

# The Government's Role in the Dissolution of PKI: A Legal and Human Rights Perspective

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**Abstract:** The Dissolution of the Indonesian Communist Party (PKI) has been a matter of concern due to the restriction of the right to associate. On the other hand, the strict prohibition of the PKI's existence is intended to protect individual rights. The communist ideology emerged from the West as a response to the oppression of the bourgeoisie against the proletariat, aiming to establish an authoritarian state while prioritizing welfare. The teachings of the PKI are in conflict with Pancasila as the state philosophy and legislation due to differing state backgrounds. Therefore, it is not appropriate to implement them within the government system, as it poses a threat if the PKI's efforts to seize power were successful. So, what is the government's role in the dissolution of the PKI with a legal and human rights approach? This study employs a normative juridical research method. The research results indicate that the government issued regulations through the MPRS Decree to dissolve the PKI and prohibit the propagation of Marxist-Leninist ideologies in Indonesia. In this context, the government, as a duty bearer, has three obligations. First, to respect means that the PKI and Marxist-Leninist ideologies are strongly prohibited in Indonesia as a sign of the state's respect for the rights of the majority of the population. Second, to protect means that the state guarantees the rights of its citizens by banning the dissemination of communist ideologies, which pose a threat to the citizens' rights as communism does not recognize individual rights. Third, to fulfill means that the MPRS Decree banning the PKI and communist ideologies aims to make the state more democratic by not limiting or reducing citizens' rights, thus ensuring the fulfillment of citizens' rights in a democratic society

**Keywords:** *Law and Human Rights: The Government's Role in the Dissolution of the Indonesian Communist Party (PKI)*

## Introduction

Human Rights (HAM) are the rights possessed by every individual in the world, originating from God and possessing an undivided nature. The existence of these rights serves to protect individuals from disparities, ensuring fair treatment regardless of ethnicity, race, religion, or culture, while also upholding the dignity of every human being. Human rights guarantee that each person's rights are preserved in all aspects and protected by the state through positive law.

Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state based on the rule of law. This implies that the state's role in upholding justice and truth starts with the supremacy of the law, and all authority is accountable based on the law. Indonesia's commitment to human rights can be observed through the 1945 Constitution of the Republic of Indonesia, Article 28A-J, which contains provisions outlining the rights that the citizens can enjoy. However, every citizen's rights are subject to limitations by the state, as stated in Article 28 J, paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This is done to safeguard the rights of individuals, each having their own interests. Given that rights and responsibilities cannot be separated and complement each other, it is implicitly expressed in the mentioned Article.<sup>1</sup>

The Decree of the People's Consultative Assembly Temporary Session Number XXV/MPRS/1966 concerning the Dissolution of the Indonesian Communist Party (PKI) is one of the restrictions imposed by the state on its citizens. Moreover, there is a ban on the promotion and propagation of Communist/Marxist-Leninist ideologies due to their contradiction with the state's ideology and values. This regulation is rooted in the history of the 30th of September Movement, which remains a controversial and mysterious chapter in Indonesian history. The party's refusal was aimed at safeguarding the state, leading to the issuance of Presidential Order of 11th March 1966, commonly known as Supersemar. Various interpretations emerged after the era of

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<sup>1</sup> M. Subhan, "Perlindungan Hukum Bagi Penganut Ideologi Komunisme/Marxisme-Leninisme di Indonesia", *Mimbar Keadilan*, Vol. 12, No. 2, (2019), hlm. 139.

President Suharto, as his rule was seen as authoritarian, and there are approximately six different versions of this historical event.<sup>2</sup>

The author will use the Legal Interests Theory by Karl Marx. This theory suggests that law is held by those in power and is exploited for the benefit of their class. The second theory used is the Natural Law Theory by John Locke, which explains that every individual is endowed with rights by nature, which are inseparable and indivisible, encompassing freedom and property that cannot be taken away by the state. There is a social contract between the people and the state, and if this social contract is not respected by the ruling authority, the people have the right to overthrow the rulers and replace them with a government that acknowledges these rights.<sup>3</sup>

According to Subhan, the existence of MPRS Decree XXV/1966 serves as the legal basis for the prohibition of Communist/Marxist-Leninist ideologies and the constitutional rights of adherents to these ideologies.<sup>4</sup> Hufron and Hajjatulloh add that the prevention and eradication of communism, not only from a legal perspective but also sociologically, is achieved by actualizing Pancasila values in the lives of society, the nation, and the state, and by instilling and practicing these values from an early age.<sup>5</sup> The early 1960s marked the peak of PKI's influence in Indonesia. However, PKI met its demise at the height of its power. General Suharto and General Abdul Haris Nasution were the key figures in the destruction of the communist movement in Indonesia. After its downfall in 1966, the communist movement could not revive, as President Suharto consistently enforced MPRS Decree NO. XXV throughout his 32-year rule.<sup>6</sup>

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<sup>2</sup> Harsa Permata, "Gerakan 30 September dalam Perspektif Filsafat Sejarah Marxisme" *Jurnal Filsafat*, Vol. 25, No. 2, (2015), hlm. 222-223.

