JUSTISI

Vol. 11, Issue. 3, September 2025
e-ISSN: 2686-0821, p-ISSN: 1979-7532
https://doi.org/10.33506/js.v11i3.4662
https://ejournal.um-sorong.ac.id/index.php/js/article/view/4662

Article History
Received: 4 July 2025
Reviewed: 26 Aug 2025
Accepted: 29 Aug 2025
Published: 13 Sep 2025

The Constitutional Court's Decision on the Perppu on Mass Organizations from the Perspective of Rechtsstaat and Critical Legal Studies

Arya Bimantara[1*], Radian Salman[2]
[1,2] Faculty of Law, Universitas Airlangga, Indonesia
*correspondence email : bimantara3655@gmail.com

Abstract

This study aims to analyze the Constitutional Court's consistency in reviewing the constitutionality of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 concerning Mass Organizations, which was later ratified as Law No. 16 of 2017. The study focuses on two main issues: first, whether the issuance of the Perppu meets the criteria of "compelling urgency" as defined in Decision No. 138/PUU-VII/2009; second, how the Court interprets multi-interpretable phrases such as "contrary to Pancasila" and "threatening national stability," for restricting the right to associate**.**

The method used is normative legal research with a statute, case (ratio decidendi), and conceptual approaches, examining the principles of lex certa, due process, proportionality, and contrarius actus, strengthened by critical legal studies (CLS) to uncover the political legal dimensions behind the Constitutional Court's jurisprudence.

The novelty of this research lies in its emphasis on the Constitutional Court's tendency to provide formal validation for the formation of Perppu but its absence in providing substantive interpretation of crucial clauses subject to multiple interpretations, combining legal-dogmatic analysis and CLS to assess the consistency of the Constitutional Court's decision on the Perppu on Mass Organizations, something that has not been done in previous studies which tend to discuss procedural or human rights aspects partially.

The results indicate that the Court prioritizes political stability over human rights protection, thus creating a double standard in the application of the rule of law principler.

In conclusion confirms although the Constitutional Court affirmed the constitutionality of the Perppu and the Mass Organizations Law, a passive attitude towards the multi-interpretable clauses opens up space for the normalization of restrictions on the right to associate outside the principles of legality, necessity, and proportionality as required by the ICCPR.

Keywords : Constitutional Court; Perppu on Mass Organizations; Right to Association.

Abstrak

Penelitian ini bertujuan *Penelitian ini bertujuan untuk menganalisis konsistensi Mahkamah Konstitusi dalam menguji konstitusionalitas Perppu No. 2 Tahun 2017 tentang Organisasi Kemasyarakatan yang kemudian disahkan menjadi UU No. 16 Tahun 2017. Fokus kajian diarahkan pada dua isu utama: pertama, apakah penerbitan Perppu memenuhi parameter "kegentingan memaksa" sebagaimana dirumuskan dalam Putusan MK No. 138/PUU-VII/2009; kedua, bagaimana Mahkamah menafsirkan frasa multitafsir seperti "bertentangan dengan Pancasila" dan "mengancam stabilitas nasional" yang berimplikasi pada pembatasan hak berserikat.*

Metode *yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, kasus (ratio decidendi), dan konseptual, dengan menelaah prinsip lex certa, due process, proportionality, dan contrarius actus, diperkuat dengan critical legal studies (CLS) untuk menyingkap dimensi politik hukum di balik yurisprudensi MK.*
Kebaruan *dari penelitian ini terletak pada penekanan bahwa MK cenderung memberikan validasi formal terhadap pembentukan Perppu, tetapi absen dalam memberikan tafsir substantif atas klausul multitafsir yang krusial, menggabungkan analisis legal-dogmatik dan CLS untuk menilai konsistensi putusan MK atas Perppu Ormas, sesuatu yang belum dilakukan penelitian sebelumnya yang cenderung membahas aspek prosedural atau HAM secara parsial.*
Hasil penelitian *menunjukkan bahwa Mahkamah lebih mengutamakan stabilitas politik daripada perlindungan hak asasi, sehingga menimbulkan standar ganda dalam penerapan prinsip negara hukum.*
Kesimpulan *dari penelitian ini menyatakan bahwa meskipun MK menegaskan konstitusionalitas Perppu dan UU Ormas, sikap pasif terhadap klausul multitafsir membuka ruang bagi normalisasi pembatasan hak berserikat di luar prinsip legality, necessity, dan proportionality sebagaimana diwajibkan oleh ICCPR.*
Kata Kunci: *Mahkamah Konstitusi; Perppu Ormas; Hak Berserikat.*

1. INTRODUCTION

Community organizations (Ormas) are a tangible manifestation of the spirit of mutual cooperation that has long been a hallmark of Indonesia. The nation's history records the active participation of various Ormas in gathering ideas, concepts, and community movements that have generated benefits. For example, before independence, Ormas such as Sarekat Islam, Budi Utomo, and Muhammadiyah were active in elevating the nation's thinking to a better level. These Ormas also unequivocally voiced the spirit and ideals of independence that shaped the founding of this nation.[1] Pancasila, as the foundation of the state, also owes much to the contributions of ideas, concepts, and discussions among Ormas cadres and leaders, along with the nation's founding fathers.[2]

The rights of association and assembly have been recognized as human rights, both internationally and nationally. These rights are fundamental because they provide individuals and groups with the opportunity to voice their opinions, advocate for their interests, and participate in the democratic process.[3] Internationally, the right to associate is regulated in Article 20 of the 1948 Universal Declaration of Human Rights (UDHR), which states that "everyone has the right to freedom of peaceful assembly and association."[4] Furthermore, the International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia through Law

[1] Rohmatullah Assidiqi, "Perlindungan Hukum Dan Kebebasan Berserikat Dalam Konteks Organisasi Kemasyarakatan Di Era Digital Pendahuluan Organisasi Kemasyarakatan (Ormas) Merupakan Salah Satu Pilar Penting Dalam Kehidupan Demokrasi Yang Berfungsi Sebagai Wadah Bagi Masyarakat Un" 6, no. 5 (2025): 1193–1208.

[2] Auliya Khasanofa, "Kedudukan Perppu Ormas Dalam Negara Hukum Indonesia," *Jurnal Hukum Replik* 5, no. 2 (2020): 30–50, http://dx.doi.org/10.31000/jhr.v5i2.922.

[3] Numan Sofari Hafid, Tajul Arifin, and Ine Fauzia, "Hak Berserikat Dan Berkumpul Menurut UUD Pasal 28E Ayat 3 Dan Pasal 21 Ayat 1 DUHAM ; Tinjauan Aktivitas Ekonomi Islam" 10, no. 1 (2025): 49–65.

[4] M. Rizal Afandi, "Freedom of Association and State Regulations: An Indonesian Case," *Jurnal Konstitusi* 18, no. 3 (2021): 455–79, https://doi.org/10.31000/jk.v18i3.455.

