



## Urgent Necessity of Issuing Regulations concerning Government Ban on Displaying Organizational Symbols

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### **Abstract**

Back in 2017, the government dismissed a mass organization called Hizbut Tahrir Indonesia or HTI. This dismissal referred to the activities organized by HTI that was believed to pose a threat to the political sovereignty of the state. On one hand, the symbol of HTI is still visible to the public's eye on media and in all forms. Organizational symbols, believed to represent an identity and the soul of movement, have been used by several mass organizations. This research is focused on the analysis of the urgent necessity of issuing the regulations that ban the use of organizational symbols that have long been banned by the government. With normative legal method, statutory, historical, and conceptual approaches, this research has revealed that the urgency of issuing the regulations banning the organizational symbols principally refers to Pancasila (the Five Principles) as the source of law, the 1945 Indonesian Constitution, Provisions of People's Consultative Assembly, laws, and legal history of regulating mass organizations and the concept of Human Rights as referred to by the people of Indonesia.

**Keywords:** *Regulations; Use of Symbols; Organization*

### **A. Introduction**

Organizational symbols have been around in the society as the representative of identity and the vigor of movement. *Partai Komunis Indonesia* hereinafter PKI (Indonesian Communist Party) is one among others symbolized with a hammer and a sickle. When a party or a mass organization is seen contravening the *Pancasila* (Five Principles), leading to the ban of its existence, it sparks issues regarding the whole unity of the identity or the symbol that is linked with the movement of the party or organization.

Hammer and sickle still echoing along with the name of PKI is directly or indirectly associated with the PKI movement. Thus, the history implies that the appearance of this symbol is still seen as part of the PKI that does not deserve a chance to exist.

In 2017, the government dismissed Hizbut Tahrir Indonesia (hereinafter HTI) because this organization was seen to threaten the political sovereignty of this state. The HTI was a religious

organization transforming into political organization that was aimed to lead this state into an Islamic-based state, or such a state is commonly known as *khilafah* that is generally transnational and more intended to set the absence of nation and state. As a matter of fact, twenty countries including those whose major population is Islam such as Turkey, Saudi Arabia, Pakistan, Egypt, Jordan, and Malaysia banned the HTI activities far earlier.<sup>1</sup>

National law, however, recognizes that mass organizations represent human rights specifically the freedom to congregate and to unite, and this has been constitutionally recognized in the 1945 Indonesian Constitution Article 28E paragraph (3) implying that every individual holds his/her right to congregate, to unite, and to express his/her thoughts. That is, these human rights have to be guaranteed through regulations, facilities, and infrastructure, the freedom to congregate and unite. Furthermore, the interpretation of the Constitution is further elaborated in Law Number 17 of 2013 concerning Mass Organizations (Law concerning Mass Organizations Year 2013) and in Government Regulation in Lieu of Law (hereinafter Perppu) Number 2 of 2017 that was further approved by Law Number 16 of 2017.

HTI symbol still appears in media and in all forms, meaning that a threat is still in the air and there is greater likelihood that this organization still has its chance to spread its doctrine.

This research was conducted based on normative method referring to legal principles, norms, concrete rules of law, and legal system related with the materials studied.<sup>2</sup> This research employed statutory, historical, and conceptual approaches, aimed to elaborate and analyze the regulations and the position of the organizational symbols in Indonesia.

## **B. Discussion**

### **1. Mass Organizations as regulated in Law Number 8 of 1985**

Law Number 8 of 1985 concerning Mass Organizations strengthens the position of the public in a mass organization. The main concept brought in this law is that mass organizations symbolize the participation of the public in national development in post-Japanese and Dutch invasion. People of all walks of life actively participate in raising awareness as citizens according to *Pancasila* and the 1945 Indonesian Constitution. Mass organizations provide room in which opinions and thoughts are shared by all citizens, and this represents the values of *Pancasila* and the objectives of the state.<sup>3</sup>

The issuance of Law concerning Mass Organizations of 1985 highlights the meaning and function of mass organizations living under the Unitary State of the Republic of Indonesia according to *Pancasila* and the 1945 Indonesian Constitution. Both political and mass organizations rotate in the same scope, *Pancasila*. The existence of mass organizations deserves constitutional protection, where every individual has his/her rights to establish an organization. This point is asserted in the 1945 Indonesian Constitution before and after amendment. Article 28 of the 1945 Indonesian Constitution ensures the freedom to congregate and unite, express thoughts orally or in writing and so forth as regulated in the Law. Furthermore, Article 28E paragraph (3) of the 1945 Indonesian Constitution specifically implies that every individual has his rights to congregate, unite, and express his/her thoughts.

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<sup>1</sup> Bambang Prasetyo, *Pembubaran Hizbut Tahrir di Indonesia dalam Perspektif Sosial Politik*, Analisis: Jurnal Studi Keislaman, Volume 19, No. 2, Tahun 2019, DOI: <http://dx.doi.org/10.24042/ajsk.v19i2.3371>

<sup>2</sup> Sudikno Mertokusumo, *Penemuan Hukum*, Liberty, Yogyakarta, 2004, p. 29.

<sup>3</sup> See *Konsideran Undang-Undang Nomor 8 Tahun 1985 tentang Organisasi Kemasyarakatan*.

## 2. Mass Organizations based on the Hierarchy of Legislation

Based on the hierarchy of legislation, mass organizations are mentioned in *Pancasila* specifically in the Preamble of the 1945 Indonesian Constitution as *Staatsfundamentalnorm*, in the body of the Constitution as *Staatsgrundgesetz*, in Law Number 17 of 2013 in conjunction with Law Number 16 of 2017 concerning Mass Organizations as *Formell Gesetz*, and Government Regulation and derivative regulations governing mass organizations as *Verordnung & Autonome Satzung*. These are elaborated further in the following sub-sections.

