

Model of Supervision of Unregistered Community Organisations in Order to Realise Legal Certainty in Indonesia

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Abstract

As social creatures, humans have a tendency to live in society and organise their lives, which is guaranteed by the constitution, which provides guarantees for association and organisation. This freedom has implications where currently there are many community organisations that exist with various objectives, the existence of community organisations themselves in the country has been far more advanced in its work to empower the community. The problem is that CSOs currently have two forms, namely registered and unregistered, so there are problems in supervision. The variety of mass organisations gave birth to various groups, one of which was based on religious ideology, such as Hizbut Tahrir Indonesia (HTI) which was dissolved on 19 July 2017. The Law on Mass Organisations affirms the principles that must be used in the establishment of mass organisations, one of the prohibitions is that mass organisations must not conflict with Pancasila and the 1945 Constitution. However, there is no definite formulation regarding the indicators of being contrary to Pancasila or Anti- Pancasila. Various restrictions are displayed in the form of prohibitions that show the existence of the existence of a mass organisation law. However, the application of the law should have a balance of inherent matters, namely between rights and obligations.

Keywords: Community Organisation, Freedom, Prohibition.

Abstrak

Sebagai makhluk sosial manusia memiliki kecenderungan untuk hidup bermasyarakat serta mengatur dan mengorganisasi hidupnya dimana hal tersebut dijamin oleh konstitusi yang memberikan jaminan untuk berserikat dan



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berorganisasi. Dari kebebasan tersebut memiliki implikasi dimana saat ini telah banyak organisasi kemasyarakatan yang ada dengan berbagai tujuannya masing-masing, Keberadaan Organisasi kemasyarakatan sendiri di tanah air telah jauh lebih maju kiprahnya untuk memandirikan masyarakat. Problematikanya Ormas saat ini mempunyai dua bentuk yaitu yang terdaftar dan tidak terdaftar sehingga terdapat masalah-masalah dalam pengawasannya. Beragamnya ormas melahirkan berbagai golongan yang salah satunya berbasis ideologi agama seperti halnya Hizbut Tahrir Indonesia (HTI) yang dibubarkan pada 19 Juli 2017. Dalam UU Ormas ditegaskan terkait asas-asas yang harus dipakai dalam pendirian ormas, salah satu larangan bahwa Ormas tidak boleh bertentangan dengan Pancasila dan UUD 1945. Namun belum ada rumusan pasti mengenai indikator bertentangan dengan Pancasila atau Anti-Pancasila. Berbagai batasan yang ditampilkan dalam bentuk larangan yang menunjukkan eksistensi keberadaan UU ormas. Namun, penerapan undang-undang seharusnya memiliki keseimbangan terhadap hal-hal yang melekat yaitu antara hak dan kewajiban.

Kata Kunci: *Organisasi Masyarakat, Kebebasan, Larangan.*

A. Introduction

Community organisations are the role of the community in carrying out development to promote a life of justice and prosperity. The existence of community organisations in Indonesia has actually been formed since the beginning of this century and has the most strategic position for the Indonesian national process. In fact, some of these community organisations eventually became political parties that spearheaded the national movement.¹

The existence of Community Organisations or better known as Ormas in Indonesia is familiar to hear, the tendency of an individual to gather is the reason for establishing a CSO, In terms of regulations, CSOs are regulated by Law of the Republic of Indonesia Number 17 of 2013 concerning Community Organisations as amended by Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organisations which was passed through Law of the Republic of Indonesia Number 16 of

¹ Nabih Amer, 'Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum', *Jurnal Legalitas* 13, no. 01 (26 October 2020): 2, <https://doi.org/10.33756/jelta.v13i01.5417>.

2017 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organisations into Law (hereinafter referred to as the CSO Law). In the definition included in the Legislation, precisely in Article 1 paragraph 1 of the Ormas Law, it is explained that Community Organisations, hereinafter referred to as Ormas, are organisations established and formed by the community voluntarily based on common aspirations, will, needs, interests, activities, and goals to participate in development for the achievement of the objectives of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Philosophically, the provision of the freedom to assemble has actually been enshrined in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) precisely in Article 28E paragraph (3) which explains that everyone has the right to freedom of association, assembly, and expression, as the basis of the 1945 Constitution has guaranteed the right to assemble. This is a response to the tendency of individuals to gather where individuals like to be in a crowded environment to gather with many people and always active in every communication that is intertwined in it so that an association² has the legitimacy of protection by the Republic of Indonesia as a state of law.