No. 12 of 2005, also affirms this right in Article 22, which emphasizes freedom of association as a crucial element in ensuring a free and democratic society.[5]

In the national context, the right to associate is guaranteed by Article 28E paragraph (3) and Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which grants every citizen the right to freedom of assembly, association, and expression of opinion, whether orally or in writing. This right is also reinforced in Law No. 39 of 1999 concerning Human Rights (HAM), specifically Article 24, which recognizes the freedom of association, assembly, and expression of opinion freely, as well as in Law No. 17 of 2013, which was later updated with Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 concerning Mass Organizations. However, this freedom is not absolute and can be restricted under certain circumstances, particularly when it involves threats to public order, state security, or state ideology.[6]

Mass organizations play a crucial role in social, political, and economic life, as they are able to voice the interests of specific community groups, facilitate aspirations, and contribute to development. Data from the Ministry of Home Affairs shows that there are more than 400,000 registered mass organizations in Indonesia, both at the national and regional levels.[7] This number demonstrates that mass organizations play a vital role in the democratic process and public engagement in various areas, from advocating for community rights to organizing social activities. However, with the large number of mass organizations, the government also faces the challenge of maintaining a balance between protecting the right to associate and ensuring that mass organizations do not threaten state order and security.[8]

However, the existence of mass organizations in this democratic landscape has become a point of tension when the state uses legal control as an instrument of restriction. The implementation of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 (later enacted as Law No. 16 of 2017) gives the government the authority to disband mass organizations deemed to conflict with the state ideology, Pancasila, and threaten public order, without going through court procedures.[9] The implementation of this Perppu has proven controversial, particularly in the cases of the disbandment of Hizbut Tahrir Indonesia (HTI) in 2017 and the Islamic Defenders Front (FPI) in 2020, where both organizations were disbanded without going through a judicial process deemed transparent and accountable. With the primary consideration of maintaining the state's social and ideological stability, the government has broadly granted the authority to disband mass organizations, ranging from declaring them

[5] Hafid, Arifin, and Fauzia, "Hak Berserikat Dan Berkumpul Menurut UUD Pasal 28E Ayat 3 Dan Pasal 21 Ayat 1 DUHAM ; Tinjauan Aktivitas Ekonomi Islam."

[6] Prayudisti Shinta Pandanwangi, "Analisis Komparatif PERPPU No. 17 Tahun 2017 Dan UU No. 17 Tahun 2013 Tentang Organisasi Kemasyarakatan," *Arkhais* 11, no. 1 (2020): 1–14.

[7] P. Yustisia, *Pedoman Pembentukan Dan Pembubaran Ormas* (Yogyakarta: Pustaka Yustisia, 2020).

[8] Hisan Hafansyah and Taufiqurrohman Syahuri, "Pembubaran Organisasi Kemasyarakatan Front Pembela Islam (Fpi) Dalam Perspektif Hukum Tata Negara," *Jurnal Yuridis* 10, no. 2 (2023): 74–86, https://doi.org/10.35586/jyur.v10i2.7201.

[9] Bayu Marfiando, "Pembubaran Hizbut Tahrir Indonesia (HTI) Ditinjau Dari Kebebasan Berserikat," *Jurnal Ilmu Kepolisian* 14, no. 2 (2020): 13, https://doi.org/10.35879/jik.v14i2.253.

problematic to freezing them, to disbanding any organization deemed to conflict with Pancasila and threaten public order.[10]

In this context, their substantive constitutionality is particularly relevant to the principles of checks and balances and due process of law. This review is crucial given that Constitutional Court (MK) Decision No. 138/PUU-VII/2009 established the "force majeure" criterion as a constitutional prerequisite for issuing a Government Regulation in Lieu of Law (Perppu).[11] However, in practice, the dissolution of mass organizations has been carried out without a transparent and participatory judicial process, thus reinforcing the impression of a consolidation of executive power in the public legal sphere. Over time, the Constitutional Court has ruled on several judicial review cases of the Perppu, consistently rejecting and declaring the Perppu to be constitutional. However, the Court has also appeared to only provide this validation without substantive interpretation of key terms. Other identifications also indicate a tendency for the Constitutional Court's decisions to prioritize political stability over human rights protection.

Since the surge of applications in 2017 (Case No. 39/PUU-XV/2017, No. 41/PUU-XV/2017, No. 44/PUU-XV/2017, No. 48/PUU-XV/2017, No. 82/PUU-XV/2017, No. 94/PUU-XV/2017, and 2/PUU-XVI/2018), a significant pattern has emerged: the absence of substantive interpretations of key terms, such as "contrary to Pancasila" and "threatening national stability," as well as widespread acceptance of executive discretion in disbanding mass organizations without the prerequisite for open judicial review.[12] This series of decisions serves as a basis for assessing the Constitutional Court's consistency: on the one hand, it affirms the formal standards for the formation and ratification of a Perppu (Government Regulation in Lieu of Law) while on the other, it leaves a gray area that could potentially normalize restrictions on the right to associate.

The main problem with this research is the Court's lack of substantive interpretation of these multi-interpretable clauses, which has implications for the normalization of restrictions on the right to associate. This distinguishes this study from previous research, which places the Constitutional Court's decisions within the framework of the rule of law (rechtsstaat) and critical legal studies (CLS) to assess whether the consistency of the Constitutional Court's jurisprudence actually strengthens human rights protection or actually normalizes constitutional repression.[13]

Through the rechtsstaat framework, this paper examines the lack of certainty in norms and the weakness of checks and balances mechanisms as deviations from the principles of the rule of law. Furthermore, through the lens of CLS, the Constitutional Court's jurisprudence can

[10] dan Rangga W. A. Mubarok Munif, Sultan A. Z., Mochamad Iqbal Risyadi, "Berakhirnya Eksistensi Ormas Dengan Adanya Perppu No. 2 Tahun 2017," *Causa: Jurnal Hukum Dan Kewarganegaraan* 8, no. 5 (2024): 21–30.

[11] Sukri, "Dinamika Politik Disetujuinya Perppu No. 2 Tahun 2017," *Jurnal Ilmu Sosial Dan Ilmu Politik Malikussaleh* 5, no. 1 (2022): 1–18.

[12] Marfiando, "Pembubaran Hizbut Tahrir Indonesia (HTI) Ditinjau Dari Kebebasan Berserikat."

[13] Zahermann Armandz Muabezi, "Negara Berdasarkan Hukum (Rechtsstaats) Bukan Kekuasaan (Machtsstaat)," *Jurnal Hukum Dan Peradilan* 6, no. 3 (2017): 421, https://doi.org/10.25216/jhp.6.3.2017.421-446.

be read as a manifestation of double standards, where the law is positioned as an instrument of legitimacy for executive power. This becomes increasingly relevant because Indonesia, as a state party to the ICCPR, has an obligation to ensure that any restrictions on the right to associate truly meet the principles of legality, necessity, and proportionality. Using these two theoretical lenses, this study aims to present a critical reading of the constitutional limits of executive power in disbanding mass organizations, while simultaneously examining the concepts of proportionality and necessity of restrictions on the right to associate within the framework of a democratic state under the rule of law.

2. METHOD

This research uses statute, case, and conceptual approaches. The statute approach is used to examine legal norms. The case approach is used to examine the ratio decidendi of the Constitutional Court in decisions No. 39, 41, 44, 48, 82, 94/PUU-XV/2017 and No. 2/PUU-XVI/2018. The conceptual approach is used to dissect the principles of lex certa, due process, proportionality, and contrarius actus within the framework of a democratic rule of law. The analysis is conducted using a comparative-normative method to compare the Constitutional Court's arguments with the standards in Constitutional Court Decision No. 138/PUU-VII/2009 and international human rights instruments. The assessment of rights restrictions is carried out using a proportionality test (legality–necessity–proportionality), accompanied by CLS reading to uncover the political dimensions of law behind the use of law as a legitimacy of power.

3. DISCUSSION

3.1 The Legal Configuration of the Perppu on Mass Organizations and the Progress of its Testing

The first regulation marking the state's consolidation of mass organizations was Law No. 8 of 1985 concerning Mass Organizations. Enacted during the New Order era, this law was imbued with the spirit of political control. Through these provisions, the state affirmed Pancasila as the sole foundation of mass organizations, while simultaneously opening up repressive means for the government to restrict and even disband organizations deemed deviant.[14] Many viewed this law as an instrument of the New Order's "political uniformization," as it emphasized state stability and hegemony over the constitutionally guaranteed freedom of association.[15]

Following the reforms, Law No. 17 of 2013 was enacted as a correction to the repressive nature of Law 8/1985. Normatively, this law recognizes freedom of association, expands the principles of organization, and opens up space for pluralism. However, it still contains articles that place the government in a dominant position, particularly regarding supervision and administrative sanctions.[16] Thus, despite the shift from a paradigm of control to recognition,

[14] Pandanwangi, "Analisis Komparatif PERPPU No. 17 Tahun 2017 Dan UU No. 17 Tahun 2013 Tentang Organisasi Kemasyarakatan."
[15] Munif, Sultan A. Z., Mochamad Iqbal Risyadi, "Berakhirnya Eksistensi Ormas Dengan Adanya Perppu No. 2 Tahun 2017."
[16] Assidiqi, "Perlindungan Hukum Dan Kebebasan Berserikat Dalam Konteks Organisasi Kemasyarakatan Di Era

Law 17/2013 still leaves a central problem: how to balance the protection of civil liberties with the need to maintain public order and state ideology.