### a. Mass Organizations according to *Pancasila* (*Staatsfundamentalnorm*)

The preamble is the part of the Constitution that was far from coercion in the process of the making amidst the invasion of the Japanese colonials back in time. The Preamble voices state fundamentals (*staats fundamental norm*), popular sovereignty principles according to *Pancasila*, fundamental values, objectives and a set of orders to achieve the Independence of Indonesia. This Preamble voices more than ideal statements under guidelines, but it also voices orders to execute, as in paragraph four of the Preamble of the Constitution where statements of independence are elaborated, representing the state's ideology, perspective, and *Pancasila* as the main Principles.<sup>4</sup>

*Pancasila* as the state's ideology holds formal-juridical position since it is enacted in the provisions of the Constitution in the fourth paragraph, and this position is more deeply rooted in following the transition from New Order to Reform era, which was marked by the issuance of Provisions of People's Consultative Assembly (hereinafter TAP MPR) Number XVIII/MPR/1998 concerning Revocation of TAP MPR No. II/MPR/1978 concerning Guidelines of Appreciation and Exercise of *Pancasila* (*Ekaprasetya Pancakarsa*) as the state's ideology, in conjunction with TAP MPR Number I/MPR/2003 concerning Review of Materials and legal Standing of Interim TAP MPR and TAP MPR 1960 to 2002.

*Pancasila*, thus, is the principle of the state, serving as the center for the development of all sectors. In law, for example, *Pancasila* disseminates values and serves as the source of law and philosophy. In other words, *Pancasila* is positioned the highest in the hierarchy or the structure of law in Indonesia. This perspective is in line with the analysis conducted by Hamid S. Attamimi, linking it with the thought of Hans Nawiasky believing that *Pancasila* as mentioned in the Preamble of the 1945 Indonesian Constitution is *Staatsfundamentalnorm*.<sup>5</sup>

TAP MPR Number III/MPR/2000 concerning Source of Law and Structure of Legislation no longer declares explicitly that *Pancasila* is the center of all sources of the law in the national legal system. The issuance of law Number 10 of 2004 concerning the making of the Legislation has reconfirmed the position of *Pancasila* as the center of all sources of law. However, in the hierarchy of the legislation, TAP MPR as the legal roof under which *Pancasila* exists was scrapped and replaced with Law Number 12 of 2011 that regulates similar issue.

*Pancasila* is the source of law that is substantive, unlike legislation, convention between two countries, jurisprudence, or custom that are more procedural. *Pancasila* as a substantive source of law is determined by the content of the substantive material in *Pancasila* that at least involves three qualities of materials: *Pancasila* holds philosophical content of Indonesia, the content serves as the identity of the national law, and *Pancasila* does not declare order, ban, or impose sanctions, but *Pancasila* sets the

<sup>4</sup> Jakob Tobing, *Nasionalisme Dan Sejarah Konstitusi Indonesia*, Prosiding Seminar, "Integrasi Nilai-Nilai Pancasila Dalam Konstitusi, Bidang Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, Depok, 6 Juni 2018, p. 38

<sup>5</sup> Hamid S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara*, (Disertasi, Pascasarjana Universitas Indonesia), Jakarta, 1990, p. 48

fundamental principles as the basis to establish a law (*meta-juris*), all of which have set *Pancasila* as a substantive source of law.<sup>6</sup>

Law Number 17 of 2013 in conjunction with Law Number 16 of 2017 concerning Mass Organizations Article 2 states that these organizations do not contravene *Pancasila* and the Constitution.

The provision of Article 2 of Law concerning Mass Organizations mentions that mass organizations cannot be said contravening *Staatsfundamentanorm* of *Pancasila*. Moreover, the meaning in every point of *Pancasila* shows that the interpretation of this ideology should not be only at the phase of history, but in reference to contravening the ideology and the use of symbols, the interpretation of *Pancasila* needs to be made more pronounced in the fulfillment of the human rights and social justice.

Principally, *Pancasila* is one system of philosophy that carries the levels of values. That is, *Pancasila* serves as the source of all elaboration of norms, including legal and moral norms, or even other norms of the nation. The philosophy of *Pancasila* holds ideas that are critical, fundamental, rational, systematic, and comprehensive, and this system represents a set of values. In brief, all the values carried within the ideology are formed based on the consideration and assessment regarding the good and the bad. This view further serves as a reference concerning whether something should or should not be done.<sup>7</sup>

Thus, *Pancasila* is an agreement and a consensus serving as a basis to develop all sectors. As the ideology of the state, *Pancasila* serves as *rechtsidee* (the concept of law) that has to be attached to every move in life and law enforcement. Notonegoro argues that *Pancasila* serves as the concept of law due to its position as the fundamentals of the state (*staatsfundamentalnorn*) that hold power as *grundnorm*. As the concept of law, *Pancasila* has been the leading spotlight that the national legal products should follow, or, in other words, all legal products are meant to achieve the concept mentioned in *Pancasila*.<sup>8</sup>

In reference to the ideas of Kelsen and Nawiasky about *stufenboutheory* or the theory of order of norms, it can be understood that fundamental norms of the state lie on top of pyramid. Therefore, *Pancasila* as the fundamental norms sits on top of the pyramid of norms. With this position, *Pancasila* serves as the source of all sources of law.

In reference to the above explanation, *Staatsfundamentanorm*, or *Pancasila* in the Constitution serves as the source of all sources of law, including the sources that regulate mass organizations, and, therefore, the running of mass organizations has to comply with *Pancasila*.

## **b. Mass Organizations according to the 1945 Indonesian Constitution**

Hans Nawiasky's perspective, as elaborated by Hamid S. Attamimi, implies that the content of the Constitution acts as *Staatsgrundgesetz* that holds the position as a written fundamental law principally and generally giving the main provisions. As the fundamental law, the Constitution is the written law of its highest position above all legislation in Indonesia.

The 1945 Indonesian Constitution point I states that the Constitution of a state only represents a part of the law of the state. Constitution is a written law, standing next to the fundamental laws that exist unwritten but remain kept and maintained in the exercises of state administration.