In addition to the 1945 Constitution, arrangements related to freedom of assembly are also regulated in Article 24 of Law Number 39 of 1999 concerning Human Rights which stipulates that everyone has the right to assemble, meet, and associate for peaceful purposes, this reinforces the freedom to assemble but in this article it is more

² Fenny Pramasella, 'Hubungan Antara Lima Besar Tipe Sifat Kepribadian Dengan Kesepian Pada Mahasiswa Rantau', *Psikoborneo: Jurnal Ilmiah Psikologi* 7, no. 3 (23 September 2019): 463, <https://doi.org/10.30872/psikoborneo.v7i3.4805>.

detailed in terms of objectives which in the case of conducting an assembly are intended for peaceful purposes. Association itself is closely related to mass organisations where ensuring the implementation and purpose of freedom of association is very important³. However, according to the applicable regulations, there are conditions that must be met before being recognised as a mass organisation.

Referring to Article 59 of the Ormas Law, there are several restrictions for mass organisations that can be categorised as contrary to Pancasila or Anti-Pancasila, including: Every mass organisation may use names, symbols, attributes, flags, and emblems, but they must not be the same or resemble those used by the Indonesian state, other countries or unlicensed international institutions/bodies, political parties, and organisations that are categorised as prohibited; Prohibition to commit acts of hostility towards ethnicity, religion, race and group (SARA); Prohibition to abuse, blasphemy, or desecration of religions adopted in Indonesia; Prohibition to carry out separatist activities that threaten the sovereignty of Indonesia; prohibition to commit acts of violence, disturb public peace and order, or damage public facilities and social facilities; and the most crucial is the prohibition to embrace, develop, and spread teachings or ideologies that are contrary to Pancasila, the rise of radical organisations and anti-Pancasila organisations⁴. In addition, the prohibition for mass organisations

³ Wahyudi Siswanto, 'Implikasi Politik Hukum Kebebasan Berserikat Dan Hak Berorganisasi Pekerja/Buruh Dalam Produk Hukum Ketenagakerjaan Terhadap Pelaksanaan Hubungan Industrial Di Indonesia', *Syntax Literate: Jurnal Ilmiah Indonesia* 7, no. 11 (2022): 17102, <https://doi.org/https://doi.org/10.36418/syntax-literate.v7i11.11965>.

⁴ Magfirah Maasum, 'Penerapan Sanksi Terhadap Ormas Yang Bertentangan Dengan Nilai-Nilai Pancasila Ditinjau Dari Undang-Undang Nomor 17 Tahun 2013 Tentang Organisasi Kemasyarakatan', *Lex Crimen* VI, no. 5 (2017): 5, <http://nasional.warta10.com/toto-ormas-bukan->.

also includes the prohibition to embrace, develop, and spread teachings or ideologies that are contrary to Pancasila, limited only to the teachings or ideologies of atheism, communism/marxism-leninism⁵.

It is not impossible that a CSO can be dissolved as regulated in the CSO Law which has now been abolished, the abolition of Article 63 to Article 80 of Law Number 17 Year 2013 which regulates the mechanism for imposing further warning sanctions, sanctions for termination of assistance/grants, sanctions for temporary cessation of activities, sanctions for revocation of registered certificates, and sanctions for revocation of legal entity status through court hearings, so that the government can dissolve a CSO without any resistance. which is indicated to be contrary to the freedom of the community in association and assembly as mandated in the 1945 Constitution⁶.