This policy then changed drastically when the government issued Perppu No. 2 of 2017 concerning Amendments to Law No. 17 of 2013, which was subsequently ratified as Law No. 16 of 2017.[17] This Perppu was issued on the grounds of a "compelling emergency" due to the existence of mass organizations deemed anti-Pancasila and threatening national unity. One of the political reasons often highlighted was the activities of the HTI, which was seen as promoting the ideology of the caliphate. The Perppu granted the government broad authority to disband mass organizations without going through a judicial process, eliminated the pre-execution judicial review mechanism, and expanded the categories of violations for which mass organizations could be charged.[18] From a legal and political perspective, this Perppu marked a return to a paradigm of state control with greater intensity than Law 8/1985, as disbandment could be carried out unilaterally by the government through administrative mechanisms (contrarius actus).[19]

The issuance of the Perppu on Mass Organizations immediately sparked a wave of criticism because it was considered to violate the principle of due process of law, open up room for multiple interpretations in clauses such as "contrary to Pancasila" and "threaten national stability," and consolidate executive power.[20] This criticism culminated in a series of judicial review requests to the Constitutional Court throughout 2017–2018, including cases No. 39/PUU-XV/2017, No. 41/PUU-XV/2017, No. 44/PUU-XV/2017, No. 48/PUU-XV/2017, No. 82/PUU-XV/2017, No. 94/PUU-XV/2017, and No. 2/PUU-XVI/2018.

In these decisions, the Constitutional Court consistently rejected all petitions and declared both the Perppu (Government Regulation in Lieu of Law) and the Mass Organizations Law constitutional. The Constitutional Court's arguments emphasized the formal aspect, namely that the President has the constitutional authority to issue a Perppu in compelling circumstances. However, the problematic lack of substantive interpretation of the multi-interpretable phrase at the heart of the debate resulted in the Constitutional Court only strengthening formal validation without tightening the standards for restricting human rights. Thus, the post-2017 legal configuration of Mass Organizations has moved toward normalizing

Digital Pendahuluan Organisasi Kemasyarakatan (Ormas) Merupakan Salah Satu Pilar Penting Dalam Kehidupan Demokrasi Yang Berfungsi Sebagai Wadah Bagi Masyarakat Un."

[17] Choirus Salim, "Problematika Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) No. 02 Tahun 2017 Tentang Organisasi Kemasyarakatan," *Istinbath : Jurnal Hukum* 15, no. 2 (2018): 309, https://doi.org/10.32332/istinbath.v15i2.1251.

[18] M. Kautsar Thariq Syah and Paelani Setia, "Radikalisme Islam: Telaah Kampanye Khilafah Oleh Hizbut Tahrir Indonesia (HTI) Pra-Pembubaran Oleh Pemerintah," *Jurnal Iman Dan Spiritualitas* 1, no. 4 (2021): 523–35, https://doi.org/10.15575/jis.v1i4.14094.

[19] Victor Imanuel Nalle, "Asas Contarius Actus Pada Perpu Ormas: Kritik Dalam Perspektif Hukum Administrasi Negara Dan Hak Asasi Manusia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 244–62, https://doi.org/10.22304/pjih.v4n2.a2.

[20] Agus Riwanto Aditya Putra Setiawan, "Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Asasi Manusia," *Res Publica* 4, no. 3 (2020): 273–88, https://digilib.uin-suka.ac.id/id/eprint/31708/.

restrictions on freedom of association.[21]

Genealogically, the evolution of the regulation of Mass Organizations demonstrates a cycle between pseudo-liberalization and state control. Law No. 8 of 1985 emphasized full control under the New Order regime, while Law No. 17 of 2013 attempted to open up democratic space, albeit with the condition of continued strong state oversight. Perppu 2/2017, in fact, reinstated the paradigm of control with a sharper intensity, even surpassing the New Order-era Mass Organizations Law by eliminating the role of the courts.[22] This transformation demonstrates the "pendulum" of regulation of mass organizations, swinging back and forth according to the political configuration of the ruling party.

From a constitutional perspective, this pattern is reinforced by the Constitutional Court's stance, which in its decisions does not sharpen its interpretation of clauses subject to multiple interpretations. In other words, the Constitutional Court plays a more active role as a "guardian of political stability" rather than as a "constitutional interpreter" protecting human rights. This also marks a crucial point in the legal configuration of mass organizations: restrictions on freedom of association, which were previously potential, are now normalized with constitutional legitimacy.[23]

From a political-legal perspective, this government move confirms a shift in the regulatory paradigm from due process of law to administrative acts. Controversy arose because the Perppu on Mass Organizations was perceived as an instrument that increased the concentration of executive power, removed judicial control, and opened up opportunities for arbitrary dissolution. Several academics considered this Perppu a form of "abuse of constitutional mechanisms," in which the concept of force majeure was interpreted too loosely. Meanwhile, supporters of the Perppu emphasize that democracy must be limited to protect itself (militant democracy), so that mass organizations that conflict with Pancasila deserve to be swiftly disbanded for the sake of national stability.[24]

This debate demonstrates the tension between two legal political orientations: first, the human rights protection paradigm, which emphasizes the need for strict limits on government discretion; second, the protection of state ideology, which prioritizes stability. This conflict between these two orientations then flowed to the Constitutional Court through a wave of judicial review applications.

In terms of quantity, this wave of applications was quite massive, encompassing cases No. 39/PUU-XV/2017, No. 41/PUU-XV/2017, No. 44/PUU-XV/2017, No. 48/PUU-XV/2017, No. 82/PUU-XV/2017, No. 94/PUU-XV/2017, and No. 2/PUU-XVI/2018. The pattern of the application confirms that the Perppu on Mass Organizations is seen as problematic not only

[21] Evi Oktarina and Muhamad Yosi Agustian, "Implementation of Article 28e (3) of The Constitution of The Republic of Indonesia Year 1945 on The Restriction of The Right of Assembly in Law No . 17 of 2013 about Community Organizations" 3, no. 2 (2025): 191–204.

[22] Khasanofa, "Kedudukan Perppu Ormas Dalam Negara Hukum Indonesia."

[23] M. R. Winata, "Politik Hukum Dan Konstitusionalitas Kewenangan Pembubaran Ormas," *Hukum de Jure* 18, no. 4 (2019): 455–64.

[24] Salim, "Problematika Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) No. 02 Tahun 2017 Tentang Organisasi Kemasyarakatan."

by mass organizations whose existence is threatened, but also by academics, advocates and civil society groups who are concerned about the potential for constitutional erosion.

In substance, the petitioners raised three main issues: (1) The validity of the issuance of the Perppu; whether the conditions of "compelling emergency" as defined in Constitutional Court Decision No. 138/PUU-VII/2009 were truly met. The petitioners argued that the government failed to prove the existence of an objective emergency. (2) The clauses were open to interpretation; phrases such as "contrary to Pancasila" or "threatening national stability" were deemed to open up too broad an interpretation and potentially restrict the right to associate. (3) The elimination of due process of law; the main objection was directed at the elimination of the judicial mechanism before the dissolution of mass organizations, thus rendering the government's authority absolute without judicial oversight.