<sup>6</sup> *Ibid*, p. 32

<sup>7</sup> Ashabul Kahfi, *Kedudukan Pancasila Sebagai Dasar Negara Ashabul Kahfi Pasca TAP MPR No.1/MPR/2003*, Jurnal Jurisprudentie, Volume 4 Nomor 2, Desember 2017, p. 64-65

<sup>8</sup> Mahfud MD, "Menguatkan Pancasila Sebagai Dasar Ideologi Negara", Dimuat dalam *Mahkamah Konstitusi dan Penguatan Pancasila*, Majalah Konstitusi No.52-Mei 2011, p.8

The 1945 Indonesian Constitution in the structure of law in Indonesia is the highest positive law and it controls the positive legal norms positioned lower below the Constitution within the hierarchy of the law in Indonesia. Thus, every government measure or policy must be present within the frame of this highest law.

The 1945 Indonesian Constitution Article 28E paragraph (3)<sup>9</sup> ensures the freedom to congregate and express thoughts. This provision of the Constitution is written and it can be taken as an emphasis that the government holds the power of and responsibility for guaranteeing the existence of mass organizations. This matter is also provided in Article 28I paragraph (4) stating:

“protection, development, enforcement, and fulfillment of human rights are under the responsibility of the state, especially the government.”

This statement implies that the government is responsible for ensuring the rights of its citizens to get a job and to live a decent life. As a written fundamental law, the Constitution holds highest position, meaning that all other sources of law governing mass organizations refer to the 1945 Indonesian Constitution.

With its position in terms of the mass organizations, the 1945 Indonesian Constitution holds the following function:

- 1) serving as a written guideline regarding the running of mass organizations.
- 2) serving as a guideline of the making of legislation concerning mass organizations.
- 3) serving as control over whether the norms of mass organizations comply with higher norms of law, and whether all those norms of law contravene the provisions written in the Constitution.

Therefore, every legal product concerning mass organizations such as laws, government regulations, presidential decrees, ministerial regulations, or every measure or policy taken or made by the government must be based on the 1945 Indonesian Constitution, in which it refers further to *Pancasila* as the source of all sources of law.

### **c. Mass Organizations regulated in Law Number 17 of 2013**

Reform began to take place in 1998, marked by the downfall of New Order, followed by the change in political atmosphere in the state fundamentally, where changing conditions demanded new structure of law capable of maintaining its relevance to the changing time.

Post reform and global challenge faced by all people in Indonesia offered fast and dynamic change that brought along uncertainty and implausibility. This situation intersects with growing democratization process, openness, reinforcement of local wisdom, information and technology development and new way of life, freedom-based new values, high participation of people regarding human rights, the formation of social politics, economy, social culture, and further to the growth of new unprecedented rules.

Departing from the value system or positive law, as a state and the citizens, it is without doubt that Indonesia with its sovereignty requires appropriate and assertive legal certainty that is pro-justice for the people of the state, and this legal certainty must be relevant to the need of the state per se and comply with the Indonesian Constitution.

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<sup>9</sup> “Every person has his/her rights to congregate, unite, and express his/her thoughts”.

Growing mass organizations and non-government organizations along with their orientation and nature are inevitable. This phenomenon, on one hand, is seen as fresh air that supplies oxygen to the empowerment of civil society and the growth of people's awareness in democracy. On the other hand, diversity in activities, the fundamentals of establishment, ways organizations are run, interactions with the members of public, targets regarding the involvement of public sphere with new paradigm will certainly pose serious consequences to the life of the people in Indonesia, specifically when it is related with the current law or legislation.

The Indonesian Constitution agrees that Indonesia is the state of law as agreed in Article 1 paragraph (3) of the 1945 Indonesian Constitution.<sup>10</sup> Constitutional assurance through the state of law has left the responsibility to the state for providing legal protection through the embodiment of legislation that specifically elaborates the aspects of protection and the enforcement of the legal protection. Establishment of mass organizations that should have the freedom to congregate and express thoughts is governed in Article 28 of the 1945 Indonesian Constitution implying that the freedom to congregate, unite, and express thoughts orally or in writing and so forth is governed in Law. Law of 2013 concerning Mass Organizations embodies the existence of law that specifically governs people's rights to congregate or unite in a mass organization according to the Constitution.

Mass organization as in Law Number 17 of 2013 is defined as an organization established by volunteers from the society and this establishment is strengthened with aspiration, willingness, needs, interest, mission, and objectives to participate in the state development to achieve the goal of the state according to Pancasila.

### 3. Standing of Mass Organization Symbols

The history of banning mass organizations in Indonesia traces back to the time of Partai Komunis Indonesia (PKI). Following the dismissal of this party, all identities and symbols related with the party have been seen as the threat to the state, and t-shirts, hats, books, or other objects showing the symbol of the party were seized under the ruling President Soeharto.

In 1966, the government issued interim TAP MPR Number XXV/MPRS/1966 Year 1966 concerning Dismissal of Partai Komunis Indonesia to ban the existence of the party in Indonesia, along with the statement that condemned this party all over the archipelago and proscribed any forms of doctrines or teachings intended to disseminate the communism/ Marxism-Leninism.

Firstly, TAP MPR was passed due to the main consideration believing that Communism/Marxism-Leninism definitely contravenes *Pancasila*. Secondly, the history reveals that those following the communism/Marxism-Leninism, not to mention the PKI, once attempted to overthrow the government of this state with violence. Thirdly, strict measures need to be taken to fight against communist party or any activities spreading teachings and the doctrine of communism and Marxism-Leninism.

It is true that the provision in the content of the Article does not clearly regulate the use of symbol of PKI, but Article 1 to 3 seem to highlight the ban on PKI-related activities with the following details:

#### Article 1

In agreement with and to enforce the discretion of the President/Commander-in-Chief of Indonesian Armed Force/Great Leader of Revolution/Mandatory of Interim People's Consultative

<sup>10</sup> Pasal 1 ayat (3) UUD NRI 1945, "Negara Indonesia adalah Negara Hukum".

Assembly regarding the dismissal of Partai Komunis Indonesia, including all its organizations from central to regional areas or its organizations that are in line with its principles or under PKI and the statement that declares this party as a forbidden organization all over Indonesia as set forth in the provision dated 12 March 1966 No. 1/3/1966, and this discretion is enacted as the provisions of Interim People's Consultative Assembly (Ketetapan MPRS).

