

THE RADICALISM CRIMINALIZATION CONCEPT AND THE STATE IDEOLOGY AFTER THE IMPLEMENTATION OF STATUTORY PROVISION REGARDING COMMUNITY ORGANIZATIONS

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Abstract

The research on the radicalism criminalization concept on the state ideology after the implementation of the statutory provision regarding community organizations discusses the development of Hizbut Tahrir Indonesia, one of the community organizations that have been disbanded but have a strong influence and contributes to the spread of ideologies against Pancasila. After being disbanded, they then affiliate through the echoes of liberation. Considering that serious situation, a criminalization concept is needed as a form of protection to the state ideology for the dangers of such a harmful ideology so we have a strong foundation to protect Pancasila. This research aims to analyse and investigate the criminalization of radicalism, especially when it harms the state ideology. This is normative research using a conceptual approach and the approach to the Law. The data collected in this research are qualitative so we use the qualitative technique in analysing them. We found several regulations added to the regulation of the Criminal Code, especially the regulations regarding state security crimes. The regulations include criminal provisions against ideologies other than communism, Marxism, and Leninism whose orientation and manifestations endanger Pancasila. The regulations are regarded as an effort to criminalize radical perpetrators. Besides, in the regulation of the Criminal Code, there are added criminal provisions in the Law on Community Organizations regarding changes in the name of the organization which is known to be disbanded to prevent the organization from affiliating and reincarnating under another name but with the same movement. The Law Drafting Team, the legislative body, and all related institutions have to impose sanctions with a more deterrent effect regarding the criminal act.

Keywords: State Ideology, Criminalization, Radicalism

INTRODUCTION

Crime is a behaviour that violates the statutory provision in criminal law or another law and causes harm to the victim affected by or experiencing the crime.

The development stages of the regulation regarding crime in the provisions of the criminal law regulated in the Criminal Code have several changes so the provisions on crimes, one of which regarding state security, also change. One of the changes is the inclusion of treason as one of the offenses and there is amended with the inclusion of the prohibition of Marxist, Leninist, and communist teachings in all their forms.

The changes are due to some acts that need to be criminalized, not only including treason but also other acts considered against the state ideology, such as communism and Leninism. The two last acts are regulated through Tap MPR on the Prohibition of the Indonesia Communist Party and all

forms of teachings and their manifestations. The prohibition should be thus emphasized in the regulation of the Criminal Code.

Another regulation concerning to the state security crimes, especially that related to the state ideology crimes, can be observed in the regulation of community organizations that after being passed in 2017, it shows weaknesses, including its criminal provision stating that community organizations are prohibited from adhering to, developing, and spreading teachings or ideologies against *Pancasila*. In response to the regulation, *Hizbut Tahrir Indonesia* was disbanded yet consequently, the efforts to prevent the crimes of the organization are more complicated due to no legal umbrella concerning crimes committed by an ex-organization that are not included within the scope of the community organization before being disbandment.

The regulations regarding crimes against state security only concern several communist ideologies, so they have less binding power on other ideologies and on the criminalization of other crimes that are contrary to the state ideology.

It is evident that *Hizbut Tahrir Indonesia* is not only a community organization but also a political one. Furthermore, HTI aims to establish an Islamic caliphate and as stated in court decisions, in its cassation, HTI evidently orients its movement to replace *Pancasila* as the ideology of Indonesia. It strengthens the need to regulate such events with several criminalization concepts that criminalize all harmful ideologies besides communism in all their forms. Protections for state ideology should be covered by regulations that govern ex-radical organizations. This research renders a detailed explanation regarding the concept of radicalism criminalization against state ideology after the enactment of the Perpu on Community Organizations.

This research raises an issue on what the impact of the radicalism criminalization concept on state ideology after the enactment of Perpu on Community Organizations.

This research aims to analyse and find the criminal policies against radicalism, especially in terms of state ideology.

RESEARCH METHODS

This research is normative so we look for information directly to respondents or related parties to relevant legal affairs. We also conduct a library investigation to complete this research.

This research uses a conceptual approach. According to Peter Mahmud Marzuki, the conceptual approach refers to the applicable legal rules and builds a concept based on views or doctrines that develop in a legal science used as a reference in research. This research also uses a statutory approach that is an approach using legislation and regulations. Besides, this research aims to solve legal issues and provides a different perspective of what research sources are needed.

Legal research sources are divided into two i.e. primary and secondary legal materials:

1. Primary legal materials: legal materials that are authoritative in nature, so they have authorities. Primary legal materials comprise statutory of judge's decisions.

2. Secondary legal materials: legal materials commonly referred to as complementary legal materials as they complement primary ones. Secondary legal materials come in the form of publications concerning law i.e. legal dictionaries, textbooks, journals, and comments.