<sup>3</sup> Renata Christha Auli, "Hak Asasi Manusia: Pengertian, Sejarah, dan Prinsipnya", <https://www.hukumonline.com/klinik/a/hak-asasi-manusia-pengertian-sejarah-dan-prinsipnya-lt62d8fb697c622/>, akses 28 Mei 2023.

<sup>4</sup> Subhan, M. "Perlindungan Hukum Bagi Penganut Ideologi Komunisme/Marxisme-Leninisme Di Indonesia." *Mimbar Keadilan* 12.2 (2019): 138-154.

<sup>5</sup> Hufron, Hufron, and Hajjatulloh Hajjatulloh. "Aktualisasi Negara Hukum Pancasila Dalam Memberantas Komunisme Di Indonesia." *Mimbar Keadilan* 13.1 (2020): 60-71.

<sup>6</sup> Abdul Syukur, "Kehancuran golongan komunis di indonesia." *Jurnal Sejarah Lontar* 5.2 (2008): 1-8.

In another issue, during the transition from the old order to the new order, conflicts emerged within the PGRI organization. These conflicts were caused by the involvement of the PKI, resulting in organizational dualism and leadership disputes. The PKI established a similar organization to PGRI, but with a communist ideology. The PKI's efforts aimed to undermine PGRI and replace it with an organization affiliated with the PKI. This rivalry manifested during PGRI congresses, where individuals associated with the PKI sought to disrupt all of PGRI's activities.<sup>7</sup>

In addition, another internal factor contributing to the failure of the PKI uprising in 1926-1927 was (1) the absence of effective leaders who understood politics and law, or leaders capable of organizing the masses effectively; (2) the movement did not have a positive image among various groups, especially the Sarekat Islam and Muhammadiyah or other non-communist factions; (3) the movement lacked well-established and effective tactics or strategies, making it unappealing to the majority of its members; (4) mistakes in identifying issues resulting in errors in goals, the nature of the revolution, and the determination of allies; and (5) a lack of support from potential organizations due to errors in determining allies or enemies.<sup>8</sup> Previous literature with similar themes did not address the role of the government from a legal and human rights perspective, which prompted the author to conduct research emphasizing the government's role in the dissolution of PKI from the legal and human rights perspective.

Based on the above description, several questions arise: How did the Indonesian Communist Party (PKI) come into existence in Indonesia? What were the reasons for the fall of the Indonesian Communist Party? What was the government's role in the dissolution of the Indonesian Communist Party from a legal and human rights perspective? The author uses a normative juridical research method, which is a literature review analyzing the case based on existing norms to draw deductive conclusions from the data analysis.

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<sup>7</sup> Angga Prasetyo, "Dinamika Konflik Antara Persatuan Guru Republik Indonesia dan Partai Komunis Indonesia." *ISTORIA Jurnal Pendidikan dan Ilmu Sejarah* 16.1 (2020).

<sup>8</sup> Nami Irawan Batubara. "Faktor-Faktor Penyebab Kegagalan Gerakan Pemberontakan Partai Komunis Indonesia (PKI) 1926-1927." *Politeia: Jurnal Ilmu Politik* 14.1 (2022): 1-16.

## Results and Discussion

### The History of the Birth of the Indonesian Communist Party (PKI) in Indonesia

Communism was first introduced in Western Europe due to the resistance of the living conditions, particularly for the proletariat or the common people. The significant social disparity caused by class differences in Western Europe at that time was the primary trigger that gave rise to a liberation movement for the proletariat against the bourgeoisie. This idea was conceptualized by Karl Heinrich Marx, commonly known as Karl Marx, who was an economist, philosopher, sociologist, historian, and earned the title 'Father of Communism,' leading to the establishment of the communist party.

The definition of communism has various interpretations. From a linguistic perspective, in English, 'communism' refers to a theory or social organizational system where all property is under the control of the community, and each individual contributes and receives according to their ability and needs. According to Webster's dictionary, this theory has three meanings: 1) a social system involving the production of goods; 2) a theory of social change leaning towards an ideal society without social class distinctions; 3) a social theory advocating the elimination of private ownership and community control over economic matters.<sup>9</sup> In conclusion, communism is a social system that abolishes class distinctions.