#### Article 2

All activities in Indonesia intended to spread or disseminate the teachings of Communism/Marxism-Leninism in all forms or manifestation with whatever apparatus and media that assist the spreading or dissemination of the teachings are proscribed.

#### Article 3

Regarding the intention to transfer the information on this Communism/Marxism-Leninism as part of scientific reason as in universities, this activity has to be held in a guided manner, in which the government and DPR-GR must set a legislation to protect the *Pancasila* and on the grounds for security.

The existence of the symbol in the history has an impact on the form of the movement of the organization since a symbol represents the face of an organization. Thus, the ban on the use of symbol also means the ban on the operation of an organization. This refers to the provision of the approval of mass organizations. In this Articles of Association, reinforcement of regulation governing symbol also revoked the symbol of the organization.

Mass organizations are traceable in Government Regulation Number 58 of 2016 concerning Enforcement of Law number 17 of 2013 concerning Mass Organizations. This government regulation ranges from proposal of registration that requires Deed Establishment issued by a notary that involves Articles of Association, work plan, structure of organization, domicile statement of the secretary of a mass organization, tax id number, a statement declaring that the land is not in dispute or not involved in court cases and a statement stating the willingness of reporting organization activities.

Furthermore, Article 12 implies that Articles of Association must at least show the name and symbol; position; principle, objective, and function; structure of organization; rights and obligation of members; financial management; mechanism of dispute resolution and internal supervision; and dismissal of organization.

With this provision regarding the symbol of the organization included in the Articles of Association means that the ban on the organizational symbols will result in the revocation of the organization's license.

Perppu Number 2 of 2017 governs the ban on the use of symbols, flags, or attributes of organizations in Article 59 stating:

Mass organizations must not use names, symbols, flags that bear basic resemblance or complete resemblance to the names, symbols, flags, or symbols of separatist organizations or proscribed organizations;

Following the enforcement of the Perppu Number 2 of 2017 approved with Law No. 16 of 2017, the government dismissed HTI since its existence was believed to pose a threat to political sovereignty of the state. The core of this organization was *khilafah* ideology which is generally transnational that is more

likely to encourage the absence of state and nation. Moreover, twenty countries including Turkey, Saudi Arabia, Pakistan, Egypt, Jordan, and Malaysia banned the operation of this organization far earlier.

From the perspective of constitutional authority, the dismissal of HTI seemed to allow the freedom to congregate, to unite, and to express thoughts to grow and not to be easily violated arbitrarily. Thus, the restriction of the organizations, including the dismissal, still refers to particular criteria that are enacted in Article 28J paragraph (2) of the 1945 Indonesian Constitution implying that this restriction is conducted based on law and to ensure the recognition and appreciation of rights and freedom on the grounds for justice according to moral consideration, religious values, security, and public order in a democratic society.

Therefore, the dismissal of organizations like HTI or other organizations is valid as long as it is performed according to the procedure enacted in the Law concerning Mass Organizations, and this dismissal is aimed at ensuring the public order and safety within a democratic society.

The law governing mass organizations guarantees the government's right to dismiss mass organizations whose movement is believed to violate the obligation and regulations. And the *ratio legis* behind this allows the revocation of the status of legal entity. This organization violated several points governed in the Law: First, HTI failed to ensure the unity of the state as governed in Article 21 point b. There was indication that HTI's movement attempted to replace this unitary state with the ideology of *khalifah*.

Secondly, HTI movement contravened Article 21 point f implying that mass organizations are responsible for participating in the achievement of the state's objectives, and certainly this participation is impossible when a mass organization is pro-nationless and stateless, contrary to the principle of Unitary State of the Republic of Indonesia established on 17 August 1945. That is, the ideology the HTI clung on to certainly would not allow this organization to participate for the sake of the unitary state.

Thirdly, HTI violated Article 59 paragraph (2) point c implying that mass organizations must not encourage any separatist movement that threatens the sovereignty of the Republic of Indonesia. The term separatist, as translated from the Kamus Besar Bahasa Indonesia (KBBI) is "a certain group of people withdrawing from the unity/people of the state to gain support." The term 'separatist' does not necessarily refer to raised weapons to withdraw from the people to found a new nation. Campaign that attracts others to replace the existing system of the state with *khilafah* is also defined as separatist that threatens the state sovereignty.

The provision of Article 59 paragraph (4) stating that mass organizations must not follow, develop, and spread the teachings or doctrine contravening *Pancasila* is not easy to implement in the case of HTI since the point in this article restricts the definition of the teaching or concept that contravenes the *Pancasila* such as atheism, communism/Marxism-leninism.

Under Article 60 paragraph (1) of Law concerning Mass Organizations, the government is authorized to impose administrative sanction on the violation of Article 21 and Article 59 of Law concerning Mass Organizations. This sanction involves: a. written warning; b. discontinuation of aid and/or grant; c. temporary ban on activities; and/or d. revocation of registration or the status of legal entity.

The government imposed sanction involving the revocation of license of HTI, meaning that this revocation also banned all provision that came with this organization. As a legal entity, HTI had Articles of Association, and it emphasized that the revocation of the license of this organization also resulted in the ban on all forms of rights and obligation. Logo, symbol, and emblem stated in the Articles of



Association were part of the organization, and this statement allowed the revocation of all these related attributes.

