CSOs without evidence, witnesses, and a fair and balanced decision. This is of course contrary to Article 28 E paragraph 3 which states that everyone has the right to freedom of association, assembly and expression. Therefore, the substance of the latest CBOs rules is more centralistic and dominated by executive institutions which are law-making processes that are repressive and orthodox in character.<sup>20</sup>

The existence of a control mechanism through a lawsuit to the State Administrative Court does not prevent the government from unilaterally dissolving CSOs until there is a lawsuit filing with the State Administrative Court and the judge's decision has permanent legal force. Therefore, prior to the decision of a judge having legal force, the Government Decree regarding the dissolution of the CBO is in force.

The legal consequence is that all activities and attributes of the CBO are prohibited until a decision of a permanent legal force is expected that the process will take a long time because the losing party will use an appeal instrument, until cassation. The author estimates that the adjudication process can take 1-2 years. This will cause constitutional losses for Indonesian citizens who gather in these mass organizations because they cannot exercise their rights until that time.

This was also reinforced in the consideration of the Constitutional Court's decision 6-13-20 / PUUVIII / 2010 which emphasized that deprivation or restriction of civil liberties in the form of prohibition, which was carried out absolutely by the government, without going through a judicial process, was an act of a power state, not a state a law like Indonesia as affirmed in Article 1 paragraph (3) of the 1945 Constitution that the state of Indonesia is a state of law. In considering the Constitutional Court's decision, the act of prohibition or restriction on a civil liberties, "... especially without going through a judicial process, is an extra judicial execution which is strongly opposed in a rule of law that requires due process of law. Due process of law as considered above, is law enforcement through a justice system".<sup>21</sup>

<sup>18</sup> *Ibid.*, p. 123.

<sup>19</sup> Muhammad Najih, *Politik Hukum Pidana Konsepsi Pembaharuan Hukum Pidana dalam Cita Negara Hukum*, Setara Press, Malang, 2014, p. 5.

<sup>20</sup> Moh. Mahfud MD, *Politik Hukum di Indonesia*, (Jakarta: LP3ES, 1998), p. 26.

<sup>21</sup> Decision of the Constitutional Court 6-13-20 / PUU-VIII / 2010 concerning Judicial Review Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia and Law Number 4 / PNP5 / 1963 concerning Safeguarding of Printed Items that Interfering with Public Order. p. 7.

Referring to the legal considerations of the Decision of the Constitutional Court Number 613-20 / PUU-VIII / 2010 above, it can be taken that the act of dissolution or prohibition of civil liberties, which is carried out without a court process can be categorized as an act: (i) the action of a non-state power state law; (ii) extra judicial execution, contrary to the rule of law.

In addition, the existence of an opportunity for a lawsuit through the State Administrative Court, this mechanism will only test technical procedures, that state administration officials have acted based on what is mandated by statutory regulations. So, it is wrong if the principle of *contrarius actus* is implemented in the context of testing the act of restricting civil liberties.

In the case of CSOs, the Government's authority is represented by the Ministry of Law and Human Rights which can unilaterally dissolve CSOs without a judicial process. The author is of the opinion that the *contrarius actus* principle cannot be applied in dissolution of mass organizations because registration of mass organizations in the form of ratification is not a permit.

According to the author's analysis, that the application of the *contrarius actus* principle in the Ormas law shows that the government does not understand the difference between permits and endorsements. In issuing permits, the licensor can indeed revoke permits under certain conditions. However, specifically for ratification, the agency that issues the ratification cannot simply revoke it, unless there are formal conditions that can cancel the ratification.

The logic used by the government using the *contrarius actus* principle is also very potential to be used for other types of legal entities that require authorization from the government, such as foundations and political parties.<sup>22</sup> Therefore to prevent excessive government, the authority to examine, examine, prosecute, and decide on sanctions to freeze or dissolve an organization must rest with the judiciary rather than the executive.