This is evidenced by the dissolution of a CSO, where currently there are records of the dissolution of several CSOs by the government of the Hizbut Tahrir Indonesia Association on the basis of decision Number 27 K / TUN / 2019 concerning the dissolution of the Hizbut Tahrir Indonesia Association (HTI) and the second is the dissolution of the Islamic Defenders Front Community Organisation on the basis of a Joint Decree (SKB) signed by the Minister of Home Affairs, Minister of Law & Human Rights, Minister of Communication & Information, the Indonesian National Police and the Head of the National Counter Terrorism Agency (BNPT) with numbers: 220/4780 of 2020, Number M.HH/14.HH 05.05 of 2020, Number 690 of 2020, Number 264 of 2020, Number KB/3/XII of

⁵ Juanda Hutajulu, 'Tindakan Pemerintah Menegakkan Ideologi Pancasila Dalam Pembentukan Organisasi Kemasyarakatan', *Jurnal Ilmiah Publika* 10, no. 2 (2 November 2022): 327, <https://doi.org/10.33603/publika.v10i2.7707>.

⁶ Hutajulu, 330.

2020 and Number 320 of 2020 concerning the Prohibition of the Use of Symbols and Attributes and the Termination of FPI Activities.

If we look at other countries such as the Netherlands where Hizbut Tahrir was banned by some right-wing politicians, Hizbut Tahrir activists were initiated to be banned, this did not receive significant political support so the ban of Hizbut Tahrir in the Netherlands did not materialise.⁷

From the dissolution of a CSO should be the last step that can be done by the government, it is feared that the violations committed by CSOs are mistakes made by some individuals not because of the mistakes of the CSO, so it raises a question that in this case the government unilaterally dissolves the CSO and can be a formulation of the problem in this study, namely How is the Supervision Model of Unregistered Community Organisations in Indonesia.

B. Method

Each science has its own identity so there will always be differences. The research methodology applied in each science is always adjusted to the science that becomes its parent.⁸ Research methods are procedures and techniques to answer the problems to be studied, therefore the use of research methods is always tailored to the needs of the research itself, this research uses normative legal research. Normative legal research is used with the consideration that the starting point of the research analyses the laws and regulations that allow the dissolution of mass organisations that are considered contrary to the law or Pancasila. Normative legal

⁷ Edwin Bakker, 'Exclusion: Who Decides — and on What Grounds? Hizb Ut-Tahrir and the HDIM', *Helsinki Monitor* 18, no. 4 (2007): 283, <https://doi.org/10.1163/157181407782713710>.

⁸ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990), 9.

research is a scientific research procedure to find the truth based on the logic of legal science from the normative side.⁹ And the approach in the research uses (1) statutory approach (statute approach) (2) case approach and (3) conceptual approach.

With Legal Material Collection Techniques, namely by collecting and examining or tracing documents or literature that can provide or information related to this research. Document or library studies aim to find legal materials both primary, secondary and tertiary. These legal materials are used as benchmarks or norms in assessing legal issues that are solved as legal problems and Legal Material Analysis Techniques, namely the three legal materials that have been collected are processed and analysed qualitatively, so as to provide answers to the problems in this study. In reviewing this legal material, the following steps were taken:

- (1) Legal norms formulated in laws and regulations are studied and identified, to be matched with legal theories and principles as well as constitutional and criminal law concepts in terms of the dissolution of mass organisations by the government. All legal materials that have been successfully reviewed are classified systematically in accordance with the problems studied, so that the essence of the positive legal norms is obtained.
- (2) The review of secondary legal materials was carried out by looking at citation cards containing opinions or legal theories from legal experts in accordance with the research topic. Based on the study, a picture is obtained in the form of mutually reinforcing opinions to be used as arguments for solving the problem under study.

⁹ johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2005), 57.

(3) The next study looks for relationships between legal materials with one another, namely primary legal materials and secondary legal materials, using deductive and inductive reasoning, so that propositions, new concepts, both in the form of definitions, descriptions and classifications can be produced as research results. Through these research steps, scientific answers to legal problems can be found.

C. Result & Discussion

1) Mass Organisations and their Regulation in Indonesia

Our society is an organisational society, because today's society is very different from the society in the past, where people today will have the urge to always have a bond or be gathered in an organisation¹⁰. Today's modern society prioritises rationality effectiveness and efficiency as high moral values. Modern civilisation is essentially dependent on organisations as the most rational and efficient form of social grouping. Organisations combine the human resources they have with other resources, namely by intertwining leaders, groups of followers or workers, and systems and structures.¹¹

According to De Vito, cited by Burhan Bungin, the definition of an organisation is a group of individuals organised to achieve certain goals. The number of members of the organisation varies, from three or four to thousands of people. Organisations have

¹⁰ Bayu Marfiando, 'Pembubaran Hizbut Tahrir Indonesia (HTI) Ditinjau Dari Kebebasan Berserikat', *Jurnal Ilmu Kepolisian* 14, no. 2 (30 September 2020): 90, <https://doi.org/10.35879/jik.v14i2.253>.

