

## **The Construction of Government Regulation in Lieu of Law Number 2 of 2017 in the Perspective of National Defense**

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### **Abstract**

*The state's defense plays a central role in ensuring the continuity of society, nation, and state. Threats arising from social organizations that diverge from Pancasila and the 1945 Constitution, using the freedom of association and assembly to replace the foundational principles of Pancasila, have prompted the President to issue Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Social Organizations (Perppu Ormas). The research method used is normative legal research, employing a qualitative approach where data is gathered in the form of descriptions focusing on Perppu Ormas. From a national defense perspective, the issuance of Perppu Ormas aims to strengthen state stability by addressing threats such as terrorism, radicalism, social conflicts, and foreign influences that potentially undermine national sovereignty. This effort also serves as a means to maintain political balance and support the positive role of social organizations in bolstering national defense.*

**Keywords:** *National Defense, Non-military Threats, Social Organizations*

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## **INTRODUCTION**

In ensuring the survival in society, nation, and statehood, the defense aspect stands as a fundamental factor. A country cannot safeguard its existence without the ability to defend itself against various threats and disturbances, whether from foreign or domestic sources. This ability is crucial for maintaining a nation's sovereignty. Hence, with all resources and capabilities, Indonesia is committed to defending and upholding its independence, preserving the nation's integrity, sovereignty, and people's safety, guided by Pancasila and the 1945 Constitution. One such effort is through national defense. In Indonesia's context, successfully safeguarding sovereignty and national security relies on several factors, including social resilience and stability. One influential factor in stability is civil society organizations (CSOs), playing a significant role in shaping Indonesia's social and political dynamics.

The rise of CSOs is a logical consequence of globalization, integrating political, economic, social, and cultural aspects worldwide, impacting domestic values. CSOs reflect civil society empowerment, indicating increased awareness in democratic participation. However, the diversity in their activities, founding principles, organizational structures, interactions with society, and the use of public spaces with new approaches could significantly impact Indonesian societal life. This is particularly relevant in shaping threats to national defense. Political factors measure political stability when aspirations clash with existing political structures. Consequently, certain political forces may mobilize masses or incite uncontrollable demonstrations to enforce their will. If such situations persist and create widespread political crises, it could erode trust in the government, potentially threatening Indonesia's unity. Even at the provincial or regional level, such conditions might fuel separatist ideas (Kemenhan RI, 2015, p. 32).

The phenomenon of CSOs in this era can either weaken or strengthen a nation's resilience. It presents both threats and opportunities, impacting each country differently due to varying geographical conditions, population capabilities, political systems, defense systems, among other factors. The country's ability to manage these global phenomena's impacts determines its

outcome (Winarno, 2017, pp. 241-242). Hence, policies accommodating CSO developments must align with the increasingly complex and multidimensional threats, guided by Pancasila and the 1945 Constitution.

These efforts align with the state's objectives and embody the mandate contained in the preamble of the 1945 Indonesian Constitution, which is to protect the entire Indonesian nation and all aspects of its diverse heritage, and to participate in upholding world order. Hence, the state is an institution vested with full authority in managing defense and developing defense through the construction of capabilities to control social upheavals stemming from the evolution of civil society organizations. This aligns with the legal function as a tool for societal order and regulation. Law serves as guidance for societal behavior, and the community must acknowledge the commands and prohibitions within the legal framework for the legal function as a tool for societal order to be realized (Wiranata, 2019, p. 42).

In 2017, the Indonesian government issued Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 amending Law No. 17 of 2013 concerning Civil Society Organizations (CSOs) as an effort to regulate and control various CSOs in Indonesia. This Perppu issuance seems to be a governmental response to several issues and challenges directly or indirectly related to national defense.

The 1945 Constitution grants the President the authority to issue legally binding regulations in emergency situations. Article 22 paragraph (1) of the 1945 Constitution states, 'In urgent situations, the President is authorized to establish government regulations as substitutes for laws.' Perppu, hierarchically equal to laws, is a legal product issued by the President based on Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislation, as amended by Law No. 13 of 2022, involving various levels of legal hierarchy.