Social science explains that communism, in terms of terminology, is an anthology of Marxist doctrines critical of capitalism and liberal theory, seeking a revolution by the proletariat to construct a new concept of society. This results in four key points: the eradication of labor division, an independent life free from poverty, the absence of authoritarian institutions as tools of coercion and class superiority, and the elimination of social classes.<sup>10</sup>

The inception of communism represents a theory and social movement that distinguishes itself from previous theories and

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<sup>9</sup> William Morris, *The New International Webster's Comprehensive Dictionary of the English Language*, (Florida: Trident Press International, 1996), hlm. 265.

<sup>10</sup> Adam Kupper dan Jessica Kupper, *The Social Science Encyclopedia*, Vol. 1, (New York: Routledge, 2004), hlm. 137.

movements that had an imaginative nature. If the illustrative meaning of socialism in terminology represents a movement by the bourgeoisie, then the intended communism is an official socialist movement for the laborers. Marx also made another statement about communism, describing the state that would emerge after the destruction of capitalism, giving rise to a communist society through the evolving proletarian class struggle.<sup>11</sup> However, Engels interpreted communism more as collective property ownership that abolishes social classes and the state in its socio-economic principles.<sup>12</sup>

The first communist state was formed by Vladimir Ilyich Ulyanov, commonly known as Lenin. He explained that communism involves revolutionary actions and leadership authority through the communist party. There are also members of the communist party referred to as revolutionaries with class affiliations in the proletariat, organized and supervised by a central authority.<sup>13</sup> Through the works written by the founder of the first communist state, it is stated that a social revolution only occurs when the proletariat is marginalized, conducting a social movement to overthrow the state, leading to the transition to a new civilization by subduing the bourgeoisie.<sup>14</sup> The doctrines of Marx and the realization by Lenin in establishing the communist state gave rise to the term Marxism-Leninism.

There are three fundamental concepts in Marx's doctrine:

- 1) Dialectics: In this approach, Marx constructs several elements into one for the social improvement, namely, humans, nature, and means of production. He introduces antitheses to these concepts and their relations within social-economic circumstances. When a problem arises due to economic

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<sup>11</sup> Donald M. Borchert, *Encyclopedia of Philosophy*, (Michigan: Thomson Gale & Mamillan Reference, 2006), hlm. 361-363.

<sup>12</sup> Frederick Engels, *Little Library No. 3 Principles of Communism: Engels First Draft of The Communist Manifesto*, Terjemahan, Introduction dan Appendix oleh Max Bedacht, (Chicago: The Daily Worker Publishing Co., 1925), hlm. 6.

<sup>13</sup> Vladimir Ilyich Lenin, *The State and Revolution*, (Peking: Foreign Language Press, 1973), hlm. 122-188.

<sup>14</sup> Vladimir Ilyich Lenin, *What is to be Done?* (Peking: Foreign Language Press, 1973), hlm. 20-25.

structure and production processes hindering the development of productive forces, that's when social revolution emerges.<sup>15</sup>

- 2) Historical Materialism: The economic perspective focuses on the social, political, and economic aspects in human history. Marx admired Hegel and used an approach where the fundamental differs from reality. He also added that the state of the physical world depends on how we position someone and their relationship with reality. The underlying idea of this concept is that the economy serves as a tool for progress and increasing production to meet the needs of the people. The change in classes involves a transition from a capitalist to a communist social-economic system by promoting high-quality production.<sup>16</sup>
- 3) Class Conflict: The core issue here is the permission to use means of production, determined by an individual's social class. The nobility is allowed to use machines and factories as their primary means of production, while the proletariat is restricted to using their means of production, such as agriculture and farming. The oppressed classes begin to realize this, and over time, conflicts arise, leading to the transformation of the government from capitalist to socialist.<sup>17</sup>

The entry of communism in Indonesia was initiated by the Marxist intellectual figure, Josephus Fransiscus Marie Sneevliet, who served as the chairman of the railway workers' union in the Netherlands in 1909. He spread this doctrine and had an impact on the Sarekat Islam in Central Java, leading to the formation of the Indische Sociaal Democratische Partij (ISDV). This division resulted in the Sarekat Islam being split into two factions, one aligned with Sneevliet's teachings and the other rejecting them. Eventually, Sneevliet was expelled by the Dutch East Indies government and returned to the Netherlands in 1918.<sup>18</sup>

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<sup>15</sup> Leslie Holmes, *Communism: A Very Short Introduction*, (New York: Oxford University Press, 2009), hlm. 1-2.

<sup>16</sup> Mohammad Hatta, *Pengantar ke Jalan Ekonomi Sosiologis*, (Jakarta: PT. Gunung Agung, 2002), hlm. 104.

<sup>17</sup> Fadhilah Rahmawati, "Kritik Terhadap Konsep Ideologi Komunisme Karl Marx", *Jurnal Sosiologi Agama Indonesia*, Vol. 1, No. 1, (2020), hlm. 71.