The data acquired and collected in this research are qualitative so the data analysis technique used is qualitative, where all processing is conducted in a deductive way, starting from thoroughly studying the basics of general knowledge then studying specific events and drawing conclusions.

DISCUSSION

Radicalism is a response to the on-going condition. The response comes in the form of evaluation, rejection, or even resistance. The evaluated, rejected, or resisted objects can be in the form of assumptions, ideas, institutions, or values responsible for the sustainability of a situation rejected by radicalism. In simple terms, radicalism is an idea or attitude characterized by four properties i.e. *first*, intolerance and disrespect for others' opinions or beliefs; *second*, fanaticism, or always feeling right for yourself and seeing others as wrong; *third*, exclusiveness, or differentiating oneself from others, and *fourth*, revolutionary, or inclining to use violence to achieve goals.

Radicalism develops as its adherents are also increasing. Each radical movement is inevitably nurturing different goals and patterns from time to time. Some movements simply fight for the implementation of sharia and rule out the need to establish "an Islamic state", but others are struggling for both the establishment of an Indonesia Islamic state and "Islamic caliphate". The movements also have varied organizational patterns, ranging from moral ideological movements; such as *Majelis Mujahidin Indonesia*, *Hizbut Tahrir Indonesia* (HTI) to military movements such as *Laskar Jihad* and FPI.

One of the reasons behind the intention to establish a caliphate is the view that considers the current systems, including the systems implemented by Moslems, are not in accordance with Islamic ideals; even the systems are against them. Starting from this point of departure, the idea nurtured by the movements is understandable if it remains on a non-mainstream path. However, they nurture an idea that is contradicting the values prevailing in Indonesia that is the democraticsystem and *Pancasila*. In the next sessions, we will see how all HTI movements are, for example, dominated by very sharp and frontal criticism of the Indonesian government system.

That situation should be resolved using various criminalization models regarding radicalism against state ideology.

The criminalization models of radicalism against state ideology are:

1. Not limiting the prohibition of ideas contrary to state ideology; such as communism, Marxism, and Leninism based on the regulation as stated in Law Number 27 of 1999 on Amendment to the Criminal Code Concerning State Security Crimes. By the resolution, other ideologies with all forms of their manifestation that are contrary to *Pancasila* can be prohibited.
2. Adding a provision to Law Number 16 of 2017 on Community Organizations stating a prohibition of changing the names of officially disbanded organizations and convincing that the organizations have proliferated ideologies that are intended to replace *Pancasila*.

It affirms that if the models are not included in Law Number 16 of 2017 on Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 on Community Organizations as in the previous explanation, other new problems will arise after the implementation of the Law. The criminalization models thus constitute a benchmark for dealing with crimes and community organizations disbanded due to carrying out radical acts that contradict state ideology. Evidently, ex. HTI has expanded its ideology to several student organizations; such as *Gema Pembebasan*. In December 2018-January 2019, LPPM UNUSIA conducted qualitative research on the ideology expansion activities in eight campuses in Central Java and Yogyakarta, one of which was Universitas Gadjah Mada (UGM). There are some notable points in the research. Firstly, in terms of *tarbiyah* movements observed in the researched campuses, *Hizbut Tahrir Indonesia* is claimed to still make movements in silence after being disbanded by the government in 2018. The movement is rumoured to infiltrate a student organization that is *Gema Pembebasan*. We have to notify that *Hizbut Tahrir Indonesia* (HTI) has been declared a banned community organization after proven to have the intention to transform the *Pancasila* state into a caliphate.

Law Number 27 of 1999 on Amendment to the Criminal Code Relating to Crimes against State Security must be added a provision concerning ideologies analogous to communism that will harm state ideologies with all their manifestations as *Pancasila* is the state ideology that must be protected from other ideologies that attempt to replace it.

The process of determining whether an act is a crime and must be regarded as an offense must be reviewed considering the act can be radical and hence harmful for state ideology. Referring to the previous explanation of the category of crime that consists of four categories, a crime is any act that hinders and restricts the goals of the nation and thus is considered harmful for the whole society. We can regard radicalism as the crime because it inclines to alter state ideology and concept and therefore may harm the country. The reformation of criminal law to eradicate crimes either new or identified as dangers should be criminalized.

As described above, it is evident that we have an offense regarding teachings or ideologies contrary to *Pancasila*. The offense should be targeted to the community organizations that have been disbanded and regulated in the Criminal Code, specifically in the State Security Crimes session. In the regulation, we can see that even though there is no explicit prohibition against a certain ideology, if the ideology is considered contrary to *Pancasila*, it must contain criminal elements.