Law Number 16 of 2017 concerning the Stipulation of Perppu Number 2 of 2017 still contains mechanisms for dissolution of CSOs by the Judicial Institution in this case the Judiciary Institution under the Supreme Court. To overcome the problem of inefficiency because of the length of time needed to dissolve a mass organization. The government can shorten the stages of dissolution of CSOs such as providing time limits to the Judiciary in examining, adjudicating, and deciding cases of dissolution of CSOs.

If Law No. 17/2013 states that a court is given 60 days to render a decision, a Perppu can be shortened to 20 days. Likewise, if the CSOs are dissatisfied with a *Judex facti* court decision and submit an appeal, there needs to be a limit to the Supreme Court in making a decision.

In Law Number 17 Year 2013 the process in the Supreme Court has no restrictions, so that the cause of dissolution of mass organizations can be protracted and take years. Therefore, in a Perppu there needs to be a limit given to the Supreme Court in examining cases like 45 days so there is certainty from the case.

This method is wiser and provides a solution to the government's concern that if the dissolution of mass organizations involves justice institutions, it will take a long time. The mechanism also reflects a rule of law that still adheres to the principle of due process of law, the absence of monopoly power in the dissolution of CSOs because it still involves judicial power in the dissolution of a Community Organization.

<sup>22</sup> BEM KEMA UNPAD "Perppu Ormas: Pemerksaan terhadap Hukum", <https://www.selasar.com/jurnal/36674/Perppu-Ormas-Pemerksaan-terhadap-Hukum>, accessed May 15, 2018.

The second alternative is that the authority to dissolve CSOs can be given to the Constitutional Court. The 1945 Constitution gives legitimacy to the right to freedom of association and assembly. Freedom of association which is one of the Human Rights that was born from the human tendency to organize and organize themselves in order to fight for their rights and interests. Because freedom of association is a constitutional right of citizens guaranteed in the 1945 Constitution.

With regard to the deviation from the citizens' constitutional rights, the Constitutional Court can give a decision on the deviation, because the Constitutional Court is an interpreter and guardian of the constitution. Of course, this second alternative, can also be applied in the dissolution of CSOs. The judicial process in the Constitutional Court is shorter than in the Judiciary Institutions under the Supreme Court which has legal remedies from the first level, appeal, cassation, and reconsideration. Whereas the Constitutional Court's decision is final and binding, therefore there will be no further remedies after the decision, and the parties must obey and comply with the decision.

This certainly can solve the problem that has been worried by the Government where the trial proceedings can take a long time. Granting authority to dissolve CSOs to the Constitutional Court because the Constitutional Court was indeed established to ensure that the constitution as the highest law can be upheld as it should.<sup>23</sup> The purpose of holding a Constitutional Court is to oversee and guarantee that the constitutional norms are not distorted in the administration of the state,<sup>24</sup> including norms that guarantee freedom of association and association contained in Article 28 E paragraph 3.

In the practice of dissolution of mass organizations in Indonesia, it is very visible the dominance of the executive in the process. Dissolution of CSOs is only based on political assessments from the president through relevant ministries, whether the organization is in line with the objectives of the country or not. Of course, this is not in accordance with restrictions on freedom of association which requires a court decision as an embodiment of the due process of law. To avoid practices that have occurred, the authors provide the concept of the dissolution of mass organizations should be given authority to the Constitutional Court in the dissolution of mass organizations.

Other than the Constitutional Court placed as Guardian of Constitution, that authority cannot be released from the phenomenon of judicialization of politics. The phenomenon of judicialization of politics within the authority of the Constitutional Court decides the dissolution of CSOs cannot be separated from political interests.