In reference to the etymology of the term symbol, back in the time of the ancient Greek, as symbol was an object divided into two pieces, and each party had one piece and this piece was inherited to the next generation; when two pieces were put together, it would allow recognition from one another and this combination symbolized friendship that was built earlier.” However, the term symbol has been widely related with things like scar or birthmark, or coupons that are exchangeable with money or food.<sup>11</sup>

Every object that can authenticate a thing or denote convention or the convention itself can represent a symbol, as what is defined in Oxford Dictionary: “Something that stands for, represents, or denotes something else (not by exact resemblance, but by vague suggestion, or by some accidental or conventional relation)”.<sup>12</sup>

The dictionary also adds: “written character, letter, figure, or conventional symbol”. It is common to hear the term symbol in English speaking countries. Written characters, according to Bloomfield, become symbol, or sign or a group of signs that conventionally represent several linguistic forms. One symbol represents one linguistic form, meaning that when we draw a symbol with all its situations, we emit linguistic forms, and when we respond to a symbol, it is equal to the response to what we listen to as linguistic form.<sup>13</sup>

Morris sees symbols as signs that are produced to replace other signs, and these other signs are the synonym of those signs. This definition also applies in the general use of symbol. In French, mathematic, logical, chemistry symbols that are usually written represent different definition. Symbols have similar function and type to those in ancient Greek time. The symbols here are made based on convention.<sup>14</sup>

Peirce says “A symbol is a sign which refers to the object that is denoted by virtue of a law, usually an association of general ideas, which operates to cause the symbol to be interpreted as referring to that object.”<sup>15</sup> That is, a symbol represents another invisible form that is not apparent on the symbol itself.

The definition as expressed by Pierce and the concept of symbol or emblem can also be defined as what is seen in HTI that is linked with the movement of HTI since a symbol is a representation of an object that denotes general ideas that operate, so that the symbol is interpreted as the reference of the object. Therefore, an emblem is a symbol that is apparent in an organization.

#### **4. Implication of Perppu Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Mass Organizations**

On 10 July the Government issued Perppu Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Mass Organizations which was then stipulated as a Law Number 16 of 2017 concerning the Provision of Perppu Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Mass Organizations into a Law (Perppu Ormas/UU No. 16 of 2017).

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<sup>11</sup> Jeanne Martinet, 2010, *Semiologi (Kajian Teori Tanda Saussuran antara Semiologi Komunikasi dan Semiologi Signifikasi)*, Penerjemah : Stephanus Aswar Herwinarko, Jalasutra, Yogyakarta, p.59

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 60

<sup>14</sup> *Ibid.*

<sup>15</sup> Alex Sobur, 2004, *Semiotika Komunikasi*, PT. Remaja Rosdakarya, Bandung, p. 156

In reference to the basic consideration of the government, the main intention of the issuance of Perppu Ormas 2017 is to strengthen the ideology of *Pancasila* in Mass Organizations since some organizations are with the movement that contravenes *Pancasila*, threatening the Unitary State of the Republic of Indonesia. Thus, the legislation of Perppu Ormas Year 2017 allows the government to take measures to dismiss mass organizations contravening *Pancasila*.

The provisions in the regulation of Perppu Ormas of 2017 govern addition and annulment of several provisions. The main substantive material governed is related with restriction, sanction, and criminal provisions.

The provisions in:

#### Article 59

- (1) A mass organization must not:
  - a. use the name, symbol, flag, or attribute similar to the name, symbol, flag, or attribute of a government agency;
  - b. use the name, symbol, flag of another country or international institution/body similar to the name, symbol, or flag of a mass organization without consent; and/or
  - c. use the name, symbol, flag, or logo that bear basic or complete resemblance to the name, symbol, flag, or logo of another mass organization or political party.
- (2) A mass organization must not:
  - a. receive fund from or grant fund for others of any form that fails to comply with legislation; and/or
  - b. raise fund for a political party
- (3) A mass organization must not:
  - a. discriminate a tribe, religion, race, or group;
  - b. abuse or insult religions in Indonesia;
  - c. involve violence, spark problems that is likely to interrupt public order and safety, or do vandalism; and/or
  - d. carry out tasks that are within the authority of law enforcers according to the legislation.
- (4) A mass organization must not:
  - a. use the name, symbol, flag, or emblem of an organization that bear basic or complete resemblance to the name, symbol, flag, or emblem of a separatist organization or proscribed organization;
  - b. do any separatist movement that threatens the sovereignty of the Unitary State of the Republic of Indonesia; and/or
  - c. follow, develop, and spread the teaching or concept contravening *Pancasila*.

Are amended in Article 60, stating that mass organizations violating the provisions as in Article 21, Article 51, and Article 59 paragraph (1) and paragraph (2) are subject to administrative sanction, and mass organizations violating the provisions as intended in Article 52 and Article 59 paragraph (3) and paragraph (4) are subject to administrative sanction and/or criminal sanction.

The provisions of administrative sanction are governed in Article 61 paragraph (1) that consists of: written warning; termination of movement; and/or revocation of registration or legal entity.

Mass organizations represent the freedom to congregate, unite, and express thoughts and they are guaranteed under Constitution and the activities are further regulated in the law. However, the freedom in the movement of mass organizations seems to have transcended what is appropriate and thus, this

movement is potential for abuse and misuse.<sup>16</sup> Mass organizations are often linked with money laundering, instrument facilitating political interest, terrorism, and other radical movement that pose a threat to this country.<sup>17</sup>

According to Law Number 17 of 2013, the principles of mass organizations do not contravene the Pancasila and Constitution and they are seen to improve the participation and empowerment of the people; provide services to public; maintain religious values and the belief to God Almighty; maintain norms, values, moral values, ethics, and culture that live in the society; preserve natural resource and protect environment; develop social relationship, mutual work, and tolerance in society; maintain and protect the unity of the state.<sup>18</sup>

Mass organizations represent human rights in the freedom to congregate and unite and this freedom is guaranteed under the Constitution. This freedom should be given access to infrastructure and facilities and this freedom should juridically be internalized into international law as what is stated in the Declaration of Human Rights. Based on Indonesian National Law, mass organizations must comply with the Law concerning Mass Organizations, meaning that the organizations that are established have to pay attention to restriction according to legislation, including the restriction of mass organizations.

In reference to the concept of the regulation of mass organizations, Law concerning Mass Organizations 1985, 2013, and 2017 embody the concept of the state of law. However, there is a shift in the regulation concerning the types of mass organizations but there does not seem to be a ban on certain organizations, where *Pancasila* is stated as the only ideology. This provision also implies that any ideology contravening *Pancasila* can be dismissed by the Government. This dismissal will certainly revoke symbol or other forms of identity stated in Articles of Association and the government holds full authority over this dismissal.