¹¹ Amitia Etzioni, *Organisasi-Organisasi Modern* (Jakarta: Universitas Indonesia (UI-Press), 1985), 1.

general goals and specific goals, to achieve these goals, norms are made rules that are obeyed by all members of the organisation.¹²

Organisations are tools to achieve ideology through politics or certain means. To achieve goals (ideology) and through certain means (politics) is impossible to do individually without leadership, members or without the support of the broad masses of society. So an organisation is needed as a tool that unites the strength of each member; society and leadership in one joint command. it is in accordance with the theory of society as stated by Oran Young quoted by Arbi Sanit that, "*The theory of society compiled by pluralism illustrates that society is not composed of individuals, but is formed by groups considered as the basic unit of society*".¹³ In addition, in organisations one tends to sacrifice one's own interests for the greater good. When people work together in organisations voluntarily, they learn the values of moderation, self- command, and the importance of compromise in organisational life. So it can be said that organisations will foster the habits and attitudes of democratic and independent citizens.¹⁴

The concept of society put forward by Arbi Sanit is in line with the thoughts of Von Savigny as quoted by Antonius Cahyadi and E. Fernando M. Manulang, that: People as a unity of diverse individuals (interests, needs, ideals, etc.) live in order. Vakil in Lewis and Kanji defines community organisations as: "*NGOsari self- governing, private, not-for-profit organisations that are geared towards improving the quality of life disadvantaged*

¹² Burhan Bungin, *Sosiologi Komunikasi: Teori, Paradigma, Dan Diskursus Teknologi Komunikasi Di Masyarakat* (Jakarta: Kencana, 2017), 272.

¹³ *Ibid.*

¹⁴ William A. Galston, 'Civil Society and the "Art of Association"', *Journal of Democracy* 11, no. 1 (January 2000): 64–70, <https://doi.org/10.1353/jod.2000.0010>.

people". "Community Organisations are independent, private, not-for-profit organisations that aim to improve the quality of life of disadvantaged or disadvantaged people".

Meanwhile, Law No. 16/2017 on community organisations of the Government of Indonesia defines community organisations as: "Organisations established and formed by the community voluntarily based on common aspirations, will, needs, interests, activities, and goals to participate in development for the achievement of the goals of the Unitary State of the Republic of Indonesia based on Pancasila".¹⁵ Community organisations as a rule are directly related to the interests of all members or supporters of the organisation itself. Regarding the formation of community organisations, there are several indicators, among others:

a. Aspects of community engagement

Community organisations engage people far beyond the formal boundaries of an individual's attachment to the world he or she lives in while not violating the rules that have bound him or her beforehand.

b. Membership aspect

Community organisations may have certain criteria for selecting their members, as those within the organisation must work technically within the wider community to move them towards the community goals set by the organisation.¹⁶

c. Organisational objectives

The objectives of community organisations are specific, clear and operational so that they are easily recognised by both the members and the community they are intended to

¹⁵ Lihat UU No 16 Tahun 2017

¹⁶ Antonius Cahyadi dan E. Fernando M. Manulang, *Pengantar Ke Filsafat Hukum*, cetakan 1 (Jakarta: Kencana Prenada Media Group, 2007), 133.

mobilise. The purpose of a community organisation is also usually formulated in a general, broad and enchanting way, even if it is not yet operational. It is hoped that the goal will encompass a wide range of people and that members of the wider community will realise their unity.

d. Ideology

In community organisations, ideology plays an important role in sharpening the formulation of the organisation's goals, bringing together a large number of members, giving identity to all members and ideology is used to demand the organisation to play its role in the life of the nation in Indonesia.