32

In the context of dissolution of CSOs, the function of the Constitutional Court as the guardian of the constitution prevents the government from being able to disband community organizations. The legal consequences of the dissolution of the mass organization itself have a very big impact on the legal status of the mass organization, even the status of the members of the mass organization being dissolved when serving in the executive or legislative branches of power. So that the decision of the Constitutional Court regarding the dissolution of mass organizations is very necessary to protect freedom of association and protect the life of democracy in Indonesia. So that the government can dissolve CSOs through the institutions of the constitution, while simultaneously accommodating the dissolution of CSOs by upholding the principles of democratic rule of law that uphold protection of freedom of association and assembly. There is no reason anymore that the dissolution of CSOs through the State Administrative Court requires quite a long time. With the election of the Constitutional Court as an alternative to dissolve mass organizations, it can be done briefly.

<sup>23</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta: Sinar Grafika, 2012, p. 130.

<sup>24</sup> Hamdan Zoelva, *Mengawal Konstitusionalisme*, Jakarta: Konstitusi Press, 2016, p. 94.

### **Conclusion**

1. The application of the *contrarius actus* principle in the perspective of the Democratic Law State is actually emphasized in order to carry out the government's control function over the establishment of community organizations, but in practice or application the *contrarius actus* principle is made a weapon or tool by the government to combat social organizations which are deemed incompatible with the ideology of Pancasila. Whereas in a democratic rule of law every citizen is guaranteed freedom of association and assembly which is limited by the constitution.
2. Juridical implication of the use of the *Contrarius Actus* Principle to freedom of association and association is the existence of freedom to carry out its activities will be limited, and the government can at any time dissolve social organizations that are considered not in line with national and state ideology without going through a judicial process, so that freedom of association and assembly for every citizen The country will be confined.
3. The concept of the dissolution of a good social organization in relation to a democratic rule of law should be carried out according to the provisions of the law, namely that all dismissal and/ or dissolution processes must go through a court and in this case the constitutional court is deemed appropriate for dissolving CSOs, so that the mechanism its dissolution is carried out briefly.

### **Recommendation**

1. Dissolution of mass organizations should follow the formulation that has been formed based on the law by returning the control mechanism through a state administration lawsuit to prevent the government from unilaterally dissolving the organization until there is a lawsuit filing.
2. Giving authority to the Constitutional Court to adjudicate the dissolution of social organizations which are requested by the government, such as the dissolution of political parties in order to continue to uphold the principles of the rule of law. Because the proceedings at the Constitutional Court are relatively short, so it does not require a long time in the process of dissolution of mass organizations.
3. The concept of dissolution of mass organizations should be carried out through the adjudication stage before the permit revocation process.

### **References**

- Adi Sulistiyono. 2008. *Negara Hukum: Kekuasaan, Konsep dan Paradigma Moral*. LPP UNS and UNS Press, Surakarta.
- Adriaan W. Bedner. 2012. *Suatu Pendekatan Elementer terhadap Negara Hukum*", in the book *Kajian Sosio- Legal*, organized by Adriaan W. Bedner, (et.al) (eds), Jakarta: Universitas Indonesia, Universitas Leiden, Universitas Groningen.
- C.S.T Kansil. 1989. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Balai Pustaka, Jakarta.
- Dendy Sugono. 2008. *Kamus Bahasa Indonesia*, Pusat Bahasa Departemen Pendidikan Nasional, Jakarta.
- Eny Kusdarini. 2011. *Dasar-Dasar Hukum Administrasi Negara Dan Asas-Asas Umum Pemerintahan Yang Baik*. UNY Press, Yogyakarta, Jacqueline Vel, "Sebuah Kerangka Analisis untuk Penelitian Empiris dalam Bidang Akses terhadap Keadilan.
- Jimly Asshidiqie. 1994. *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*. Ihtiar Baru van Hoeve, Jakarta.