The main concept that is still firmly held in the shift of the regulation regarding mass organizations is the concept of the state of law, while the Law of Mass Organizations 2013 still refers to the state of law with permit as part of the instrument in the concept of the state of law. This is in line with the opinion of Julius Sthal,<sup>19</sup> elaborating the elements of state of law (*rechtsstaat*), emphasizing that human rights and government, are inextricable from the permit as legal aspect according to legislation.

J.B.J.M ten Berge elaborates further in the perspective of the state of law, explaining that the principles of the state of law involve legality, protection of human rights, government bound to the law, monopoly set by the government and supervision of independent judges.<sup>20</sup> Thus, regarding the shift in the meaning of the regulation of Law concerning Mass Organizations in Indonesia linked with the Constitution, the material of the regulation concerning mass organizations is a step taken to provide legal protection for both the citizens and the state according to the principle of legality, the government bound to law, and monopoly set by the government as in permit issuance. This is all reflected in the restriction of mass organizational operation as governed in the Legislation Number 16 of 2017 and this simultaneously guarantees the freedom to congregate, unite, and express thoughts, and to gain an opportunity for individual rights or collective rights to participate in the development of the society and the state as part of the recognition of human rights.<sup>21</sup>

<sup>16</sup> Tobias Basuki, 2011, *Organisasi Masyarakat dalam Demokrasi Indonesia*, Serial Online Juli-Agt, URL: <http://www.leimena.org/id/> accessed on 15 April 2017.

<sup>17</sup> *Ibid.*

<sup>18</sup> See Law Number 17 of 2013 concerning Mass Organizations, Article 2 and Article 5.

<sup>19</sup> Miriam Budihardjo, *Dasar-Dasar Ilmu Politik*, Gramedia Indonesia, 1982, Jakarta, p. 57-58.

<sup>20</sup> See in Ridwan HR, *Hukum Administrasi Negara*, PT RajaGrafindo Persada, Jakarta, 2006, p. 9

<sup>21</sup> Tim Redaksi Pustaka Yustisia, *Pedoman Pembentukan dan Pembubaran Ormas*, Pustaka Yustisia, Yogyakarta: 2013. p.71

On the other hand, Ten Berge<sup>22</sup> also sees permit issuance as an access to allowing things that are proscribed. In other words, mass organizations are forbidden since their movement seems to have shifted from its earlier intention of achieving national objectives along with the government.

It is true that the regime of mass organizations in Law concerning Mass Organizations of 2013 indicates shift in permit issuance. The philosophy of the regulation concerning mass organizations is related with the protection of fundamental rights of the citizens to congregate and participate in the development of the nation according to Article 28 of the Constitution. Revocation of the permit the organizations can take place under the authority of the government according to Perppu Number 2 of 2017 (Law Number 16 of 2017) when administrative requirement is not fulfilled. Organizations should run under a license, and this clarifies that organizations are forbidden and, thus, to allow their operations, a permit must be granted.

Government, according to legislation as the component of the state of law is defined as an authority and state apparatus that work according to law or, in other words, that is controlled by law to bring justice to its citizens.<sup>23</sup> Therefore, permit issued to control mass organizations is under the authority of the government mandated by the legislation as the instrument of the state. That is, the state holds full authority to supervise license, and this reflects the concept of the state of law.

The Constitution implies that Indonesia is the state of law (*rechstaat*), not based on mere power (*machstaat*).<sup>24</sup> Thus, this country shall not run activities only because of power, but it all has to refer to the law. Moreover, the Constitution confirms that Indonesian government takes measures according to the constitutional system (fundamental law) not referring to absolutism (limited power) because the president holds executive and administrative power. That is, administration is restricted to legislation in performing its tasks.<sup>25</sup> Law should serve as a commander that gives order to its people to do something (the law is a king).<sup>26</sup> Thus, law has its highest position in terms of the instrument in the development and balance of other sectors for the sake of the welfare of the state.

Society is more than just a group of humankind, but it further embraces groups and institutions. People will not have the same interest, but the same interest is more likely to group them. Institutions growing in the society are intended to respond to the issues according to their sphere such as economics, politics, religion, and so forth. It indicates that the society grows along with the increasing numbers of groups and institutions.<sup>27</sup> In other words, the maturity and the development of the way of thinking of the communities in the society and the same interest and objectives may form groups that are legitimated by the law, and these groups are known as organizations.

Developing and growing along with international need, organizations are instrument to achieve an ideology through politics or particular way. Achieving an objective (ideology) in a certain political way requires a structure involving leadership, membership, or support coming from large mass. Thus, an organization is needed as an instrument to summon power of each of its member, mass, and the leadership under one command.

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<sup>22</sup> Ten Berge, dalam Ridwa HR, *loc.cit.*

<sup>23</sup> Ni'matul Huda, *Hukum Tata Negara*, Cet.ke-6, Rajawali Pers, Jakarta, 2012, p. 88.

<sup>24</sup> Kansil dan Christin S.T Kansil, *Hukum Tata Negara Republik Indonesia*, Rineka Cipta, Jakarta: 2008, p. 86.

<sup>25</sup> *Ibid.* p. 87

<sup>26</sup> Emilda Firdaus, *Hukum Tata Negara*, Universitas Riau Press, Riau, 2012, p. 25

<sup>27</sup> Satjipto Raharjo, *Hukum dan Masyarakat*, Angkasa, Bandung, 1980, p. 95

Sondang P. Siagian states that organization can be seen from three different perspectives:<sup>28</sup>

1. an organization as a media in which administrative activities, management and its characteristics are “relative static”;
2. an organization is “dynamic and represents a process of interaction involving people as members in the organization
3. An organization is where people congregate since it serves as a media or a place, meaning that (a) it represents the description of network at work that is formal and according to official position of the members in the organization; (b) it represents the hierarchy that clearly describes the line of authority and responsibility; (c) it represents an instrument with permanent but flexible structure (where changes may take place). Thus, what has happened or will happen in an organization is more or less similar and predictable.

The recognition and assurance of Human Rights in the Constitution following the first and second amendment Year 2000 indicate that the Unitary State of the Republic of Indonesia is a state of law that recognizes and guarantees the rights of the people.