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Law/Government Regulation in Lieu of Law;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regional Regulations; And
- g. Regency/City Regional Regulations.

However, according to Article 22 paragraph (2) of the 1945 Constitution, Perppu requires approval from the House of Representatives (DPR) in the following session. If it fails to obtain DPR's approval, Article 22 paragraph (3) mandates its revocation. The determination of Perppu by the President in emergencies or compelling situations signifies that its issuance cannot be arbitrary. The use of Perppu must be based on compelling urgencies. The phrase 'urgent matters' refers to difficult, crucial, and sometimes highly critical situations, unpredictable or unforeseen beforehand. Immediate actions are required in such cases, forming regulations equivalent to laws without DPR's consent (Kurniawan, 2018).

The question arises regarding the conditions classified as 'urgent matters.' This becomes crucial when the President establishes a Perppu like Perppu No. 2 of 2017 regarding CSOs. Disputes arise, questioning whether Perppu regarding CSOs meets the criteria of 'urgent matters.' Scholars and analysts raise concerns about the validity of issuing such Perppu, emphasizing the need for objective assessments based on compelling urgencies, free from political interests or human rights issues.

As expressed by Farhan Permaqi (2017, p. 418), in forming a Perppu, the President should ideally pay attention to and thoroughly analyze aspects of the compelling urgency objectively, so that no one is disadvantaged due to political interests or issues concerning Human Rights. Furthermore, Auliya Khasanofa (2017, pp. 138-139) stated that the position of Perppu, particularly regarding Organizations, raises numerous issues as it can be subjectively interpreted

by the President according to their will. When addressing emergency situations, there should be an authority interpreting them in line with Pancasila and the 1945 Constitution, no longer solely the President's subjective prerogative. Reno Meidi Fikri's research analyzing Political Parties and the Government Coalition, a Study of PAN's Rejection of Perppu Ormas in the Joko Widodo-Jusuf Kalla Government 2014-2019, suggests that PAN assessed the absence of compelling urgency, thereby necessitating the President to issue a Government Regulation in lieu of Law or provide other rational reasons. PAN considers compelling urgency, for instance, a major disaster like the Aceh tsunami in the past, or during wartime when the government requires the state budget, as grounds for the President to issue a Perppu (Fikri, 2019).

Those opinions underscore the President's authority, which holds subjective rights in establishing a government regulation in lieu of law. In reality, law itself represents power; applying a law requires authority to support it. This fundamental characteristic distinguishes legal norms from others. Authority is necessary because the law is coercive. Without authority, the implementation of the law within society would face obstacles. According to Soerjono Soekanto, the goodness or badness of power depends on how that power is utilized. This implies that the quality of power must always be measured by its usefulness in achieving a goal predetermined or recognized by society first (Rasjidi, 2012, p. 77). The utilization of the President's subjective rights in issuing the Perppu regarding organizations is an effort made by the government to protect the entire Indonesian population, aligning with Indonesia's doctrine of national defense.

## **RESEARCH METHODS**

Based on the background of this research, the researcher examines the formation of the government regulation in the perspective of national defense. The writing method used is the normative legal method. The approach is qualitative, where data is collected in the form of descriptions based on what is said or expressed by the research subjects. The accuracy of the data or final research premises entirely depends on the researcher's judgment and interpretation, not bound by external standards or other evaluators. (Moleong, 2005)

## **RESULT AND DISCUSSION**

### **Defense Against Non-Military Threats**

National defense refers to the principles and values embraced by the Indonesian society to ensure the integrity and continued existence of the Unitary State of the Republic of Indonesia (NKRI) based on Pancasila and the 1945 Constitution. This is explicitly stated in Article 30 paragraph (1) of the 1945 Constitution, affirming that "Every citizen has the right and obligation to participate in the effort for the defense and security of the state." National defense constitutes one of the state governance functions, aiming to achieve national goals: protecting the entire nation and all Indonesian citizens, advancing general welfare, fostering national intellect, and participating in establishing world order based on independence, eternal peace, and social justice.