The former members of a disbanded organization community as proven developing an ideology contrary to *Pancasila* must have criminal responsibility if performing other radical acts and crimes that harm state ideology. Besides, the reaffirmation of Government Regulation in Lieu of Law Number 2 of 2017 on Community Organizations that have been declared into law with the issuance of Law Number 16 of 2017 on Community Organizations must be consistent in regulating community organizations and disbanded community organizations. It is also necessary to make preventive acts concerning community organizations that re-establish their organizations under new names after being disbanded. The preventive acts have not been validated. Furthermore, there is no action based on the existing regulations and consequently, after an organization is disbanded due to radical acts carried out by its members, the members of the organization can continue their movement under a different organization name.

The disbandment of HTI must be monitored by the government and the whole society because there may be a new group or a group with ex-members of HTI that does not regard *Pancasila* as the state ideology. The decision at the cassation level regarding *Hizbut Tahrir Indonesia* renders a certainty that the organization is contrary to *Pancasila* as stated by the Supreme Court that:

“The plaintiff has violated Article 59 Paragraph (4) Letter c of Government Regulation in Lieu of Law Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Community Organization (hereinafter referred to as PerppuOrmas) whose procedure for imposing sanctions is short and sufficiently requests considerations from related institutions *in casu* the Coordinating Minister of Political, Legal, and Security Affairs of the Republic of Indonesia. Therefore, procedurally, the act of the Cassation Petitioner/Previously the Plaintiff has been in accordance with Article 61 Paragraph (4) of PerppuOrmas that then, through a historical approach, the founding fathers agreed on *Pancasila* as the fundamental ideology of the Republic of Indonesia; whereas the Cassation Petitioner//Previously the Plaintiff had conducted activities that developed an ideology contrary to *Pancasila*. Therefore, substantially, the action of the Cassation Petitioner//Previously the Plaintiff has violated Article 59 Paragraph (4) Letter c of PerppuOrmas and its explanation so the legal reason is considered adequate to declare that the Cassation Petitioner/Previously the Plaintiff is subject to administrative sanctions as stipulated in Article 60 Paragraph (2) *juncto* Article 61 Paragraph (3) of PerppuOrmas.

Coordination between institutions is essential and a special regulation regarding radical organizations must be so the possibility of the establishment of an organization that is intending to do crimes can be prevented and eliminated as early as possible by the means of effective handlings.

By observing the court decisions and identifying problems triggered by radical criminal acts against state ideology, we can make preventive acts as early as possible, as previously explained.

CLOSING

CONCLUSION

The impacts of the criminalization concept on state ideology after the enactment of PerppuOrmas are the prohibition of the change in the name of a community organization that is declared to have been disbanded, where the change aims to spread ideologies contrary to *Pancasila*, and the addition of some provisions and regulations regarding state security crimes in the Criminal Code, specifically in the state security crime session that regulates all ideologies besides communism that are oriented to spread ideologies with all their manifestations that are contrary to *Pancasila* and intend to replace *Pancasila* as the state ideology.

SUGGESTIONS

With the actions that are criminalized as described above, it is evident that the actions must be prevented using several reconstruction models suggested by this research. Regarding the addition of the actions that need criminalization, the Law Drafting Team, the legislative body, and all related institutions should impose sanctions that have a more deterrent effect regarding the criminal act.

REFERENCES

1. Ahmad Asrori, 2015, Radikalisme di Indonesia antara Historitas dan Antropisitas, Kalam: Jurnal Studi Agama dan Pemikiran Islam, Vol. 9(2).
2. Emna Laisa, 2014, Islam dan Radikalisme, Islamuna: jurnal studi islam, vol. 1(1).
3. Endri, 2016. Kebijakan Kriminal dalam Menanggulangi Kejahatan Delik Agama, *Jurnal Ilmu Hukum*, Vol 3(1).
4. Nilda Hayati, 2017, konsep *khilafah islamiyyah* hizbut tahrir indonesia kajian *living al-qur'an* perspektif komunikasi, *Episteme Jurnal Pengembangan Ilmu Keislaman*, Vol. 12(1).

BOOKS

1. Peter Mahmud Marzuki, 2016, Penelitian Hukum, Jakarta: Perneranda media.
2. Salman Luthan, 2014, *Kebijakan Kriminalisasi di Bidang Keuangan*, Yogyakarta: FH UII Press.

INTERNET

1. Agilasshofie, Radikalisme Gerakan Islam, <http://agilasshofie.blogspot.com/2011/10/radikalisme-gerakan-politik.html>, retrieved October 4th, 2019.
2. Rivan Dwiastono, Gerakan islameksklusif' tumbuhs subur di kampus-kampus negeri, menurut studi NU, <https://www.bbc.com/indonesia/indonesia-48754115>, retrieved October 5th, 2019.

DECISIONS

Decision on Cassation Level Number 27K/TUN/2019.

DICTIONARY

Pusat bahasa Depdiknas RI dalam kamus besar bahasa indonesia.