<sup>18</sup> Arnold C. Brackman, *Indonesian Communism: A History*, (New York: Frederick Preager, 1964), hlm. 7-15.

The expulsion of Sneevliet did not diminish the influence of communist ideology. Semaun and Dharsono took up the mantle of spreading communism and established the United Communist Party of East Indies, which was predominantly composed of the Red Sarekat Islam members. The term 'Red Sarekat Islam' referred to members influenced by Sneevliet, while 'White Sarekat Islam' was used for those who opposed this ideology. This had a significant impact on railway and tram workers, as both were the most advanced means of transportation at the time. This union initiated a rebellion in 1926-1927 but failed, resulting in the exile of many of its leaders to Boven Digul in West Papua.<sup>19</sup>

After Indonesia's independence, the Indonesian Communist Party (PKI) was banned following the rebellion in 1927. However, the party later regained prominence as Indonesia adopted a multi-party system, and political parties aligned with their ideologies were established. In general, the political currents between 1945-1965 can be divided into five: Javanese Traditionalism, Islamism, Democratic Socialism, Radical Nationalism, and Communism.<sup>20</sup>

The PKI's membership grew from 3,000 to 30,000 under Muso's leadership as he successfully merged the PKI with the Indonesian Labor Party, the Indonesian Socialist Party, the All-Indonesian Central Labor Union (SOBSI), and the Indonesian Socialist Youth (Pesindo). Muso was a key figure in the international communist movement centered in the Soviet Union and was appointed as the General Secretary of the PKI's Politburo during a conference in August 26-27. Subsequently, the PKI openly opposed the Indonesian government and, centered in Madiun, East Java, on September 19, 1948, aimed to establish a Soviet-style communist state. This movement was thwarted by President Soekarno and Vice President Mohammad Hatta, marking the second failure of their rebellion.

The PKI's failure in the rebellion led to rapid leadership regeneration, with figures like Sudisman, Nyoto, and D.N. Aidit emerging as the main leaders of the PKI in the 1950s, making it the

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<sup>19</sup> Abdul Syukur, "Kehancuran Golongan Komunis di Indonesia", *Jurnal Sejarah Lontar*, Vol. 5, No. 2, (2008), hlm. 1.

<sup>20</sup> Herbeth Faith dan Lance Castles, *Pemikiran Politik Indonesia 1945-1965*, (Jakarta: LP3ES, 1988), hlm. 53-67.



fourth-largest party in the 1955 elections.<sup>21</sup> Their influence grew with the issuance of President's Decree on July 5, 1959, and they intensified their foreign policy to oppose 'Nekolim' (New Colonialism and Imperialism). PKI's mass and international networks played a significant role in Soekarno's opposition to Nekolim countries. The Indonesian Army, particularly the Army's Ground Forces (TNI AD), hindered the PKI's efforts to spread its influence in Indonesia.

The PKI believed that the TNI AD was the main obstacle to their influence, fearing that the TNI AD would stage a coup against Soekarno. Consequently, they kidnapped and killed several high-ranking Army officers. The kidnapping and murder operation took place on October 1, 1965, between 02:30-04:30. Several high-ranking officers were executed by the PKI, including Brigadier General Soetojo Siswomihardjo, Lieutenant General Ahmad Yani, Major General S. Parman, Major General R. Soeprapto, and Major General Harjono Mas Tirtodarmo. The operation was carried out by the Tjakrabirawa Regiment, a joint force consisting of the Navy, Air Force, Army, and Police. However, A.H. Nasution managed to escape and flee to the Kostrad forces led by Soeharto.<sup>22</sup>

The news of the kidnapping was relayed to Soeharto, who was the Commander of Kostrad, by Mashuri. Soeharto then rushed to the Kostrad Headquarters in Central Jakarta. Since the information he received was still unclear, he decided to temporarily take command of the Army. Following negotiations with senior officers, they agreed to make him the highest-ranking officer in the Army for the time being.<sup>23</sup>

### **The Causes of the Fall of the Indonesian Communist Party (PKI)**

The success of the Tjakrabirawa Regiment in kidnapping several senior figures in the Indonesian Army prompted various responses. The V Jakarta Regional Military Command (Kodam V Jakarta) was visited by a leader from the Nahdlatul Ulama (NU) party, H. Subchan ZE. He sought military assistance from Major General

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<sup>21</sup> Jacques Lerclerc, "Audit dan Partai Pada Tahun 1950", *Prisma*, No. 7, (1982), hlm. 65-71.

<sup>22</sup> Nugroho Notosusanto dan Ismail Saleh, *Tragedi Nasional Percobaan Korp G 30 S/PKI di Indonesia*, (Jakarta: Intermassa, 1990), Cet. II, hlm. 16-23.