In response, the Constitutional Court consistently rejected all petitions. For example, in Decision No. 39/PUU-XV/2017, the Constitutional Court stated that the President has the authority to issue a Perppu as long as there is a compelling emergency that, in its judgment, cannot be postponed. Decision No. 41, 44, 48, and 82/PUU-XV/2017 affirmed a similar point, emphasizing the need for the state to have instruments to safeguard ideology and sovereignty. Meanwhile, in Decisions No. 94/PUU-XV/2017 and No. 2/PUU-XVI/2018, the Constitutional Court even strengthened the legitimacy of disbandment without judicial intervention, citing effectiveness.

However, crucially, the Constitutional Court's lack of substantive interpretation of the multi-interpretation clause, which is at the heart of the problem, remains open to interpretation, allowing the government to freely assess whether an organization is "anti-Pancasila" or "threatening national stability." This stance renders the Constitutional Court more of a validator of government legal policy than a guardian of citizens' constitutional rights.[25]

The map of petitions and decisions above demonstrates that the Constitutional Court has chosen a formal validation approach over substantive interpretation. This stance has serious implications for the legal configuration of mass organizations in Indonesia. First, the Constitutional Court normalized the regulatory shift from a rights protection paradigm to a paradigm of executive control. Second, the Constitutional Court failed to establish jurisprudential standards that could clarify the meaning of "Pancasila" and "national stability" as the boundaries for disbanding mass organizations. Third, the Constitutional Court indirectly widened the scope for abuse of power in the context of restricting the right to associate.

This shift confirms that the political-legal debate over the Perppu on Mass Organizations does not stop at the executive-legislative level, but continues into the judicial sphere.[26] However, rather than acting as a counterbalance, the Constitutional Court actually reinforces the trend of executive power consolidation. Thus, the map of judicial review applications for

[25] Aditya Putra Setiawan, "Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Asasi Manusia."

[26] Yudit Bertha Rumbawer, Donny Eddy Sam Karauwan, and Anthon Rumbruren, "Ambiguitas Keputusan Administrasi Negara : Antara Diskresi Dan Legalitas," *JURNAL SULTAN: Riset Hukum Tata Negara* 2, no. 2 (2024): 52–63, https://doi.org/10.35905/sultan_htn.v2i2.9569.

the Perppu on Mass Organizations not only illustrates civil society resistance but also demonstrates the Constitutional Court's failure to fulfill its role as guardian of the constitution.

3.2 Comparative Analysis of the Norms Tested: Articles 59(4)c, 62(3), 80A, and 82A of the Mass Organizations Law

One of the most crucial aspects of the judicial review of the Perppu on Mass Organizations is the debate over new norms deemed to have direct implications for the right to associate. At least four norms have been consistently questioned by the applicants: Article 59 paragraph (4) letter c, Article 62 paragraph (3), Article 80A, and Article 82A of the Mass Organizations Law. An analysis of these norms demonstrates how the Perppu and the Mass Organizations Law shift the configuration of protection of the right to associate toward stricter state control, while also demonstrating the Constitutional Court's stance, which is more inclined towards validation than substantive correction.[27]

3.2.1 Article 59 paragraph (4) letter c: "Mass organizations are prohibited from adhering to, developing, and spreading teachings or ideologies that contradict Pancasila."

This article is key because it contains a clause open to multiple interpretations: "contradicts Pancasila." In the Constitutional Court's judicial review (Case Nos. 39, 41, 44, 48, and 82/PUU-XV/2017), the petitioners argued that this phrase was too broad and vague, opening the government to disband mass organizations subjectively without clear parameters. Normatively, this multi-interpretable clause contradicts the principles of lex certa and due process of law, which require clarity in legal norms to ensure compliance and avoid uncertainty.[28]

However, the Constitutional Court, in its rulings, considered this phrase sufficiently clear because Pancasila is considered the foundation of the state and a fundamental norm. The Court did not provide a more substantive interpretation of the definition of "contradicts" itself. Academic criticism arose because this stance emphasized the Court's tendency to avoid formulating a standard of review, even though, in the context of international human rights (Article 22 of the ICCPR), restrictions on freedom of association must meet the requirements of legality, necessity, and proportionality

3.2.2 Article 62 paragraph (3): Severe administrative sanctions for violations of Article 59

This norm provides the basis for the government to impose administrative sanctions in the form of revocation of legal entity status and dissolution of mass organizations if they violate the provisions of Article 59. The major change brought by the Perppu is the elimination of the judicial mechanism before imposing dissolution sanctions, which was previously regulated in Law No. 17 of 2013. In other words, the government's administrative decisions are final and without judicial review.

---

[27] Denny Agustian, "Administrative Discretion and Civil Rights: A Study on Indonesian Perppu Ormas," *Jurnal Ius et Lex* 11, no. 2 (2023): 125–41, https://doi.org/10.22212/jil.v11i2.2023.

[28] Budi Haritjahjono and Sodikin Sodikin, "Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia," *Amnesti: Jurnal Hukum* 7, no. 1 (2025): 1–14, https://doi.org/10.37729/amnesti.v7i1.5873.

In the judicial review, the applicant argued that this norm contradicts Article 28E paragraph (3) and Article 28I paragraph (1) of the 1945 Constitution because it eliminates the right to a fair trial and judicial oversight mechanisms. The Constitutional Court rejected this argument, arguing that control over government actions is still possible through the State Administrative Court (PTUN) mechanism or ex post facto constitutional review. However, this view has been criticized as inadequate ex post justification, as the PTUN lacks preventive power against potential executive arbitrariness.

3.2.3 Article 80A: Administrative Revocation of Legal Entity Status

Article 80A explicitly authorizes the Minister of Law and Human Rights to revoke the legal entity status of mass organizations that violate the prohibitions in Article 59, without going through a judicial process. This norm marks a fundamental shift from judicialized control to executive control. In practice, this article served as the legal basis for the disbandment of the HTI in 2017 and the FPI in 2020.[29] Normatively, the existence of this article is seen as problematic because it increases the potential for abuse of power and undermines the principle of checks and balances, which is the essence of a state based on the rule of law. The Constitutional Court, in its ruling, reaffirmed the government's position as the authority to safeguard state ideology, citing effectiveness. This drew strong criticism, as the Constitutional Court was deemed to have failed to fulfill its function as the guardian of the constitution and instead legitimized the expansion of executive discretion.

3.2.4 Article 82A: Prohibition of Mass Organization Activities and Confiscation of Assets Potentials

Article 82A expands the scope of criminal sanctions by thus potentially allowing the government not only to disband a mass organization but also to have the probability of prohibiting all its activities and confiscate its assets. This provision raises serious concerns regarding property rights and freedom of association. Under international law, such restrictive measures are only justified if they comply with the principle of proportionality and are subject to strict judicial oversight.[30]

In its ruling, the Constitutional Court again rejected the petition for judicial review of this article, arguing that the government's actions were solely intended to maintain national stability and protect society from ideological threats contrary to Pancasila. However, this stance of the Constitutional Court demonstrates a bias towards the paradigm of "stability over freedom," disregarding the balance between individual rights and the public interest as mandated by the 1945 Constitution and the ICCPR.

An analysis of these four articles reveals a consistent pattern: the Perppu on Mass Organizations shifts the legal framework from protecting constitutional rights to strengthening executive discretion, and the Constitutional Court (MK) in its judicial review chose formal validation over substantive interpretation. The lack of a clear interpretation of

[29] M. Qurtuby, "Religious Violence and Islamic Militancy in Indonesia: The Case of FPI," *Southeast Asian Studies Review* 8, no. 1 (2020): 15–35.
[30] Agustian, "Administrative Discretion and Civil Rights: A Study on Indonesian Perppu Ormas."

the phrase "multi-interpretable" and the full legitimacy of government administrative authority has implications for the normalization of restrictions on the right to associate.