According to Article 1 number 1 of Law Number 3 of 2002 concerning National Defense, national defense encompasses all efforts to defend the state's sovereignty, the integrity of the Indonesian territory, and the safety of all citizens from threats and disturbances against the nation and state's integrity.

Advancements in science and technology significantly influence the rapidly changing patterns and forms of threats, causing volatility, uncertainty, complexity, and ambiguity. The dynamics of threats are a primary consideration in formulating the National Defense Doctrine.

This doctrine is adjusted to various types of threats, whether actual (real) or potential. Each threat has different characteristics influencing its handling pattern. Hence, considerations related to the essence, assessment of characteristics/classification, and threat trends need to be scrutinized. Assessment of threats is done by identifying their characteristics and analyzing their tendencies. Identifying threat characteristics results in categorizing threats based on their forms, actors, sources, media, and natures. A deeper analysis of escalation and trends provides information on the urgency level and how to counteract these threats. Accurate threat assessment is crucial in formulating objectives and priority targets to be achieved, both in defense deployment and usage strategies and defense capability development strategies.

In the context of this study, these are non-military threats categorized into ideological, political, economic, socio-cultural, public safety, technology-information, and legislative dimensions. Non-military threats involve efforts or activities assessed to have the potential to threaten the state's sovereignty, territorial integrity, and the safety of all citizens, whether originating from foreign or domestic sources, conducted by state actors, non-state actors, or state-sponsored actors. In modern warfare, non-military threats are increasingly challenging to detect and anticipate. States targeted by non-military threats often fail to recognize their intrusion until evident signs emerge, such as political instability, economic crises, social unrest, legislative ambiguity, information obscurity, deliberately created by other parties.

**Tabel 1. Threat Classification**

Form / Type	1. Military 2. Non-military 3. Hybrid
Actor	1. State 2. Non-state 3. State Sponsored
Source	1. Overseas 2. Domestic
Media	1. Land 2. Sea 3. Air 4. Space 5. Cyber
Characteristics	1. Actual 2. Potential

Source: Minister of Defense Regulation Number 12 of 2023 concerning the National Defense Doctrine

### **Emergency Need for the Formation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 Regarding Civil Society Organizations**

Article 22 paragraph (1) of the 1945 Constitution provides the constitutional basis regarding the President's right to enact government regulations as a substitute for laws in cases of urgent necessity. The President's authority to establish a Perppu is a "noodverordeningsrecht" (emergency decree right) to regulate in cases of urgent necessity (Zamroni, 2015). According to Bagir Manan, the explanation of the 1945 Constitution on Article 22 as "nood verordeningsrecht" describes the President's right to enact emergency regulations (noodverordening). The term "staatsnoodrecht" differs from "noodrecht." In "staatsnoodrecht," the term "staat" refers to condition or circumstance, while "recht" means law, thus "noodrecht" can be interpreted as emergency law. Thus, "staatsnoodrecht" refers to emergency law applied in a state of emergency (Nursamsi, 2014, p. 97). The President's emergency decree right is necessary for the government to ensure the nation's safety in urgent and pressing situations and to act promptly. However, this

doesn't exempt it from the supervision of the House of Representatives (DPR), requiring DPR approval in the subsequent session (Yuliani, 2021); if it fails to gain this approval, it must be revoked as stated in Article 22 paragraphs (2) and (3) of the 1945 Constitution.

The condition of urgent necessity can be interpreted as an emergency situation, an abnormal state. Actions taken in cases of urgent necessity are minimally analyzed and are solely aimed at addressing the pressing situation at hand and are expected to no longer be needed when the situation returns to normalcy (Yuliani, 2021). The criteria for urgent necessity (emergency) refer to conditions that are difficult, important, and sometimes crucial, which cannot be predicted or foreseen beforehand. Therefore, immediate legislative action at the level of law is needed to address this (Bima, 2019, p. 101). Urgent situations are abnormal, thus requiring measures beyond those typically taken to address such abnormal circumstances.