<sup>23</sup> O. G. Roeder, *The Smiling General: President Soeharto of Indonesia*, (Jakarta: Gunung Agung, 1969), hlm. 11.

Umar Wirahadikusuma, who served as the Commander of Kodam V Jakarta, to eradicate the Indonesian Communist Party (PKI). Subchan strongly believed that the kidnapping was orchestrated by the PKI. He requested the assistance of Islamic organizations and political parties in mobilizing the masses to support the Army in suppressing the PKI.<sup>24</sup>

This mass mobilization could be considered daring, as the information about the kidnappings was still unclear. The ambiguity was resolved after a broadcast by Radio Republik Indonesia (RRI), in which Lieutenant Colonel Untung, the leader of the Tjakrabirawa platoon, announced that the September 30th Movement, responsible for the abduction of several high-ranking Army officers, was their doing. He also announced the establishment of the Indonesian Revolutionary Council and the objective of the kidnappings, which was to seize control of the government. This statement prompted Army officers to take action against the PKI and appointed Soeharto as the leader of this operation. The Army's elite forces swiftly subdued the rebels who had taken over the national broadcasting station within a few hours. The rebels then fled to Halim Perdana Kusuma Airbase, which was the rebel military headquarters.<sup>25</sup>

There was tension between the Army and the Air Force due to the blockade of the airbase by the Army's Paracommando Regiment (RPKAD) under Soeharto's command. However, Soekarno ordered the rebels not to resist and to surrender, leading to the rebels' capitulation. Major General Sutjipto and Subchan held a meeting with the leaders of various political parties on October 2, 1965, at the Kostrad Headquarters. The PKI and the Indonesian Christian Party (Parkindo) did not participate in this meeting. Major General Sutjipto urged the party leaders to choose between supporting the Army or the Communists. The party leaders sided with the Army and agreed to participate in the suppression of the PKI. This alignment of the party leaders was demonstrated through the formation of the Coordination Body for the Annihilation of the Counter-Revolutionary Movement of September 30. This body was later transformed into Gestapu (the September 30th Movement) United Action, whose purpose was to

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<sup>24</sup> M. T. Arifin, *Mubammdiyah Potret Yang Berubah*, (Surakarta: Institut Gelanggang Pemikiran Filsafat Sosial dan Budaya Kependidikan, 1990), hlm. 304.

<sup>25</sup> Aristides Kattopo, *Meyingkap Kabut Halim 1965*, (Jakarta: Sinar Harapan, 1999).

mobilize the masses in suppressing the PKI. Subchan's residence became the headquarters of the anti-communist movement, and he was appointed as the coordinator.<sup>26</sup>

The leaders of political parties and organizations held speeches at Sunda Kelapa Park in Central Jakarta. The speeches were delivered by Subchan Z.E. and Yahya Ubaid, representing NU; Projokusumo from Muhammadiyah; Syekh Marhaban from PSII; Tejomulyo from the Catholic community, and many others. The content of these speeches included declarations of resistance against the events of September 30, which aimed to stage a coup against the president. They also revealed that behind this movement, the PKI and its affiliated organizations played a central role. Subchan Z.E. successfully rallied the masses during this speech due to the public's trust in him and his popularity, which led to the formation of the Anti-Communist People's Action Command (KAP-Gestapu), with him as its leader.<sup>27</sup>

The funerals of the slain TNI AD officers were surrounded by the Indonesian people. The gruesome condition of the bodies sparked outrage, particularly among the leaders of parties and organizations that opposed the PKI, intensifying the anti-communist sentiment. Thousands of members of Nahdlatul Ulama's youth organization, Ansor, demolished the PKI's headquarters in Kramat Jaya, Central Jakarta. This triggered a series of demonstrations calling for the dissolution of the Indonesian Communist Party and its affiliated organizations. Soekarno's lack of clarity regarding the PKI's involvement in the coup attempt further fueled the anti-communist sentiment evident in the demonstrations for the dissolution of the PKI. On January 10, 1966, a 'street parliament' took place, culminating in demands for: 1) economic improvements; 2) the dissolution of the PKI; and 3) the purging of government institutions of PKI elements.<sup>28</sup>

The destruction of the PKI accelerated as more and more anti-communist groups took action in various regions. Mass killings of PKI cadre and followers were carried out by anti-communist and anti-communist Islamic groups, playing a significant role. In 1966, the PKI

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<sup>26</sup> Kusumah Hadiningrat, *Sejarah Operasi-Operasi Gabungan Dalam Rangka Dwikora*, (Jakarta: De. Hankam, 1971), hlm. 40-45.