- Jimly Asshiddiqie. 2015. Penguatan Sistem Pemerintahan dan Peradilan. Sinar Grafika, Matter I, Jakarta.
- , 2004. Cita Negara Hukum Indonesia Kontemporer”. Scientific Oration at Graduation Law Bachelor of Law Faculty of Sriwijaya University Palembang, March 23, 2004.
- , 2008. Pokok-Pokok Hukum Tata Negara Pasca Reformasi. PT. Bhuna Ilmu Populer, Jakarta.
- National Human Rights Commission. 2009. Komentar umum Kovenan Internasional Hak Sipil dan Politik, Kovenan Internasional Hak Ekonomi, Sosial, dan Budaya, Jakarta: Komisi Nasional Hak Asasi Manusia.
- Mardian Wibowo. 2015. Menakar Konstusionalitas Sebuah Kebijakan Hukum Terbuka dalam Pengujian Undang- Undang. Jurnal Konstusi, Vol. 12, No. 2.
- Moh. Mahfud MD. 2000. Demokrasi Dan Konstitusi Di Indonesia. PT Rineka Cipta, Jakarta.
- Muin Fahmal. 2006. Peran Asas-Asas Umum Pemerintahan Yang Layak Dalam Mewujudkan Pemerintahan Yang Bersih, UII press Yogyakarta, Yogyakarta.
- Muhammad Najih. “Politik Hukum Pidana Konsepsi Pembaharuan Hukum Pidana dalam Cita Negara Hukum”, Setara Press, Malang.
- Nimatul Huda and R Nazriyah. 2011. Teori dan Pengujian Peraturan perundang-undangan. Nusa Media, Bandung.
- , 2005. Negara Hukum, Demokrasi Dan Judicial Review. UII Press Yogyakarta, Yogyakarta.
- Nur Basuki Winanrno. 2008. Penyalahgunaan Wewenang dan Tindak Pidana Korupsi , laksbang mediatama, Yogyakarta.
- O. C. Kaligis. 2006. Pengawasan Terhadap Jaksa Selaku Penyidik Tindak Pidana Khusus dalam Pemberantasan Korupsi, P.T Alumni Bandung.
- Philipus M. Hadjon and Tatiek Sri Djatmiati. 2005. Argumentasi Hukum. Gadjah Mada University Press, Yogyakarta.

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).

## ORIGINALITY REPORT

19%

SIMILARITY INDEX

%

INTERNET SOURCES

14%

PUBLICATIONS

15%

STUDENT PAPERS

## PRIMARY SOURCES

1	Submitted to Athlone Institute of Technology Student Paper	3%
2	Submitted to Universitas Muria Kudus Student Paper	2%
3	Submitted to Flinders University Student Paper	2%
4	Submitted to Universitas Airlangga Student Paper	1%
5	MARUADI, M. Hadin MUHJAD. "THE LEGALITY OF THE 2020 REGIONAL ELECTION ON STATE CONDITIONS IN A HEALTH EMERGENCY", Journal of Public Administration, Finance and Law, 2021 Publication	1%
6	M. Asfa Firosa. "Pembubaran Organisasi Kemasyarakatan dalam Perspektif Hak Kebebasan Berserikat Berdasarkan Konstitusi Negara Republik Indonesia", Volksgeist: Jurnal Ilmu Hukum dan Konstitusi, 2019 Publication	1%

7	Submitted to Universitas Brawijaya Student Paper	1 %
8	Submitted to Universiti Teknologi MARA Student Paper	1 %
9	Riris Ardhanariswari, Muhammad Fauzan, Ahmad Komari. "The Attempt to Human Rights Protection Through Judicial Review in Indonesia", SHS Web of Conferences, 2018 Publication	1 %
10	Faissal Malik, Syawal Abduladjid, Dewa Gede Sudika Mangku, Ni Putu Rai Yuliartini et al. "Legal Protection for People with Disabilities in the Perspective of Human Rights in Indonesia", International Journal of Criminology and Sociology, 2021 Publication	1 %
11	Submitted to Universitas Negeri Semarang Student Paper	<1 %
12	Nyoman Martana, Putu Ade Hariestha Martana, Kadek Agus Sudiarawan, Bagus Hermanto. "Discourses of Legal Certainty in Execution of Administrative Court Decision", Substantive Justice International Journal of Law, 2019 Publication	<1 %
13	Submitted to Padjadjaran University Student Paper	<1 %