From a legal perspective, this situation reflects a serious deviation because it ignores the principles of lex certa and due process of law. From a CLS perspective, this configuration indicates that the law functions as an instrument of the government's political legitimacy, rather than as a protector of citizens' fundamental rights. Thus, these several factors demonstrate that the judicial review of Articles 59(4)c, 62(3), 80A, and 82A is not simply a matter of positive legal interpretation, but concerns the fundamental configuration between citizens' constitutional rights and executive power in a democratic state.

3.3 Analysis of the Constitutional Court Decision

As outlined in the previous chapter, the judicial review of the Perppu on Mass Organizations resulted in a series of relatively consistent Constitutional Court decisions validating the government's authority. However, this consistency was not accompanied by a deeper understanding of substantive interpretations of multi-interpretable norms, thus raising serious questions about the direction of protection of the right to associate in Indonesia.

To provide a more systematic overview, the following is a comparative matrix of Constitutional Court decisions related to the judicial review of the Perppu on Mass Organizations. This matrix summarizes the case number, the article being challenged, the main points of the petition, the ruling, and critical analysis notes.

Table 1. Matrix of the Constitutional Court's Decision on the Judicial Review of the Mass Organizations Perppu

Decision No.	Articles Under Review	Principle of the Petition	Decision	Critical Analysis Notes
39/PUU-XV/2017	Articles 59(4)c, 62(3)	The applicant argued that the phrase "contrary to Pancasila" was vague, and that administrative sanctions without a trial violated due process of law.	Rejected in its entirety. The Constitutional Court considered the phrase clear and that administrative sanctions could still be tested at the State Administrative Court (PTUN).	The Constitutional Court failed to provide a substantive interpretation; ex post justification (PTUN) was ineffective as a preventive measure.
41/PUU-XV/2017	Article 80A	The applicant questioned the administrative authority of the Minister of Law and	Rejected. The Constitutional Court considered the government's authority constitutional in order to	Shifting the paradigm from judicial control to executive control,

		Human Rights to revoke the status of a legal entity without a trial.	safeguard the state ideology.	validating executive discretion.
44/PUU-XV/2017	Articles 59(4)c, 82A	The applicant argued that the dissolution of mass organizations and the prohibition of activities without trial violated human rights and Article 28E of the 1945 Constitution.	Rejected. The Constitutional Court emphasized that restrictions on rights can be implemented in the interests of national stability.	The Constitutional Court prioritized political stability; the proportionality test was not examined.
48/PUU-XV/2017	Articles 62(3), 80A	The applicant believed that the sanction of final administrative dissolution contradicted the principles of the rule of law.	Rejected. The Constitutional Court declared the mechanism constitutional.	It affirmed the executive's position as the sole actor controlling mass organizations, ignoring the principle of checks and balances.
82/PUU-XV/2017	Articles 59(4)c, 62(3), 82A	The applicant questioned the multiple interpretations of the term "contrary to Pancasila" and the potential human rights violations resulting from administrative sanctions.	Rejected. The Constitutional Court considered the prohibition clear, and dissolution part of state authority.	Consistent with a repetitive pattern, the Constitutional Court consistently rejected substantive interpretations.
94/PUU-XV/2017	Articles 59(4)c, 80A, 82A	The applicant argued that the multiple interpretation clauses	Rejected. The Constitutional Court considered the government's authority proportional to the 1945	The Constitutional Court did not apply the proportionality

		contradicted lex certa, and the asset confiscation sanction was disproportionate.	Constitution.	test, tending to normalize constitutional repression.
2/PUU-XVI/2018	Articles 80A, 82A	The applicant again questioned the mechanism for non-judicial dissolution and asset confiscation.	Rejected. The Constitutional Court consistently considered the government's authority legitimate.	Strengthening the formal validation pattern, the absence of in-depth international human rights review.

3.3.1 Formal Analysis: Urgent Needs in the Formation of the Perppu on Mass Organizations

One of the main issues raised in the judicial review of the Perppu on Mass Organizations is the formal issue regarding the constitutional requirement of "compelling urgency" as stipulated in Article 22 paragraph (1) of the 1945 Constitution. In constitutional law doctrine, this requirement is intended as a constitutional safeguard to prevent the use of Perppu as an instrument of political power. Decision No. 138/PUU-VII/2009 established three clear parameters for determining the existence of compelling urgency: (1) an urgent need to resolve the legal issue quickly; (2) the necessary law does not yet exist, or there is a legal vacuum; and (3) the legal vacuum cannot be addressed through normal lawmaking procedures.[31]

These three criteria serve as landmark decisions because they provide objective benchmarks for the executive in exercising its authority to issue Perppu. However, when challenged, the Constitutional Court did not strictly apply these parameters. In cases 39, 41, 44, 48, 82, 94/PUU-XV/2017, and 2/PUU-XVI/2018, the Constitutional Court asserted that the President has full authority to assess the existence of compelling urgency, arguing that the disbandment of HTI in 2017 and the subsequent threat to Pancasila constituted an extraordinary situation that could not be addressed through ordinary legislative mechanisms.[32]

This shift raises serious problems. First, the Constitutional Court ignores the fact that Law No. 17 of 2013 concerning Mass Organizations already regulates the mechanism for disbanding Mass Organizations through the courts, thus preventing a legal vacuum as defined by Decision 138/2009. Therefore, the government's argument for a legal vacuum is flawed, as it simply reflects executive dissatisfaction with court procedures, which it deems slow and

[31] Sukri, "Dinamika Politik Disetujuinya Perppu No. 2 Tahun 2017."
[32] M. Beni Kurniawan, "Konstitusionalitas Perppu Nomor 2 Tahun 2017 Tentang Ormas Ditinjau Dari UUD 1945," *Jurnal Konstitusi* 15, no. 3 (2018): 455, https://doi.org/10.31078/jk1531.

ineffective. Second, the Constitutional Court's assessment that ideological threats can be categorized as a compelling emergency is inherently elastic and potentially abusive of constitutional mechanisms, as any political threat can be used at any time as a basis for issuing a Government Regulation in Lieu of Law (Perppu) without adequate proportionality testing.[33]

Further analysis shows that the Constitutional Court, in its judicial review decisions on the Mass Organizations Perppu, tends to shift the parameters of compelling emergency from the objective to the subjective realm. While Decision 138/2009 positions the Court as the final interpreter of the existence of a compelling emergency, the decisions related to the Mass Organizations Perppu actually return this authority to the President. The Constitutional Court argues that the assessment of emergency conditions is the political domain of the executive, and the Court only conducts formal ex post review.[34] This stance undermines the Constitutional Court's constitutional role as the guardian of the constitution, as it reduces the strict standards previously established.

From a rechtsstaat perspective, consistency with the parameters of 138/2009 is key to preventing arbitrary restrictions on constitutional rights. However, in practice, the judicial review decisions on the Mass Organizations Perppu actually demonstrate a tendency to normalize the use of the Perppu as a means of political repression.[35] This becomes even clearer when compared with international standards, particularly General Comment No. 29 of the ICCPR, which emphasizes that a state of emergency permitting human rights derogations must be extraordinary. The dissolution of mass organizations in Indonesia in 2017 fell short of this standard.

Thus, this formal analysis confirms that the Constitutional Court failed to maintain the consistency of the jurisprudence established in Decision 138/2009. Instead of strengthening objective parameters, the Constitutional Court preferred subjective validation of executive claims of compelling urgency. The implication of this shift is the delegitimization of the judicial oversight function and the strengthening of executive dominance in restricting freedom of association, which contradicts the principle of checks and balances in a democratic state governed by the rule of law.

3.3.2 Material Analysis: The Multi-Interpretable Phrases "Contrary to Pancasila" and "Threatening National Stability"

One crucial issue in the judicial review of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 in conjunction with Law No. 16 of 2017 is the lack of clear interpretation of the phrases "contrary to Pancasila" and "threatens national stability." These phrases serve as the legal basis for the government to disband mass organizations, but at the same time, they open up broad, even flexible, interpretations. Normatively, this situation creates a lex certa problem that contradicts the principle of the rule of law, which emphasizes that legal norms must be

[33] Pandanwangi, "Analisis Komparatif PERPPU No. 17 Tahun 2017 Dan UU No. 17 Tahun 2013 Tentang Organisasi Kemasyarakatan."