<sup>27</sup> Arief Mudatsir Mandan, "Subchan Z.E. dalam Konstelasi Politik Pasca 1965", *Prisma No. Khusus*, (1991). Hlm. 202.

<sup>28</sup> Lerissa, R. Z. *Jenderal Maraden Panggabean Berjuang dan Mengabdi*, (Jakarta: Sinar Harapan, 1993), hlm. 344.

appeared severely weakened in practice, and Soekarno issued the March 11, 1966, Presidential Order, which called for the dissolution of the PKI and its affiliated organizations. On July 5, 1966, the People's Consultative Assembly (MPR) issued Decree No. XXVV / MPRS / 1966 on the Dissolution of the PKI and the Prohibition of Disseminating or Propagating Communist/Marxist-Leninist Ideology or Teachings. From that moment, the PKI and organizations holding such ideologies became illegal.<sup>29</sup> The PKI's attempted takeover of power was potentially infringing on individual rights. John Locke's theory states that human rights are inherent to every individual, and if these rights are not fulfilled, society has the right to overthrow the head of state as a form of dissatisfaction because their rights are not being upheld.

### **The Role of the Government in the Dissolution of the Indonesian Communist Party from a Legal and Human Rights Perspective**

Initially, the dissolution of the Indonesian Communist Party (PKI) was rooted in the September 30th Movement, which aimed to overthrow the president during the Old Order era. Several high-ranking members of the Indonesian National Army (TNI AD) were killed as the first step to seize power. Major General Soeharto then took command to lead the suppression of the PKI. PKI headquarters and affiliated organizations were successfully eliminated. Subsequently, President Soekarno ordered the dissolution of the PKI and banned communism in Indonesia through a decree from the Provisional People's Consultative Assembly (MPRS). This action is in line with Karl Marx's theory that the law is controlled by those who hold power to serve the interests of the anti-communist faction.

Regardless of the political reasons during the Old Order era, communist ideology conflicted with the values of Pancasila and the constitution. Marxist-Leninist teachings opposed the accumulation of capital by individuals, advocated state control of the means of production, disregarded individual rights, were non-religious, as religious beliefs were viewed as addictive, strictly limited the democratic

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<sup>29</sup> Abdul Syukur, "Kehancuran Golongan Komunis di Indonesia", *Jurnal Sejarah Lontar*, Vol. 5, No. 2, (2008), hlm. 7.

rights of non-communist citizens, and aimed to use the communist party as an instrument to seize state power.<sup>30</sup>

Indonesia allows freedom of assembly, association, and expression as regulated in Article 28E of the 1945 Constitution. While Indonesia grants freedom to associate, it is not absolute freedom without limitations. Human rights are protected by the state and given to the people, constituting an inherent human right.<sup>31</sup> Human rights are universally recognized through the Universal Declaration of Human Rights, although they only have moral binding. Unilateral agreements are required to give them legal force. Indonesia has ratified several international human rights instruments that bind the participating countries, such as the International Covenant on Civil and Political Rights. This covenant authorizes states to restrict human rights in times of emergency.<sup>32</sup>

Article 4, paragraph 1 of the Covenant on Civil and Political Rights states that countries may derogate their obligations during a state of emergency, providing that their actions are not discriminatory based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. In a state of emergency, which threatens the life of the nation, a country is authorized to limit human rights.<sup>33</sup> Such an emergency may arise from external or internal factors, including military or non-military threats such as terrorism or other emergencies. Anything can be considered a threat if it causes casualties and damages property that should otherwise have complete ownership.<sup>34</sup>

During a state of emergency, laws that would apply under normal circumstances can be overridden by emergency laws because the Covenant grants the state the power to set aside positive law. In

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<sup>30</sup> Franz Magnis Suseno, *Pemikiran Karl Marx: Dari Sosialisme Utopis ke Perselisihan Revisionisme*, (Jakarta: Gramedia Pustaka Utama, 2013).

<sup>31</sup> Knut D. Asplund, *Hukum Hak Asasi Manusia*, (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia, 2009), hlm. 11.

<sup>32</sup> Matompo, Osgar S, "Pembatasan Terhadap Hak Asasi Manusia Dalam Perspektif Keadaan Darurat", *Jurnal Media Hukum*, Vol. 21, No. 1, (2014), hlm. 58.

<sup>33</sup> Jayawicakrama Nihal, *be Judicial Application of Human Rights Law National, Regional and International Jurisprudence*, (Jakarta: Cambridge University Press, 2002), hlm. 205.