The current Law on Mass Organisations has changed the regulation on the revocation of the legal entity status of mass organisations and the dissolution of mass organisations that have had their legal entity status revoked. The revocation of Article 63 to Article 80 of Law No. 17/2013, which regulates the mechanism for imposing further warning sanctions, sanctions for termination of assistance/grants, sanctions for temporary cessation of activities, sanctions for revocation of registered certificate, and sanctions for revocation of legal entity status through court hearings. After revoking these provisions, Article 61 paragraph (3) of Law No. 16 Year 2017 regulates that the revocation of the legal entity status of mass organisations is carried out directly by the minister who organises government affairs in the field of law and human rights. The revocation then has an impact on the dissolution of the CSO that is the subject of the revocation activity. The process of dissolution of mass organisations that was originally regulated in Law Number 17 of 2013 was amended by the Ormas Law that is currently in force

to remove the mechanism of the judicial process as the process of dissolving mass organisations on the pretext of the court will be a complicated and lengthy process. With the current Law on Mass Organisations, the dissolution of mass organisations can be carried out only with a ministerial decree, which is a setback from the previous provisions. The freedom of assembly should be carefully protected before there is a ban on assembly or dissolution in the name of a Community Organisation.

In the amended Organisation Law, there is no concept of procedural law in the supervision of the Correctional Organisation that explicitly regulates the procedures for supervision. The supervision in question is like the existence of an Ombudsman who has the authority and duties which in this case are regulated in article 7 and article 8 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia where the Ombudsman of the Republic of Indonesia has the authority to firstly summon, examine and clarify. Second, conduct mediation, conciliation, and make recommendations. Third, to announce findings. Fourth Suggest improvements to organisations and procedures. And the fifth Suggests changes in legislation. While the duties of the Ombudsman himself Receive public reports, Examine the substance of reports, Follow up public reports, Conduct investigations on their own initiative, Coordinate, Manage networks, Prevent maladministration.

2) Dissolution of Organisations in Law and Human Rights

The concept of human rights has two dimensions, the first is the indivisible and inalienable rights that cannot be restricted in all circumstances. These rights are called *non derogable rights* (absolute rights that cannot be reduced in fulfilment by state

parties, even in emergencies)¹⁷. This right is a moral right that comes from the humanity of every human being and this right aims to ensure the dignity of every human being. The second dimension is human rights based on law, which is made in accordance with the law formation process of the international and national community.¹⁸

In terms of the fulfilment of human rights by the state, human rights are divided into 2 (two) categories, namely rights that cannot be reduced under any circumstances and by anyone (non derogable rights) and rights that can be reduced through exceptions in the law (derogable rights). Non-derogable rights are rights included in civil and political rights that are absolute in nature and may not be reduced in fulfilment by the state or other individuals under any circumstances. rights included in the Non-derogable rights category include the right to life, the right to be free from torture, the right to freedom of thought, belief and religion. Whereas derogable rights are rights covered by civil and political rights that are not absolute in nature and may be reduced in fulfilment by the state in certain circumstances. derogable rights include, among others, the right to freedom of peaceful assembly, the right to freedom of association, including forming and becoming members of trade unions, and the right to express opinions and/or expression.¹⁹

¹⁷ Osgar S. Matompo, 'Pembatasan Terhadap Hak Asasi Manusia Dalam Prespektif Keadaan Darurat', *Jurnal Media Hukum* 21, no. 1 (2014): 60, <https://doi.org/https://doi.org/10.18196/jmh.v21i1.1157>.

¹⁸ D. W. Sabela, A. R., & Pritaningtias, 'Kajian Freedom of Speech and Expression Dalam Perlindungan Hukum Terhadap Demonstran Di Indonesia Article Sidebar', *Lex Scientia Law Review* 1, no. 1 (2017): 81-92, <https://doi.org/https://doi.org/10.15294/lesrev.v1i01.19484>.

¹⁹ Suparman Marzuki, 'PERSPEKTIF MAHKAMAH KONSTITUSI TENTANG HAK ASASI MANUSIA', *Yudisial* 6, no. 3 (2013): 189, <https://doi.org/https://doi.org/10.29123/jy.v6i3.98>.