[34] dan Legionosuko Parameswari, Putri, Teguh Prasetyo, "Analisis Kebijakan Perppu Ormas Dalam Perspektif Peperangan Asimetris," *Jurnal Keamanan Nasional* 5, no. 2 (2019): 51–67.

[35] Muabezi, "Negara Berdasarkan Hukum (Rechtsstaats) Bukan Kekuasaan (Machtsstaat)."

certain, predictable, and prevent the domination of power.[36]

In cases 39, 41, 44, 48, 82, 94/PUU-XV/2017, and 2/PUU-XVI/2018, the Constitutional Court tended to avoid substantive interpretation of these phrases. The Constitutional Court merely asserts that Pancasila is an open ideology that must be protected from ideological threats that could undermine the state, while the determination of whether a mass organization "contradicts Pancasila" or "threatens national stability" is returned to the executive branch. This approach has serious implications, shifting the Constitutional Court's function from being a guardian of the constitution to merely legitimizing government discretion. In other words, the Court stops at formal legality without ensuring that restrictions on the right to associate meet the principles of legality, necessity, and proportionality as required by Article 22 of the ICCPR and the Siracusa Principles (1984).[37]

This absence of substantive interpretation demonstrates the Constitutional Court's tendency to normalize double standards in the law. Through the lens of CLS, the Constitutional Court's stance can be read as a seemingly neutral legal strategy that actually reinforces the executive's political dominance. The phrase "multiple interpretations" functions as a flexible legal tool: when necessary, the government can use it to justify the dissolution of mass organizations without having to present objective evidence that can be tested in court. Thus, the law operates not as a protector of civil rights, but as an instrument of repression legitimized by judicial decisions.

Furthermore, this situation contradicts Indonesia's constitutional commitments. Article 28E paragraph (3) of the 1945 Constitution guarantees freedom of association, while Article 28J paragraph (2) only permits restrictions as long as they are regulated by law and necessary to protect the rights of others, morality, public order, and national security.[38] By failing to provide a strict interpretation, the Constitutional Court ignored the principle of proportionality, which states that restrictions must be: (1) prescribed by law, (2) aimed at a legitimate aim, and (3) truly necessary and proportionate. In the case of the dissolution of HTI and FPI, these procedures were ignored; the organizations were immediately dissolved through Ministerial Decrees, without any judicial review mechanism in the general courts.

Referring to Jimly Asshiddiqie's theory of rechtsstaat, the Constitutional Court should have used this opportunity to uphold due process of law by ensuring that the phrase "multi-interpretable" has strict legal parameters.[39] However, what emerged was an abstract justification for the importance of maintaining Pancasila and stability, which actually lowered the constitutional standards of the rule of law. The Constitutional Court failed to clearly distinguish between ideological differences tolerated in a democracy and concrete actions

[36] Haritjahjono and Sodikin, "Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia."
[37] Salim, "Problematika Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) No. 02 Tahun 2017 Tentang Organisasi Kemasyarakatan."
[38] Hafid, Arifin, and Fauzia, "Hak Berserikat Dan Berkumpul Menurut UUD Pasal 28E Ayat 3 Dan Pasal 21 Ayat 1 DUHAM ; Tinjauan Aktivitas Ekonomi Islam."
[39] Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011).

that violate criminal law or pose a measurable threat to state security.

The implication is the delegitimization of freedom of association as a fundamental right. If the term "multi-interpretation" continues to be upheld without strict criteria, there is no guarantee that this right will be protected from abuse of power.[40] In fact, the potential for overcriminalization of freedom of association becomes real, as any form of criticism deemed "contrary to Pancasila" or "threatening national stability" can be used as a basis for repression. This clearly contradicts the clear and present danger doctrine developed in comparative constitutional law, which emphasizes that restrictions on freedom can only be imposed when there is a real, direct, and substantial threat to the state.

Thus, a material analysis of the phrase "multi-interpretation" shows that the Constitutional Court is not fulfilling its role as the last bastion of human rights protection. Instead of upholding strict constitutional standards, the Court is allowing for the flexibility of norms that benefit the executive.[41] This strengthens the conclusion that the Constitutional Court's jurisprudence in mass organization cases normalizes constitutional repression and weakens substantive democracy.

3.4 Due Process, Contrarius Actus, and Proportionality Test in the Dissolution of Mass Organizations

One crucial point in the Perppu on Mass Organizations is the absence of an adequate due process mechanism. Perppu No. 2 of 2017 grants the government direct authority to revoke the legal status of mass organizations and even dissolve them through a Ministerial Decree, without prior judicial procedure. The rationale used is the doctrine of contrarius actus, which states that officials authorized to issue permits or approvals also have the authority to revoke them. Administratively, this doctrine is recognized in state administrative law. However, problems arise when it is used to revoke constitutional rights, in this case freedom of association, which should be protected through an independent judicial process.[42]

In a series of decisions, the Constitutional Court accepted the government's argument that the State Administrative Court (PTUN) is a sufficient mechanism for reviewing decisions to disband mass organizations. However, this view is problematic. The PTUN only examines administrative formalities, such as the procedure for issuing decisions, but does not address the substance of human rights restrictions. Therefore, the PTUN does not provide a forum equivalent to constitutional due process, which requires that restrictions on fundamental rights are only valid if determined by an independent judicial institution, with open evidence, and through procedures that guarantee the defendant's right to defend themselves (a fair trial).[43]

---

[40] Ery. Nugroho, "Bill on Societal Organizations and Freedom of Association in Indonesia," *ICNL Research Paper*, 2020.

[41] Gani Hamaminata, "Perkembangan Sistem Peradilan Pidana Di Indonesia," *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 4 (2023): 52–64, https://doi.org/10.55606/jhpis.v2i4.2334.

[42] Noer Yasin, "THE AUTHORITY RATIONALIZATION PHILOSOPHY OF THE INDONESIA COMPETITION COMMISSION: The Due Process of Law and Maqashid Sharia Perspectives," *Jurisdictie: Jurnal Hukum Dan Syariah* 13, no. 1 (2022): 63–89, https://doi.org/10.18860/j.v13i1.15873.

[43] Ayu Wulandari and Sidi Ahyar Wiraguna, "Problematika Penerapan Prinsip Due Process of Law Dalam Hukum

From an international human rights law perspective, the standard that must be used is the proportionality test, as stipulated in Article 22 of the ICCPR. This test has three main pillars: legality, necessity, and proportionality.[44] First, legality requires that restrictions be based on clear, predictable, and non-transparent law. In the context of the Perppu on Mass Organizations, the phrases "contrary to Pancasila" and "threaten national stability" fail to meet this requirement because their flexible meanings allow for unilateral interpretation by the government. Second, necessity requires that restrictions be strictly necessary to protect legitimate interests, such as national security or public order. However, in the practice of disbanding HTI and FPI, the government never proved a clear and present danger to the state. Third, proportionality demands a balance between the purpose of the restrictions and the resulting impact. Permanent disbandment of mass organizations without a judicial process is clearly disproportionate, as the sanctions imposed are more severe than the demonstrable threat.