<sup>34</sup> Binsar Gustom, *Pelanggaran HAM Dalam Hukum Keadaan Darurat Di Indonesia Mengapa Peradilan HAM Ad Hoc Indonesia Kurang Efektif*, (Jakarta: PT. Gramedia Pustaka Utama, 2010), hlm. 4.

addition, the state has the authority to determine the nature of the emergency that threatens the nation. Judges like David argue that, to safeguard its existence, the government has the power needed and granted within the constitution. This aligns with the viewpoint of Beni Prasad, stating that in an emergency, anything can be done by the government. Chaotic situations within a nation can suspend the usual standards of morality. To protect its citizens and the integrity of the state, restrictions on human rights are justified.<sup>35</sup>

In essence, human rights must be protected, fulfilled, and upheld by the state. However, not all rights must be fulfilled, as there are two classifications of rights: those whose fulfillment may be restricted and those that must not be restricted, even in a state of emergency. Rights that may be restricted are called derogable rights, including the right to move, the right to express opinions, the right to speak, and the right to assemble. Rights that may not be restricted are called non-derogable rights, even in a state of emergency. These include the right to freedom of religion, the right to life, freedom from torture, freedom from inhumane treatment, freedom from retroactive law, freedom from slavery, and the freedom to think. These collectively represent the essence of human rights (hardcore), signifying the core rights that must not be violated and must be protected.<sup>36</sup>

A state in a state of emergency can take abnormal actions with the intention of restoring the state to its original condition, ultimately to maintain the country's integrity and protect its population. This issue has garnered attention as there is a need for regulations regarding states of emergency and the limitations on rights that can be imposed. There are principles that are established to guide states of emergency, including:<sup>37</sup>

- a. Declaration Principle: In every state of emergency, it must be officially and publicly announced so that the general public is informed.
- b. Legality Principle: Ensures that the actions taken by the state do not violate international legal instruments governing

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<sup>35</sup> Matompo Osgar., hlm. 59.

<sup>36</sup> Matompo Osgar., hlm. 60.

<sup>37</sup> Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Raja Grafindo Persada, 2007).

emergency measures conducted by the head of state. What the state does must remain within the legal framework.

- c. **Communication Principle:** The necessity to inform other relevant states of the declaration of a state of emergency is done through formal diplomatic channels with countries that have connections, via special reports to the United Nations.
- d. **Temporality Principle:** The exceptional nature of a state of emergency is subject to a time limit to prevent abuse by authorities that could threaten human rights.
- e. **Imminence of Threat Principle:** The certainty that the urgency experienced by the state truly poses a potential threat to the collective life and that the threat is currently happening and real.
- f. **Proportionality Principle:** The urgency of the measures taken must be necessary and appropriate according to the required emergency and proportionate (reasonable and not excessive).
- g. **Intangibility Principle:** Non-derogable human rights cannot be reduced even if the state is in a state of emergency.
- h. **Supervision Principle:** All actions taken by the state during a state of emergency must not contradict the principles of a state governed by the rule of law and democracy.

The dissolution of the Indonesian Communist Party (PKI) and the ban on the spread of communist ideology had multiple reasons. It began with political practices that aimed to seize power, which, if left unchecked, would damage the state's ideology. Additionally, the teachings were in conflict with existing laws. These circumstances placed the country in a state of emergency, allowing the government to take any measures necessary to protect the population.

Communist ideology opposes religion, which can be seen through historical facts. Marx always had disdain for religion and its practices. Through his writings and speeches, he never advocated the forceful eradication of religion. Instead, he used a strategy to encourage workers to free themselves from religious influence, believing that religion would disappear indirectly. He regarded all religions as baseless, with superstition in religion and belief being indistinguishable, even though he believed that some forms of religion were more progressive than others. Continuously, he referred to religious objects

as "religious phantoms" or inhabitants of a "religion enveloped in mist."<sup>38</sup>

Marx's ideas aimed not only to dismantle religion but also to eliminate laws, rights, and the family. He sought to create a world without beliefs, aspirations, morals, people without property ownership, obedience to the government without interference from society. He envisioned a world where food would be abundant, happiness would be realized, and worldly wealth and success would be achieved, all without the presence of God.<sup>39</sup>

Pancasila, as the state ideology, mandates in its first principle the belief in the existence of God and respect for religious diversity. Religious freedom is enshrined in Article 28D of the 1945 Constitution, which grants everyone the right to worship according to their beliefs. The right to practice religion is also regulated in Article 22, paragraphs 1 and 2, of Law No. 39 of 1999, which allows everyone to practice their religion as prescribed by their faith. The state guarantees freedom in practicing one's religion and religious rituals.<sup>40</sup> On the other hand, communist ideology opposes religion because it does not acknowledge the validity of any religion from any source. This stance can disrupt religious communities. Marx's practices aimed to diminish the influence of religion on individuals, and he believed in the non-existence of God.