The interpretation of the phrase "ihwal kegentingan memaksa" can be seen in several Constitutional Court Decisions (MK) as legal references, namely Constitutional Court Decision Number 033/PUU-III/2005 on the Material and Formal Testing of Law Number 19 of 2004 concerning the Determination of Government Regulation Number 1 of 2004 on Amendments to Law Number 41 of 1999 concerning Forestry into a Law against the 1945 Constitution and Constitutional Court Decision Number 138/PUU-VII/2009 concerning the Testing of Government Regulation Substitute Law Number 4 of 2009 on Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution. Decision Number 033/PUU-III/2005 concludes that the matter of urgent necessity is not always considered a state of danger at the level of civil emergency, military emergency, or wartime. In this case, urgent necessity refers to a condition that creates legal uncertainty and impediments in the smooth functioning of governance. However, this remains a subjective judgment of the President, with its objectivity assessed by the DPR in the subsequent session that may accept or reject the enactment of the Perppu into law.

Furthermore, Decision Number 138/PUU-VII/2009 interprets the urgent necessity condition by requiring several conditions, as outlined in the context of the Ormas Perppu:

1. The existence of a situation demanding urgent resolution based on the law. Post the issuance of Perppu No. 2 of 2017 on Ormas, the Government immediately revoked the Legal Entity Status of an organization (HTI) on July 19, 2017, through the Decree of the Minister of Law and Human Rights (Kemenkumham) Number AHU-30 AH.01.08 Year 2017 concerning the Revocation of the Minister of Law and Human Rights Republic of Indonesia Decree Number: AHU-00282.60.10.2014 concerning the Approval of the Establishment of the Legal Entity of Hizbut Tahrir Indonesia Association, dated July 19, 2017, effectively dissolving it. This action had immediate legal implications in line with Constitutional Court Decision Number 1-2/PUU-XII/2014: "Perppu must have a prompt immediate effect to solve legal issues."
2. The required legislation does not exist, creating legal gaps, or existing legislation is inadequate. The sanction mechanism prescribed in Articles 60 through 80 of the old Ormas Law did not adhere to the *contrarius actus* principle, allowing ample time and room for Ormas, strongly suspected of promoting ideologies contrary to Pancasila and the 1945 Constitution, to continue activities that could threaten the existence of Pancasila.
3. The legal vacuum cannot be addressed by creating legislation through regular procedures due to the prolonged time required, while the urgent situation demands swift resolution. The legal gap in the old Ormas Law, which lacked effective sanctions, compelled the President to issue the urgently needed Perppu. The legislative process for approving a Draft Law in



the House of Representatives entails a long process, including the creation of an Academic Draft, inclusion in the National Legislative Program, and discussions at different levels.

These three characteristics align with Article 4 of the International Covenant on Civil and Political Rights (ICCPR) 1967: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

Referring to Article 4 of the ICCPR, "ihwal kegentingan yang memaksa" includes "threatens the life of the nation and the existence of which is officially proclaimed." In the context of Perppu issuance, this phrase is used to provide a strong legal basis for the government to regulate Ormas or other actions deemed potentially endangering national security or the state's existence. This step is taken when the government believes the threat is serious enough to necessitate emergency actions to protect the sovereignty and security of the state. It refers to a situation that threatens national security and the existence of the state. Threats arise when Ormas engages in hostile actions and disseminates messages or attitudes inciting hatred against specific groups or authorities within the country. This could trigger social conflicts that could potentially create chaos difficult to manage by law enforcement authorities. Therefore, in such cases, the government needs to take immediate action to maintain stability and the state's sovereignty.

The urgent necessity mentioned in Perppu No. 2 of 2017 on Ormas refers to the existence of an organization fundamentally contradicting Pancasila and the 1945 Constitution. These groups aim to achieve their political goals through unconventional tactics and strategies using social influence and extreme rhetoric, strongly suspected to be "packaged" within the freedom of association and assembly, successfully amassing a considerable number of followers and sympathizers. Eventually, this could become an actual (real) threat to the state's existence.