The most fundamental weakness of the Constitutional Court's approach is its inability to integrate the proportionality test into its constitutional interpretation. Rather than asserting strict limits on the executive, the Constitutional Court (MK) has allowed the use of contrarius actus and the PTUN (State Administrative Court) as formal justification for protecting the right to freedom of association.[45] However, from a legal perspective, human rights protection must be guaranteed through substantive checks and balances, not merely procedural ones. From a CLS perspective, the Constitutional Court's stance demonstrates a structural bias: the law is used to legitimize executive power, leaving formal loopholes that mask the lack of substantive protection for citizens' rights.[46]

Therefore, it can be concluded that the PTUN mechanism cannot be considered sufficient legal protection for the dissolution of mass organizations. It merely provides the illusion of due process without ensuring the fulfillment of fair trial standards and the proportionality of rights restrictions. Compared with Indonesia's obligations as a state party to the ICCPR, this position places the Constitutional Court in a problematic position: it fails to uphold international standards that have become part of national law through ratification.

3.5 Reading the Constitutional Court Decision through Critical Legal Studies: Law as the Legitimacy of Power

The CLS approach offers a different perspective for reading the legal configuration of the Perppu on Mass Organizations and a series of Constitutional Court decisions. CLS rejects the assumption that law is neutral and autonomous. Instead, it views law as an instrument that often disguises the interests of power behind claims of normative rationality.[47] In the context

Acara Pengujian Undang-Undang Di Mahkamah Konstitusi," *Politika Progresif : Jurnal Hukum, Politik Dan Humaniora* 2, no. 2 (2025): 52–63, https://doi.org/10.62383/progres.v2i2.1613.

[44] Oktarina and Agustian, "Implementation of Article 28e (3) of The Constitution of The Republic of Indonesia Year 1945 on The Restriction of The Right of Assembly in Law No . 17 of 2013 about Community Organizations."

[45] Kurniawan, "Konstitusionalitas Perppu Nomor 2 Tahun 2017 Tentang Ormas Ditinjau Dari UUD 1945."

[46] Nugroho, "Bill on Societal Organizations and Freedom of Association in Indonesia."

[47] Roberto Unger, *The Critical Legal Studies Movement* (Cambridge: MA: Harvard University Press, 1986).

of the Perppu on Mass Organizations, the Constitutional Court consistently affirms the constitutionality of executive products without delving into substantive interpretations of clauses subject to multiple interpretations, such as "contradicts Pancasila" and "threatens national stability." This stance demonstrates a pattern of double standards: when faced with national stability, the Constitutional Court prefers to protect the executive branch's freedom of movement rather than strengthen the protection of citizens' rights.[48]

This phenomenon demonstrates what Roberto Unger calls the indeterminacy of law: the law is inherently open to various interpretations, but the choice of interpretation is always linked to dominant power relations.[49] The Constitutional Court actually has the space to affirm the protection of the right to associate by applying the proportionality test as standardized by the ICCPR. However, this space is not utilized. Thus, the Constitutional Court's decisions reflect political logic rather than constitutional commitment. The law appears to be neutral, but in reality, it reproduces executive dominance in restricting civil liberties.[50]

When interpreted within the framework of legal principles, this phenomenon marks an erosion of the principles of checks and balances and due process of law, pillars of a democratic rule of law. Within the legal system paradigm, the principle of lex certa requires that restrictions on rights be outlined in clear, unambiguous norms.[51] However, the Court has allowed flexible phrases like "anti-Pancasila" and "threatening national stability" to remain without concrete guidelines. This is not simply a matter of normative weakness, but a shift in principle: from law as a check on power to law as a tool for legitimizing power.[52]

The classic adage "ubi societas, ibi ius" (where there is society, there is law) ideally means that the law exists to protect the diversity of social expression, including freedom of association. However, in decisions related to the Perppu on Mass Organizations, this adage seems to have changed: "ubi potestas, ibi ius" (where there is power, there the law follows). By this logic, the law becomes an instrument justifying repressive actions in the name of stability, rather than balancing the interests of the state and its citizens.

A closer look reveals the Constitutional Court's stance, demonstrating a pattern of defensive jurisprudence. Instead of broadening the horizons of constitutional democracy, the Court chose a safe path by relying on formal reasoning and the doctrine of contrarius actus. This paradigm ignores the principle of salus populi suprema lex esto (the safety of the people is the supreme law) in its substantive meaning, as what is being safeguarded is not the safety of the people in the sense of protecting rights, but rather the safety of the regime from potential political instability.

---

[48] Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi* (Jakarta: Konstitusi Press, 2005).

[49] Muabezi, "Negara Berdasarkan Hukum (Rechtsstaats) Bukan Kekuasaan (Machtsstaat)."

[50] I Made Sugita, "Tinjauan Yuridis Konsep Negara Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Jurnal Hukum Agama Hindu Widya Kerta* 7, no. 2 (2024): 105–27, https://doi.org/10.53977/wk.v7i2.2185.

[51] Fauzi Iswari, "Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia," *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 127, https://doi.org/10.33760/jch.v6i1.285.

[52] Laurensius Arliman. S, "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, no. 1 (2019): 1–20, https://doi.org/10.28932/di.v11i1.1831.

Based on the CLS reading, the Constitutional Court's decisions regarding the Perppu on Mass Organizations confirm the criticism that the law often functions as a legitimation of constitutional repression. On the surface, the Constitutional Court appears to uphold the constitution by reviewing the Perppu through the parameters of "compelling urgency" and the administrative mechanisms of the State Administrative Court (PTUN). However, behind this, the Court failed to ensure that the right to associate is upheld to the strict standards mandated by the 1945 Constitution and the ICCPR. The law, which should be a shield of liberty, has instead become a sword of power.[53]

Therefore, this study confirms that the main problem is not simply the absence of a substantive interpretation of the phrase "multi-interpretable," but also concerns the Court's crisis of constitutional orientation. CLS reminds us that law is always in the crossfire of ideologies, so an interpretation of constitutional law that ignores human rights cannot be considered neutral. In this case, the Constitutional Court has chosen to side with the powerful. Therefore, to restore the principle of democratic rechtsstaat, a reconstruction of constitutional interpretation is needed that places legality, necessity, and proportionality as the absolute standards in restricting freedom of association.[54]

4. CONCLUSION

This study concludes that the issuance of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 concerning Mass Organizations, which was later ratified as Law No. 16 of 2017, does not fully meet the parameters of "compelling urgency" as formulated by the Constitutional Court in Decision No. 138/PUU-VII/2009. In a series of judicial review decisions, the Constitutional Court has provided more formal validation of the validity of the Perppu and the Mass Organizations Law, but has been absent in providing substantive interpretations of multi-interpretable phrases such as "contrary to Pancasila" and "threatening national stability." This condition has serious implications for legal certainty and opens up space for the normalization of restrictions on the right to associate outside the principles of legality, necessity, and proportionality as required by the ICCPR and the Siracusa Principles. Thus, this study confirms that the Constitutional Court has shifted the function of constitutional review as a mechanism of checks and balances. Therefore, it is necessary to reaffirm the constitutional parameters of rights restrictions through the Court's substantive interpretation so that the practice of disbanding mass organizations remains within the corridor of a democratic rule of law.

REFERENCE

Aditya Putra Setiawan, Agus Riwanto. "Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Asasi Manusia." *Res Publica* 4, no. 3 (2020): 273–88. https://digilib.uin-suka.ac.id/id/eprint/31708/.

Afandi, M. Rizal. "Freedom of Association and State Regulations: An Indonesian Case." *Jurnal*

[53] Unger, *The Critical Legal Studies Movement.*

[54] Julius Stahl, *Das Staatsrecht. Berlin: Duncker & Humblot (Edisi Reprint Terjemahan Indonesia Oleh Mahfud MD, 2011)*, 2009.

Konstitusi 18, no. 3 (2021): 455–79. https://doi.org/10.31000/jk.v18i3.455.

Agustian, Denny. "Administrative Discretion and Civil Rights: A Study on Indonesian Perppu Ormas." *Jurnal Ius et Lex* 11, no. 2 (2023): 125–41. https://doi.org/10.22212/jil.v11i2.2023.

Arliman. S, Laurensius. "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia." *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, no. 1 (2019): 1–20. https://doi.org/10.28932/di.v11i1.1831.