The guarantee of human rights protection has actually been regulated in various legal instruments, both national and international legal instruments such as the American Revolution (1775-1783) and the French Revolution (1789-1799), the Universal Human Rights Convention (1948) and other human rights arrangements²⁰. Internationally, the international community in all parts of the world has issued several conventions related to the protection of human rights. The international convention related to the protection of human rights that has been universally recognised is the Universal Declaration of Human Rights (UDHR). Meanwhile, the right to freedom of association and assembly itself is based on national legal instruments that regulate the protection of the right to association and assembly, generally regulated in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which stipulates that everyone has the right to freedom of association, assembly, and expression.

Meanwhile, the protection of the right to freedom of association and assembly is regulated in UDHR Article 20 paragraph (1), which reads "everyone has the right to freedom of peaceful assembly and association". The guarantee of freedom of association is a very important part of maintaining the creation of a democratic space. The practice of association and assembly, which is usually manifested through an organisation, gives everyone the opportunity to express and protect their interests together through a forum. In addition, the guarantee of freedom of association and assembly also plays an important role in

²⁰ Widyawati Boediningsih and Novi Prameswari Regina Dermawan, 'Perkembangan HAM Di Indonesia Dan Problematikanya', *Education: Jurnal Sosial Humaniora Dan Pendidikan* 3, no. 2 (8 June 2023): 79=81, <https://doi.org/10.51903/education.v3i2.336>.

safeguarding public interests for the protection of human rights. Based on this explanation, it is known that the right to freedom of association and assembly falls into the category of derogable rights, meaning that if needed, the state can limit the exercise of this right with certain arrangements as outlined in the law.

The current Law on Mass Organisations has changed the regulation on the revocation of the legal entity status of mass organisations and the dissolution of mass organisations that have had their legal entity status revoked. The revocation of Article 63 to Article 80 of Law No. 17/2013, which regulates the mechanism for imposing further warning sanctions, sanctions for termination of assistance/grants, sanctions for temporary cessation of activities, sanctions for revocation of registered certificate, and sanctions for revocation of legal entity status through court hearings. After revoking these provisions, Article 61 paragraph (3) of Law No. 16 Year 2017 regulates that the revocation of the legal entity status of mass organisations is carried out directly by the minister who organises government affairs in the field of law and human rights. The revocation then has an impact on the dissolution of the CSO that is the subject of the revocation activity. The process of dissolution of mass organisations that was originally regulated in Law Number 17 of 2013 was amended by the Ormas Law that is currently in force to remove the mechanism of the judicial process as the process of dissolving mass organisations on the pretext of the court will be complicated and lengthy process. With the current Law on Mass Organisations, the dissolution of mass organisations can

be carried out only with a ministerial decree, which is a setback from the previous provisions.²¹

3) Models of Supervision of Community Organisations

The current Law on Mass Organisations has changed the regulation on the revocation of the legal entity status of mass organisations and the dissolution of mass organisations that have had their legal entity status revoked. The revocation of Article 63 to Article 80 of Law No. 17/2013, which regulates the mechanism for imposing further warning sanctions, sanctions for termination of assistance/grants, sanctions for temporary cessation of activities, sanctions for revocation of registered certificate, and sanctions for revocation of legal entity status through court hearings. After revoking these provisions, Article 61 paragraph (3) of Law No. 16 Year 2017 regulates that the revocation of the legal entity status of an Ormas is carried out directly by the minister who organises government affairs in the field of law and human rights. The revocation then has an impact on the dissolution of the CSO that is the subject of the revocation activity. The process of dissolution of mass organisations that was originally regulated in Law Number 17 of 2013 was amended by the Ormas Law that is currently in force to remove the mechanism of the judicial process as the process of dissolving mass organisations on the pretext of the court will be complicated and lengthy process. With the current Law on Mass Organisations, the dissolution of mass organisations can be carried out only with a ministerial decree, which is a setback

²¹ Marfuatul Latifah, 'Pelindungan HAM Dalam Mekanisme Pembubaran Ormas Berbadan Hukum Berdasarkan Undang-Undang No. 16 Tahun 2017 (Human Rights Protection on Dissolution Mechanism of Civil Society Organizations (CSOs) Based on Law No. 16 of 2007)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 1 (23 June 2020): 94–95, <https://doi.org/10.22212/jnh.v11i1.1584>.

from the previous provisions. The freedom to assemble should be carefully protected before there is a prohibition to assemble or dissolution in the name of Community Organisation.