Article 43, paragraph 1 of Law No. 39 of 1999 on Human Rights states that every individual has the right to be elected and to vote in a free and fair election. The freedom to establish political parties is not unconditional. The Indonesian Communist Party (PKI) had deviating ideologies that contradicted Pancasila and positive law. Therefore, the freedom to associate was restricted. The Constitutional Court has determined the interpretation of Article 28J, paragraph 2, of

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<sup>38</sup> Marx, Karl, *Capital: A Critical Analysis of Capitalist Production*, (London: Swan Sonnenschein & Co, 1904), hlm. 372.

<sup>39</sup> Wood, John S, *100 Things Should You Know About Communism and Religion*, (Washington D. C.: Committee on Un-American Activities, U. S. House of Representatives, 1949), hlm. 39.

<sup>40</sup> Regita Puspitasari, Dinie Anggraeni Dewi, dan Yayang Furi Furnamasari, "Hak Asasi Untuk Kebebasan Beragama", *Jurnal Pendidikan Tambusai*, Vol. 5, No. 3, (2021), hlm. 7307.



the Constitution and has outlined seven conditions:<sup>41</sup> 1) it must be regulated by law; 2) it must have a strong, logical, non-excessive basis that is proportional; 3) it must be done to protect the freedoms of others; 4) it must be fair according to moral standards, religious values, and public order in a democratic society; 5) it must not discriminate; 6) it must not deprive citizens of the equal opportunity to participate in government; 7) it may be restricted for reasons such as incapacity to vote, such as mental illness and age.

Democracy within communist governments significantly restricts the democratic rights of citizens who are not members of the communist party. In a democratic system of governance, citizens have the right to assess government performance. Critical thinking can prompt citizens to participate in checks and balances, and if freedom to criticize the government is absent, transparency in government operations diminishes.<sup>42</sup> A hallmark of a democratic government is the mutual control between the executive, legislative, and judicial branches, as well as citizen involvement, where ultimate power resides with the people. In contrast, Marx's ideology advocates for government authority without citizen intervention.

Communist governance does not recognize individual rights. The ability to express oneself and have a say is a characteristic of a democratic state, as it grants everyone the right to express themselves and participate in the electoral process, both as voters and as candidates. Such a system has the potential to create a more stable state and allows for intellectual development, as individuals have the opportunity for interdisciplinary exchange, thereby maximizing individual potential.<sup>43</sup> As stated in Article 28F of the 1945 Constitution, every person has the right to receive information for self-improvement and to disseminate it. Ensuring these rights will enhance the quality of human resources in the country, particularly among the next

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<sup>41</sup> Ilham dan NRA, Arief Hidayat: Pembatasan HAM Tidak Boleh Diskriminatif?, <https://www.mkri.id/index.php?page=web.Berita&id=16041>, akses 5 Juni 2023.

<sup>42</sup> Cairin Melina, "Kebebasan Berespres di Era Demokrasi: Catatan Penegakkan Hak Asasi Manusia", *Lex Scientia Law Review*, Vol. 2, No. 2, (2018), hlm. 194.

<sup>43</sup> Marwandianto dan Helmi Ardani Nasution, "Hak atas Kebebasan Berpendapat dan Berespres di Koridor Penerapan Pasal 310 dan 310 KUHP", *Jurnal HAM*, Vol. 11, No. 1, (2020), hlm. 2.

generation. Given that the law evolves in line with changing social conditions and the importance of up-to-date information, the right to receive and disseminate information will contribute to the advancement of the state.

The government, as a duty bearer, has three obligations, including:

- a. To respect: In this context, the government respects the right of anyone to associate, but it also imposes limitations on the associations formed. The Indonesian Communist Party (PKI) has teachings that are in conflict with the state's philosophy. PKI and Marxist-Leninist ideologies are strictly prohibited in Indonesia as a way for the government to respect the rights of the majority of the population.
- b. To protect: The state ensures that people's rights are protected through the existing legal regulations. Additionally, the prohibition of communist teachings, which pose a threat to citizens' rights, enhances their protection, as communism does not recognize individual rights.
- c. To fulfill: The decision of the People's Consultative Assembly (TAP MPR) that bans the PKI and communist ideologies makes the state more democratic. This is because there are no limitations or reductions in citizens' rights, and the rights of citizens are fulfilled in a democratic society.

## Conclusion

The efforts made by the PKI to seize state power posed a threat. As a result, the state entered a state of emergency and took action to suppress the PKI to protect the nation. While the right to associate is granted by the state as a form of respect for its citizens, the teachings of the PKI are in contradiction with the state's philosophy and existing laws. These teachings do not recognize individual rights, lack belief in democracy for non-communist citizens, and impose limitations. In order to safeguard the individual rights of citizens and the state's ideology, the government issued regulations through the People's Consultative Assembly's decision to dissolve the PKI and prohibit the presence of Marxist-Leninist ideologies in Indonesia.

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