Asshiddiqie, Jimly. *Hukum Tata Negara Dan Pilar-Pilar Demokrasi*. Jakarta: Konstitusi Press, 2005.

———. *Konstitusi Dan Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika, 2011.

Assidiqi, Rohmatullah. "Perlindungan Hukum Dan Kebebasan Berserikat Dalam Konteks Organisasi Kemasyarakatan Di Era Digital Pendahuluan Organisasi Kemasyarakatan (Ormas) Merupakan Salah Satu Pilar Penting Dalam Kehidupan Demokrasi Yang Berfungsi Sebagai Wadah Bagi Masyarakat Un" 6, no. 5 (2025): 1193–1208.

Ayu Wulandari, and Sidi Ahyar Wiraguna. "Problematika Penerapan Prinsip Due Process of Law Dalam Hukum Acara Pengujian Undang-Undang Di Mahkamah Konstitusi." *Politika Progresif : Jurnal Hukum, Politik Dan Humaniora* 2, no. 2 (2025): 52–63. https://doi.org/10.62383/progres.v2i2.1613.

Gani Hamaminata. "Perkembangan Sistem Peradilan Pidana Di Indonesia." *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 4 (2023): 52–64. https://doi.org/10.55606/jhpis.v2i4.2334.

Hafansyah, Hisan, and Taufiqurrohman Syahuri. "Pembubaran Organisasi Kemasyarakatan Front Pembela Islam (Fpi) Dalam Perspektif Hukum Tata Negara." *Jurnal Yuridis* 10, no. 2 (2023): 74–86. https://doi.org/10.35586/jyur.v10i2.7201.

Hafid, Numan Sofari, Tajul Arifin, and Ine Fauzia. "Hak Berserikat Dan Berkumpul Menurut UUD Pasal 28E Ayat 3 Dan Pasal 21 Ayat 1 DUHAM ; Tinjauan Aktivitas Ekonomi Islam" 10, no. 1 (2025): 49–65.

Haritjahjono, Budi, and Sodikin Sodikin. "Implementation of the Lex Certa Principle towards the Ambiguity of Digital Law's in Indonesia." *Amnesti: Jurnal Hukum* 7, no. 1 (2025): 1–14. https://doi.org/10.37729/amnesti.v7i1.5873.

Iswari, Fauzi. "Aplikasi Konsep Negara Hukum Dan Demokrasi Dalam Pembentukan Undang-Undang Di Indonesia." *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 127. https://doi.org/10.33760/jch.v6i1.285.

Khasanofa, Auliya. "Kedudukan Perppu Ormas Dalam Negara Hukum Indonesia." *Jurnal Hukum Replik* 5, no. 2 (2020): 30–50. http://dx.doi.org/10.31000/jhr.v5i2.922.

Kurniawan, M. Beni. "Konstitusionalitas Perppu Nomor 2 Tahun 2017 Tentang Ormas Ditinjau Dari UUD 1945." *Jurnal Konstitusi* 15, no. 3 (2018): 455. https://doi.org/10.31078/jk1531.

Marfiando, Bayu. "Pembubaran Hizbut Tahrir Indonesia (HTI) Ditinjau Dari Kebebasan Berserikat." *Jurnal Ilmu Kepolisian* 14, no. 2 (2020): 13. https://doi.org/10.35879/jik.v14i2.253.

Muabezi, Zahermann Armandz. "Negara Berdasarkan Hukum (Rechtsstaats) Bukan Kekuasaan (Machtsstaat)." *Jurnal Hukum Dan Peradilan* 6, no. 3 (2017): 421. https://doi.org/10.25216/jhp.6.3.2017.421-446.

Munif, Sultan A. Z., Mochamad Iqbal Risyadi, dan Rangga W. A. Mubarok. "Berakhirnya

Eksistensi Ormas Dengan Adanya Perppu No. 2 Tahun 2017." *Causa: Jurnal Hukum Dan Kewarganegaraan* 8, no. 5 (2024): 21–30.

Nalle, Victor Imanuel. "Asas Contarius Actus Pada Perpu Ormas: Kritik Dalam Perspektif Hukum Administrasi Negara Dan Hak Asasi Manusia." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 244–62. https://doi.org/10.22304/pjih.v4n2.a2.

Nugroho, Ery. "Bill on Societal Organizations and Freedom of Association in Indonesia." *ICNL Research Paper*, 2020.

Oktarina, Evi, and Muhamad Yosi Agustian. "Implementation of Article 28e (3) of The Constitution of The Republic of Indonesia Year 1945 on The Restriction of The Right of Assembly in Law No . 17 of 2013 about Community Organizations" 3, no. 2 (2025): 191–204.

Pandanwangi, Prayudisti Shinta. "Analisis Komparatif PERPPU No. 17 Tahun 2017 Dan UU No. 17 Tahun 2013 Tentang Organisasi Kemasyarakatan." *Arkhais* 11, no. 1 (2020): 1–14.

Parameswari, Putri, Teguh Prasetyo, dan Legionosuko. "Analisis Kebijakan Perppu Ormas Dalam Perspektif Peperangan Asimetris." *Jurnal Keamanan Nasional* 5, no. 2 (2019): 51–67.

Qurtuby, M. "Religious Violence and Islamic Militancy in Indonesia: The Case of FPI." *Southeast Asian Studies Review* 8, no. 1 (2020): 15–35.

Salim, Choirus. "Problematika Peraturan Pemerintah Pengganti Undang-Undang (PERPPU) No. 02 Tahun 2017 Tentang Organisasi Kemasyarakatan." *Istinbath : Jurnal Hukum* 15, no. 2 (2018): 309. https://doi.org/10.32332/istinbath.v15i2.1251.

Stahl, Julius. *Das Staatsrecht. Berlin: Duncker & Humblot (Edisi Reprint Terjemahan Indonesia Oleh Mahfud MD, 2011)*, 2009.

Sugita, I Made. "Tinjauan Yuridis Konsep Negara Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia." *Jurnal Hukum Agama Hindu Widya Kerta* 7, no. 2 (2024): 105–27. https://doi.org/10.53977/wk.v7i2.2185.

Sukri. "Dinamika Politik Disetujuinya Perppu No. 2 Tahun 2017." *Jurnal Ilmu Sosial Dan Ilmu Politik Malikussaleh* 5, no. 1 (2022): 1–18.

Syah, M. Kautsar Thariq, and Paelani Setia. "Radikalisme Islam: Telaah Kampanye Khilafah Oleh Hizbut Tahrir Indonesia (HTI) Pra-Pembubaran Oleh Pemerintah." *Jurnal Iman Dan Spiritualitas* 1, no. 4 (2021): 523–35. https://doi.org/10.15575/jis.v1i4.14094.

Unger, Roberto. *The Critical Legal Studies Movement*. Cambridge: MA: Harvard University Press, 1986.

Winata, M. R. "Politik Hukum Dan Konstitusionalitas Kewenangan Pembubaran Ormas." *Hukum de Jure* 18, no. 4 (2019): 455–64.

Yasin, Noer. "THE AUTHORITY RATIONALIZATION PHILOSOPHY OF THE INDONESIA COMPETITION COMMISSION: The Due Process of Law and Maqashid Sharia Perspectives." *Jurisdictie: Jurnal Hukum Dan Syariah* 13, no. 1 (2022): 63–89. https://doi.org/10.18860/j.v13i1.15873.

Yudit Bertha Rumbawer, Donny Eddy Sam Karauwan, and Anthon Rumbruren. "Ambiguitas Keputusan Administrasi Negara : Antara Diskresi Dan Legalitas." *JURNAL SULTAN: Riset Hukum Tata Negara* 2, no. 2 (2024): 52–63. https://doi.org/10.35905/sultan_htn.v2i2.9569.

Yustisia, P. *Pedoman Pembentukan Dan Pembubaran Ormas*. Yogyakarta: Pustaka Yustisia, 2020.