The supervision in question is like the existence of an Ombudsman who has the authority and duties which in this case are regulated in article 7 and article 8 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia where the Ombudsman of the Republic of Indonesia has the authority to firstly summon, examine and clarify. Second, conduct mediation, conciliation, and make recommendations. Third, to announce findings. Fourth Suggest improvements to organisations and procedures. And the fifth Suggests changes in legislation. While the duties of the Ombudsman himself Receive public reports, Examine the substance of reports, Follow up public reports, Conduct investigations on their own initiative, Coordinate, Manage networks, Prevent maladministration.

The organisation combines its human resources with other resources, namely by intertwining leaders, groups of followers or workers, and systems and structures. According to De Vito quoted by Burhan Bungin, the definition of an organisation is as a group of individuals organised to achieve certain goals. The number of organisation members varies, from three or four to thousands of people. Organisations have general goals and specific goals, to achieve these goals, norms are made rules that are obeyed by all members of the organisation. Organisations are tools to achieve ideology by politics or certain means. To achieve goals (ideology) and through certain means (politics) is impossible to do alone without leaders, members or without broad mass support where ideology is a set of beliefs, ideals, and

rules that direct group behaviour²². So an organisation is needed as a tool that unites the strength of each member; the community and the leadership in one common command.

This is in accordance with the theory of society as stated by Oran Young quoted by Arbi Sanit that, "The theory of society compiled by pluralism illustrates that society is not composed of individuals, but is formed by groups considered as the basic unit of society.

Law together with other social aspects constitutes a unity, which arises and at the same time reflects the soul of society or nation (*volksgeist*)²³, where a nation will tend to gather to unite its thoughts. Wakil in Lewis and Kanji defines community organisations as: 'NGOs are independent, private, non-profit organisations geared towards improving the quality of life of the disadvantaged'. 'A Community Organisation is an independent, private, non-profit organisation that aims to improve the quality of life of disadvantaged or disadvantaged people'.

Meanwhile, the Law on Community Organisations of the Government of Indonesia defines community organisations as: "Organisations established and formed by the community voluntarily based on common aspirations, will, needs, interests, activities, and goals to participate in development for the achievement of the goals of the Unitary State of the Republic of Indonesia based on Pancasila". From this explanation, it can be meant that Control is used so that the fulfilment of rights for

²² Arfan Fadhillah Danuwidjaja and Manan Firman, 'Hubungan Antara Kaderisasi Dan Ideologi Dalam Partai Politik: Studi Kasus Aktivitas Internal PDIP', *Epistemik: Indonesian Journal of Social and Political Science* 4, no. 1 (29 April 2023): 42, <https://doi.org/10.57266/epistemik.v4i1.119>.

²³ M. Zulfa Aulia, 'Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa', *Undang: Jurnal Hukum* 3, no. 1 (7 July 2020): 202, <https://doi.org/10.22437/ujh.3.1.201-236>.

existing CSOs can be fulfilled so as to minimise the sanction of dissolution later.

In addition, community organisations as usual are directly related to the interests of all members or supporters of the organisation itself. Regarding the formation of community organisations, there are several indicators, among others:

1. Aspects of community engagement
2. Membership aspect
3. Organisational objectives
4. Ideology

Which in this case means that the existence of mass organisations itself is very important in our society as a form of fulfilment of the right to freedom of association and the government should not limit this freedom except through the judiciary. In addition, in Islamic law there is also a concept that refers to the principles in Islam as a consideration for the government to dissolve a mass organisation because what is happening now is that many have been dissolved unilaterally, namely the Principles of Legal Certainty and the Principles of Legal Benefit.

If the two principles in Islamic law are linked in the context of the regulation of mass organisations in Indonesia, it can be concluded that in making a rule or determination as a binder for the community to comply with it, a clear rule is needed. The rules on mass organisations in general have actually been regulated in the Law on Mass Organisations, but in the existing rules there is no clear rule related to supervisory arrangements and institutions that are obliged to supervise existing mass organisations, whether registered or unregistered mass

organisations. It is hoped that the existence of rules that also regulate supervision can be an effort to prevent unwanted things that might be done by existing mass organisations in the future. So that material and immaterial losses caused to the community and government can also be minimized.