The concept of the state of law, as in Julius Stahl’s perspective in Chapter II, involves the recognition of human rights, and, thus, it is essential to protect the freedom to congregate, unite, and express thoughts as enacted in the Constitution.

In reference to fundamental rights, human rights are related with the dimension of human’s life. Human Rights are fundamental rights embedded to every individual, they are universal and eternal and, thus, they have to be protected, respected, maintained, and must not be overlooked, reduced, or seized by others. The existence of Human Rights are not from other people or state, but it is born from the dignity of an individual.

In terms of the concept of Human Rights in Indonesia, the recognition of the existence of humankind indicates that every human is the creature of God Almighty, and, that is, these rights are granted to each individual by God, and these rights are seen as fundamental rights that are embedded in every human being, that are innate, and that keep the integrity of their existence. This concept also guarantees security, independence, justice, togetherness, and welfare as blessed by the Almighty God. The freedom to congregate and to unite represent nothing but the “the independence to congregate” and “the independence to unite”.

The independence to congregate means that people have their time to mingle with others for a purpose, while the independence to unite means gathering with others to discuss an issue.<sup>29</sup> Every individual has his/her rights do things of their will as long as their act does not harm others and violate others’ rights. Human Rights are mostly related with and extend to various aspects of the following three elements: integrity, freedom, and equal status of all human beings.<sup>30</sup>

Individualism does not mean the division of plural society into individuals, but this individualism needs society, needs togetherness under a symbolic system. Without this concept, individual’s rights will not apply. In contrast to the look where individualism seems high in western countries, western people see themselves as part of their family, their group, or they even believe that those other people are essential components in their life; they never take themselves as individuals. Autonomy in individualism is not only for the sake of the individuals, but this should support the continuous existence of the people.

<sup>28</sup> Sondang P. Siagian, *Filsafat Administrasi*, Gunung Agung, Jakarta, 1980, p. 68.

<sup>29</sup> Rukmana Amanwinata, “*Pengaturan dan batas implementasi Kemerdekaan Berserikat dan Berkumpul dalam Pasal 28 UUD 1945*” Disertasi, Universitas Padjajaran, Bandung, 1996, p.16-17.

<sup>30</sup> Yusuf Daeng, *HAM dan Keadilan*, Pekanbaru. Alfa Riau, 2007. p.57

The role of the people, communities, or others is essential since the fulfillment of rights rely on other parties. Human beings are not in their capacity to fulfill rights on their own effort, and definitely the existence of others counts. An individual is unlikely to be able to fulfill all his/her rights and, thus, human rights come with demanding requirement for organized groups, especially the state. When the state fails to maintain the human rights within individuals, then these individuals will try to get involved in communities or groups. In other words, Human Rights are related with organized society according to the nature and the role of the social institutions and their practices. These institutions represent how the need of the people are met to ensure their welfare or at least to protect their pre-existing rights.

The concept of Human Rights in mass organizations indicates that the role of the people in national development through these organizations in Indonesia exists along with respects of others towards these fundamental rights of individuals or another group to support the harmony that grows in the society. The implementation of expression of freedom in the context of Human Rights is intended to create peace, and this approach requires harmony, balance, and congruence in the society. This atmosphere is expected to encourage people to highly respect the norm, morality, and religious values in every move of their act and conduct.

Human Rights in Indonesia are clarified in TAP MPR No.XVII/MPR/1988 concerning Human Rights, perspective, and the tendency of the state towards human rights as follows:<sup>31</sup>

1. Indonesia has perspective about and tendency towards human rights coming from religious teaching, universal moral value, and cultural noble value in the state and according to *Pancasila* and the 1945 Indonesian Constitution.
2. Indonesia as the member of United Nations is responsible for respecting the Universal Declaration of Human Rights and other international instruments regarding Human Rights.

Human Rights are understood in Indonesia in the following ways:<sup>32</sup>

1. Human Rights are equal fundamental rights of human beings. Recalling that the fundamental rights are gift from God Almighty, the human rights in every individual are innate, universal, and eternal as always related with the dignity of human beings.
2. Every individual is known to have and is respected for equal human rights no matter what their gender, complexity, nationality, religion, age, political perspective, social status, or language is. The seizure or violation of human rights will certainly lead to the loss of the dignity as a human being, and this situation could hamper the development o the personality and role as a whole.
3. Indonesia is aware that human rights are historical and dynamic and they are living in the society and the state.

In reference to the concept of the definition of Human rights in Indonesia, individuals also have their fundamental responsibilities to each other in the society and the state. Thus, the concept of Human Rights in Indonesia is not only about the fundamental rights of every individual, but this is also about the fundamental obligation of the individuals as the citizens of the state to abide by the legislation, unwritten laws, and to respect others' human rights, morality, ethics, and also abide by international law concerning Human Rights as recognized in Indonesia and stand for the state. The government's compulsory responsibilities to respect, protect, enforce, and develop Human Rights are governed in legislation and international law concerning Human Rights as recognized in Indonesia. Human Rights, as mentioned earlier, are granted by God, not by people with authorities. These rights are fundamental and inseparable

<sup>31</sup> See Provisions of People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights

<sup>32</sup> *Ibid.*

from the life of every human being.<sup>33</sup> The responsibility of individual or society are governed in Article 28J paragraph (2) of the 1945 Indonesian Constitution:

“To exercise human rights and freedom either as individual or collectively, it is compulsory for every person to respect others’ human rights and he or she shall comply with restriction as set by laws intended to ensure the recognition and appreciation of the right of freedom of others and to give equal treatment according to moral and religious values, security, and public order in a democratic society.”

The above provision governs the restriction of individual’s human rights and this is intended to provide guidelines for every individual or community in the society. Freedom has general norm that takes place in the society. Thus, every individual’s human rights will encounter others’ human rights and this is where people with equal human rights are to respect each other. In other words, human rights exist to also create harmony in life in the society.

The provision of Article 28J of the 1945 Indonesian Constitution implies that human rights are not absolute (relative). This is in line with the perspective of ASEAN in the first and second point of Bangkok Declaration on Human Rights 1993.