### **Formation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2017 on Civil Society Organizations from the Perspective of National Defense**

Social phenomena associated with movements threatening the state are commonly known as terrorism, but that's just a small part of the journey within movements with radical-extremist ideologies. According to Baran (2004, p. 7), post the 9/11 incident, the government and media focused solely on the idea of the "war on terror." However, terrorism is just the tip of the iceberg. Violence is only one tool used by radical groups in a broader "war of ideas." These groups attempt to win hearts and minds by employing democratic rhetoric and non-violent messaging.

Returning to the perspective of national defense, which refers to Article 1, point 1 of Law Number 3 of 2002 concerning National Defense, national defense encompasses all efforts to defend the state's sovereignty, the integrity of the Indonesian territory, and the safety of the entire nation from threats and disruptions to the nation's unity and integrity. Due to developments in the globalization era marked by advancements in science, technology, communication, and information, threats have significantly transformed from formerly physical (conventional) assaults on national sovereignty to multidimensional threats encompassing both physical and non-physical elements, originating domestically or internationally. Hence, addressing these issues should not solely rely on defense departments but also involve all relevant agencies.

According to Buzan (2009), the character of a country's securitization agenda is highly influenced by its national interests. Buzan expands the scope of national security agenda beyond conventional military issues. However, the principle of state-centrism remains relevant. An issue is deemed a security concern when actors explicitly involved in security declare it as a threat through their actions and speech. In this context, the Minister for Political, Legal, and Security Affairs (Wiranto) accompanied by the Chief of National Police General Tito Karnavian, the

Minister of Home Affairs (Tjahjo Kumolo), and the Minister of Law and Human Rights (Yasonna H. Laoly) conveyed during a press conference at the Ministry of Political, Legal, and Security Affairs office in Jakarta on Monday, May 8, 2017. Minister Wiranto affirmed that the activities carried out by an organization (HTI) were strongly indicated to be in contradiction with the principles and characteristics based on Pancasila and the 1945 Constitution as regulated in Law Number 17 of 2013 concerning Organizations. These activities had caused social conflicts threatening public order and the unity of the Republic (Sekretariat Kabinet RI, 2017). Furthermore, Minister Wiranto stated on May 12, 2017, "If left unchecked, this conflict could escalate, and day by day, the rejection is growing wider and if horizontal conflict occurs, it will endanger national security, unity and integrity of the nation, the unity of the Republic of Indonesia, and will disrupt the ongoing national development." (Ministry of Coordinator Political, Legal and Security Affairs, 2017)

As issues related to national defense concern not only military defense but also non-military defense, placing government institutions outside the defense domain as primary elements adjusted to the form and nature of threats. Thus, in dealing with radical ideologies propagated by organizations, the initiative taken by the Ministry of Law and Human Rights, based on assessments from related ministries like the Ministry of Political, Legal, and Security Affairs, is a collaborative effort of government bodies rather than a unilateral decision (Press Release from the Ministry of Law and Human Rights, 19 July 2017).

The issuance of the Perppu on Civil Society Organizations, reviewed from the perspective of national defense, aims to strengthen and maintain state stability. Below are the perspectives of national defense regarding the issuance of the Perppu on civil organizations:

1. Controlling Terrorism and Radicalism Threats: The government, through assessments from the Ministry of Political, Legal, and Security Affairs, views the disbanded organization (HTI) as a potential source of terrorism and radicalism threats. The Perppu issuance is seen as an effort to identify, control, and reduce organizations involved in radical or terrorist activities. This step is crucial for maintaining national security and protecting citizens from potential terrorist threats.
2. Defense Against Social Conflict Threats: Within any organization, interactions among its members may provoke conflicts. Civil society organizations involve various forms of interaction between groups, groups with individuals, or individuals within different civil society organizations. Such situations often serve as triggers for conflict (Zainuddin, 2016, p. 17). Civil society organizations involved in social conflict can disrupt national stability and sovereignty. Soejono Soekanto mentions abnormal symptoms as social problems perceived by some individuals in society as unexpected conditions. Since social issues are closely linked to social values and institutions and are related to human relationships within normative cultural frameworks (Nurhasanah, 2016, p. 161). By regulating civil society organizations, the government aims to manage social conflicts and prevent escalation that could negatively impact national defense. This effort aligns with the principle of national defense, requiring social stability.
3. Protecting Sovereignty from External Influence: Threats from external actors attempting to manipulate civil society organizations for their own interests are also a concern in national defense. The increasing ease of global interaction and convergence of resistance ideologies against the anarchic world system is evident in the development of global-based radical movements that later evolve into international terrorism movements (Sukendro, 2015). The government's concern regarding radical ideologies is logical considering their potential to