14	Submitted to Universitas Sebelas Maret Student Paper	<1 %
15	Submitted to University of Melbourne Student Paper	<1 %
16	Submitted to UIN Syarif Hidayatullah Jakarta Student Paper	<1 %
17	Kartono Kartono, Aji Mulyana. "The Implementation of Chemical Castration Penalties towards Paedophilia Crime Perpetrators", FIAT JUSTISIA, 2019 Publication	<1 %
18	Toto Suharto. "Transnational Islamic education in Indonesia: an ideological perspective", Contemporary Islam, 2017 Publication	<1 %
19	Submitted to O. P. Jindal Global University Student Paper	<1 %
20	Lalu Jumaidi, I. Nyoman Nurjaya, Zainal Asikin. "Legal Protection for Prisoners for a Conditional Exemption in the Perspective of Human Rights", Mediterranean Journal of Social Sciences, 2017 Publication	<1 %
21	Syamsir Syamsu, Muhammad Alifian Gerald Fauzi. "Meaning and Follow Up of Positive Fictional Decisions According to the	<1 %



Government Administration Law", Fiat Justisia:  
Jurnal Ilmu Hukum, 2021

Publication

---

22

Submitted to Universitas Hasanuddin

Student Paper

<1 %

---

23

"The International Conference on ASEAN  
2019", Walter de Gruyter GmbH, 2019

Publication

<1 %

---

24

Rugun Romaida Hutabarat. "Legality Letter of  
Statement of Khilaf in Indonesia Criminal  
Justice System", FIAT JUSTISIA:Jurnal Ilmu  
Hukum, 2018

Publication

<1 %

---

25

"The Political participation and representation  
of national minorities: the work of  
intergovernmental committees on national  
minorities between Hungary and its  
neighbors", Corvinus University of Budapest,  
2021

Publication

<1 %

---

26

Arman Sukma Negara. "Diversion As A Crime  
Solution Towards Child Crime Prepertrator",  
Ius Poenale, 2021

Publication

<1 %

---

27

Muhammad Fauzi, Mellayanah Mellayanah,  
Muhammad Akmal Rizki Rivaldi, Fairuz Arta  
Abhipraya. "Larangan Pengunggahan Konten

<1 %

Terkait FPI: Tinjauan Perspektif Hak Asasi Manusia di Indonesia", Kosmik Hukum, 2021

Publication

28

Taufik Hidayat Simatupang. "Adult Age in Marriage in Indonesia (Theoretical Study of the Application of the Lex Posterior Derogat Legi Priori Principle)", Jurnal Penelitian Hukum De Jure, 2021

Publication

<1 %

29

Submitted to UIN Sunan Gunung Djati Bandung

Student Paper

<1 %

30

Yogi Prasetya Sinambela. "Disparity Of Death Penalthy Decision Against People Criminal Acts Of Dark Circular Narcotics", Asian Social Science and Humanities Research Journal (ASHREJ), 2020

Publication

<1 %

31

Submitted to Sultan Agung Islamic University

Student Paper

<1 %

32

Submitted to International Islamic University Malaysia

Student Paper

<1 %

33

Muhammad Reza Winata. "Politik Hukum dan Konstitusionalitas Kewenangan Pembubaran Organisasi Kemasyarakatan Berbadan Hukum

<1 %

# oleh Pemerintah", Jurnal Penelitian Hukum De Jure, 2018

Publication

---

---

Exclude quotes      On

Exclude matches      < 10 words

Exclude bibliography      On

# Actus\_Principle\_in\_Dissolution\_of\_Social\_Organizations\_from.p

---

## GRADEMARK REPORT

---

FINAL GRADE

**/0**

GENERAL COMMENTS

**Instructor**

---

PAGE 1

---

PAGE 2

---

PAGE 3

---

PAGE 4

---

PAGE 5

---

PAGE 6

---

PAGE 7

---

PAGE 8

---

PAGE 9

---

PAGE 10

---

PAGE 11

---

PAGE 12

---