This declaration confirms that Universal Human Rights in ASEAN context have to take into account uniqueness that touches regional and national senses and also have to consider historical, cultural, and religious backgrounds so that the universal human rights are not necessarily interpreted against the three backgrounds mentioned. The development of the protection of human rights as elaborated in regional, national, and international scope differentiates the protections of human rights in normal and emergency situation.

The provision of Law concerning Human Rights implies that every person has rights to congregate, and express his/her thoughts, and to unite without triggering violence. This provision is understood with the expression of freedom that carries correction emerging from the essence of the improvement of life quality in the state.

Thus, organizations are expected to run according to the concepts, ways, and the dynamic without any intervention of political interest of the government/authorities. The government’s interest in this context is at the level of supervision so that organizations will still have their soul and the ideology of the Constitution of the state sealed therein.

Regarding the above elaboration, principally the freedom to congregate stimulates internal dynamic of organizations concerned to grow and develop according to their own ideology and visions without overlooking the benefits for the people as a whole. As long as organizations take into account the benefits for the people, intervention or control over the internal dynamic of the organizations from the government or authorities will not be necessary.

Thus, it is expected that the freedom as elaborated is for the people per se, where welfare and justice can be achieved. It is essential that those values become the guidance and reference for mass organizations to keep running. That is, mass organizations should give positive influences to people or at least, through their activities, they do not interrupt public order, spark conflict or contravene the state’s interest.

Issues over the freedom to congregate and unite came back in Indonesia following the promulgation of the Perppu Number 2 of 2017, and this situation imposed a big impact on the meaning of

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<sup>33</sup> Erdiansyah, *Perlindungan HAM dan Pembangunan Demokrasi Di Indonesia*, an Article in *Jurnal Konstitusi*, BKK Fakultas Hukum Universitas Riau Kerjasama dengan Mahkamah Konstitusi, Vol.III, No.2 November 2010, p.146.

freedom to congregate and unite in mass organizations. The substantive matter that highlights the amendment of Law Number 17 of 2013 as enacted in Perppu Number 2 of 2017 is related with the revocation of license or the dismissal of mass organizations. This provision highlights the restriction to the rights to congregate and unite, where these rights were the soul of change when the Law Number 17 of 2013 was issued. This law acts as the embodiment of the values of rights as enacted in the amendment of the 1945 Indonesian Constitution. In other words, following the issuance of Perppu Number 2 of 2017, the government has brought back the vigor of the Law Number 8 of 1985.

Regarding the ideology, the vigor of Perppu Number 2 of 2017 is not significantly different from that of the Law number 17 of 2013. This is simply that *Pancasila* in Perppu Number 2 of 2017 strengthens the position of the ideology of *Pancasila* through government's power to dismiss mass organizations that contravene the values of *Pancasila*.

The provisions ensure the rights according to international law as enacted in Universal Declaration of Human rights that Indonesia and the Constitution have ratified. Indonesia sees these rights very important and these represent the main characteristics which the principle of the state of law in a country is based on. Apart from that, it is also essential to understand that every person holds obligation and responsibility that are also fundamental, and the state also holds the same fundamental rights as every person does to ensure and protect all these rights.

Thinkers in Enlightenment period believe that rights are correlated with obligation. The right to express thoughts, for example, is correlated with the obligation of others not to violate it. It means that the exercise of the right exists without any intervention of others. Negative rights involve the right to life, to the freedom of private ownership, to equality, to justice, to pursuit of happiness, to privacy, to religion, to expression of thoughts, and to congregation. These rights are correlated with negative obligation—an obligation to warn others not to interfere with the rights of others.<sup>34</sup>

Another characteristic is regarding the negative rights that hold absolute element, meaning that these absolute rights indicate that there is obligation to obey at any time anywhere. This absolute characteristic gives very meaningful protection, like in the rights to congregate, unite, and to form a group, which are categorized as negative rights.<sup>35</sup> International Covenant on Civil and Political Rights (ICCPR) protects one of these absolute rights under Article 22 implying that every individual has his/her right to congregate with others and there must not be any restriction to the exercise of this right unless it is highly necessary.

The concepts of international Human Rights and the Human Rights in Indonesia recognize the rights pre-existing even before the birth of human beings, the rights that are fundamental and principle for humankind. The founding of the state and the government, under any circumstances, must not dismiss the principles of rights and obligation in an individual and the assurance of rights and obligation are not determined by the status of an individual in a state. All people deserve their fundamental rights to be assured, and at the same time, every person wherever he/she might be must highly respect others' fundamental rights. Mass organizations' rights are based on the 1945 Indonesian Constitution in line with the provisions in Universal Declaration of Human Rights, meaning that states are responsible for ensuring and protecting the rights. Moreover, mass organizations are also obliged to abide by the law that governs the operation of the organizations that must not contravene *Pancasila* as the state ideology.

Referring to all provisions enacted by the Government, with the issuance of Perppu Number 2 of 2017 that highlights ban on the use of emblems of symbols of organizations that bear basic or complete

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<sup>34</sup> K. Bertens, *Etika*, Gramedia Pustaka Utama, Jakarta, Cet.Ke-11, 2011, p. 197-198, See also Peter Mahmud, *Pengantar Ilmu Hukum*, Cet.Ke-7, Prenadamedia Group, Jakarta, 2015, p. 172-173

<sup>35</sup> K. Bertens, *op.cit.* p. 198



resemblance to the names, emblems, flags, or symbols of any separatist movement or forbidden organizations, further regulations regarding the use of those attributes by all elements are required. Perppu only bans the use of those attributes in mass organizations, not in particular parties. As a consequence, additional clause highlighting the ban on emblems in all activities associated with proscribed organizations should be taken into account.

## Conclusion

Urgent necessity to ban the use of symbols of organizations that have been proscribed by the government is based on *Pancasila* as the source of law, the 1945 Indonesian Constitution, TAP MPR, laws and legal history regarding the regulations of mass organizations and the concepts of Human Rights in Indonesia.

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