lead to terrorist actions (Oki Wahyu Budijanto, 2021). The issuance of the Perppu can be seen as a step to protect the nation's sovereignty from foreign influence that could undermine Indonesian societal values.

4. **Maintaining Political Balance:** Political balance within society can be a crucial factor in national defense. By regulating organizations potentially disrupting political stability, the government seeks to maintain a balance of power that supports a stable and functioning governance system.
6. **Supporting the Positive Contribution of Civil Society Organizations to National Defense:** Besides addressing potential threats, the government also views civil society organizations as partners in strengthening national defense. Some civil organizations can positively contribute through social, economic, or cultural activities that support national stability. The issuance of the Perppu accommodates this positive role while upholding national defense. The purpose of the Perppu on civil organizations is to differentiate and simultaneously protect organizations that adhere to and are consistent with the principles and objectives based on Pancasila and the 1945 Constitution, from those whose principles and activities blatantly contradict Pancasila and the 1945 Constitution. This Perppu has separated these two categories of organizations and introduced extraordinary sanctions and their application. Civil society organizations are one aspect of the non-military defense framework as an integral part of supporting components. In preparing supporting components, regulation and development aiming to support non-military defense are essential. Thus, one such regulation and development are carried out through early development of civil organizations, ultimately preparing defense components to face potential threats to national sovereignty and security (Priyatno, 2013). Civil organizations have the potential to act as drivers and mobilize society in national defense efforts, especially in times of emergency (National Unity and Politics Agency Yogyakarta, 2022).

The national defense perspective on the issuance of the Perppu on civil society organizations is significantly influenced by security interests and national stability. The effort to regulate civil organizations is based on the assumption that this regulation will support the nation's defense objectives in preserving sovereignty, security, and social stability within the country.

## CONCLUSION

The issuance of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 regarding Civil Society Organizations reflects the government's efforts in facing various threats and challenges that could disrupt national stability. This stands as one of the state's obligations in safeguarding the entirety of the Indonesian nation and its diverse heritage. The pressing urgency in this context arises from civil society organizations that factually contradict the values of Pancasila and the 1945 Constitution. One of the characteristics of the threats faced is the existence of civil society organizations that exploit the framework of freedom of assembly and association to disseminate ideologies conflicting with the fundamental values of the nation. Essentially, these are non-military threats perpetrated by non-state actors, thus requiring action from institutions beyond the defense domain.

The Ministry of Political, Legal, and Security Affairs plays a crucial role in analyzing civil society organizations that can be considered threats to national stability. Meanwhile, the Ministry



of Law and Human Rights acts as the executor in revoking the legal status of civil society organizations. The issuance of the Perppu on Civil Society Organizations not only focuses on suppressing organizations deemed threatening but also considers the positive role these organizations can play in supporting national defense within a broader framework. These efforts involve better regulation and supervision of civil society organizations to ensure they contribute positively to strengthening the social, economic, and cultural aspects of society while adhering to the principles of Pancasila and the 1945 Constitution. Consequently, the Perppu serves as one instrument used by the government to maintain national stability and the integrity of the state while providing space for civil society organizations that support these objectives.

Therefore, it is advisable for the government to provide facilities and accommodations to organizations wishing to develop their ideas in accordance with Pancasila by actively participating in their development and activities. This active involvement ensures that these organizations consistently operate in line with Pancasila and the 1945 Constitution

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