So that in the context of supervision, it can be adopted as in the existing supervision in the police agency which is regulated in the Regulation of the Chief of the Indonesian National Police Number 2 of 2022 concerning Inherent Supervision within the Indonesian National Police where Article 2 is stated:

- 1) Waskat must be carried out by superiors to subordinates
- 2) The superior as referred to in paragraph (1) is an immediate superior in the same work unit.

As stated in the article, there should also be a supervisor of mass organisations who oversees all existing mass organisations so that when there are violations committed by unscrupulous members of mass organisations the government can immediately find these members through their superiors because they are still in one command led by the waskat in a community organisation that commits violations.

Considering the current Law on Mass Organisations that abolishes Article 63 to Article 80 of Law No. 17/2013, which regulates the mechanism for imposing further warning sanctions, sanctions for termination of assistance/grants, sanctions for temporary cessation of activities, sanctions for revocation of registered certificates, and sanctions for revocation of legal entity status through court hearings, there is legal uncertainty for the freedom of assembly channelled through the existence of mass organisations, The government should have taken an earlier step, namely the existence of more

supervision before the dissolution, such as the Waskat adopted by the Police Agency where all mass organisations must have a clear command system so that when there are violations, they can be recognised or prevented early on and the responsibility is guided responsibility, not in the final settlement, namely the dissolution of mass organisations which is a prohibition on assembly, which is a setback from the previous provisions.

D. Conclusion

When viewed from the history of its regulation, Community Organisations have been regulated since the existence of the New Order, namely with the existence of Law Number 8 of 1985 concerning Community Organisations, because it is considered inadequate and does not meet existing developments, Law Number 8 of 1985 concerning Community Organisations is revoked with Law Number 17 of 2013 concerning Community Organisations so that the existence of Law Number 8 of 1985 concerning Community Organisations is no longer valid. In the course of its enactment Law No. 17 of 2013 on Community Organisations is also considered to have shortcomings because it does not adhere to the principle of *cantrarius actus* so that it is ineffective to apply sanctions against community organisations that embrace, develop, and spread teachings or ideologies that are contrary to Pancasila and the 1945 Constitution of the Republic of Indonesia. Therefore, Law No. 17 of 2013 was amended through Perppu No. 2 of 2017 concerning Amendments to Law No. 17 of 2013 concerning Community Organisations which was ratified through Law No. 16 of 2017, but it should be noted in this case that the government abolished the judicial mechanism so that dissolved mass organisations could not fight against the decision to dissolve them.

Considering that the current Law on Mass Organisations has abolished Article 63 to Article 80 of Law No. 17 of 2013, which regulates the mechanism for imposing further warning sanctions, sanctions for termination of assistance/grants, sanctions for temporary cessation of activities, sanctions for revocation of registered certificates, and sanctions for revocation of legal entity status through court hearings, there is legal uncertainty for the freedom of assembly channelled through the existence of mass organisations, The government should have taken an earlier step, namely the existence of more supervision before the dissolution, such as the Waskat adopted by the Police Agency where all mass organisations must have a clear command system so that when there are violations, they can be recognised or prevented early on and the responsibility is guided responsibility, not in the final settlement, namely the dissolution of mass organisations which is a prohibition on assembly, which is a setback from the previous provisions.

Based on the description above, there are several things that need to be considered by the government. That in this case there must be a supervision model where the supervision model can be adopted from the existing supervision in the police agency which is regulated in the Regulation of the Chief of the Indonesian National Police Number 2 of 2022 concerning Inherent Supervision within the Indonesian National Police where Article 2 states:

- (1) Waskat must be carried out by superiors to subordinates.
- (2) The superior as referred to in paragraph (1) is an immediate superior in the same work unit.

As in the article, there should be a kind of supervisor of mass organisations that oversees all existing mass organisations, so that when there are violations committed by unscrupulous members of

mass organisations, the government can immediately find these members through their superiors because they are still in one command led by the waskat at a community organisation that commits violations.

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