



Reconstruction of Public Organizational Regulations to Guarantee the Right to Freedom of Organization According to the Pancasila Democracy (Study of the Regulation of the Right to Freedom to Organize in Indonesia)

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ABSTRACT

Indonesia is a democratic country and as a follow-up form in accommodating freedom in social life, the 1945 Constitution regulates guarantees for freedom of association, assembly, and expression of opinions. Freedom of association and assembly is one of the key rights in human rights because with this freedom humans can enjoy other rights and freedoms stipulated by law. Nevertheless, this freedom is not an absolute right, meaning that this freedom is subject to several restrictions which must also be stipulated in the law. This is not only a reflection, but a prerequisite in a democratic country. These restrictions are necessary if there is an interest in protecting national security or public safety, public order, protection of public health and morality, and protection of the rights and freedoms of other parties. This study uses a normative juridical method. The specifications of the research conducted by researchers and writers are analytical and descriptive. The data collection technique used in this study was a literature study. The data used is secondary data or second-hand data which is data obtained from research subjects as the main data. The data analysis to be carried out is a descriptive analysis. From the results of the research, it can be obtained that the Function of Community Organization Regulation is to Protect People's Right to Freedom to Organize, but the implementation of these regulations causes many problems including the emergence of social organizations that have deviated goals that are contrary to Pancasila and the Unitary State of the Republic of Indonesia, the birth of Community Organizations amid a large number of people. reaping the pros and cons of several parties, the rampant dissolution of social organizations, and criminal sanctions in Law Number 2 of 2017 concerning Community Organizations raise controversies that will have the potential for authoritarian government and violations of human rights and the Constitution, giving unlimited authority limited to the Minister of Home Affairs or the Minister of Law and Human Rights to determine whether the

status of a social organization is against Pancasila or not, inconsistency between the implementation of social organization regulations and the guarantee and protection of people's rights to organize. Therefore, it is necessary to have the concept of regulation of Community Organizations that can guarantee the right to freedom of community organizations in the future.

Keywords: Community Organization, Freedom to Organize, Pancasila Democracy

INTRODUCTION

The system for administering state power that is seen as most appropriate to the needs of today's modern society is the democratic system [1]. The concept of democracy was established based on the logic of equality and the idea that government requires approval from those who are governed, in this case, the people [2]. This means that both from a theoretical and practical perspective, democracy is closely related to the principle of popular sovereignty, in which a democratic state administration system guarantees that the people are fully involved in planning, organizing, supervising, and assessing the implementation of the functions of power.

Indonesia is a democratic country and as a follow-up form in accommodating freedom in social life, the 1945 Constitution regulates guarantees for freedom of association, assembly, and expression of opinion [3]. Similar provisions can be seen in international documents contained in the International Commission of Jurists conference in Bangkok in 1965 which made freedom of opinion and freedom of association the main characteristics of a country that has a democratic government under the Rule of Law. By regulating freedom of association in the two provisions above, it can be seen that freedom of association has been recognized and agreed upon as an important part of Indonesia in particular and the global community in general so it needs to be regulated explicitly and specifically.

Freedom of association and assembly is one of the key rights in human rights because with this freedom humans can enjoy other rights and freedoms stipulated by law [4]. Nevertheless, this freedom is not an absolute right, meaning that this freedom is subject to several restrictions which must also be stipulated in the law. This is not only a reflection, but a prerequisite in a democratic country. These restrictions are necessary if there is an interest in protecting national security or public safety (national security or public safety), public order (public order), protection of public health and morality (public health or morals), and protection of the rights and freedoms of other parties [5].

Freedom of association is important because it is the ultimate manifestation of freedom of conscience, freedom of belief, and freedom of expressing one's opinion [1]. Without freedom of association, human dignity can be reduced because by itself a person cannot express opinions according to his beliefs and conscience [6]. The existence of a post-reform state/government is often trapped in a position facing each other due to two main factors. First, the low trust of certain CSO leaders in the State/Government. Second, there is still a misunderstanding of the role of the State/Government in front of Community Organization (Community Organization) supporters [7]. However, the issue of freedom of assembly is a fundamental issue that is vulnerable to being challenged to be upheld because the events of restrictions on freedom of assembly after the reforms tend to recur like the pre-reforms. Based on the results of media monitoring by ICJR, throughout 2017 there were at least 12 cases of disbanding citizen

gatherings. The twelve cases were carried out either by law enforcement officials, in this case, the Police, as well as by social institutions.

As a right, the freedom to assemble and organize is rooted in the will of the Indonesian people to create a democratic state that upholds social justice and humanity [8], Article 28E paragraph (3) of the 1945 Constitution guarantees freedom of association and assembly, expressing thoughts orally and in writing. Article 28C paragraph (2) of the 1945 Constitution stipulates that everyone has the right to advance himself in fighting for his rights collectively to develop his community, nation, and country. The protection of the right to freedom of peaceful assembly is realized, among others, in the form of an advance notification mechanism so that the process is not too bureaucratic [9]. The advance notification mechanism does not oblige state authorities to give consent in line with the principle of good presumption. This principle is intended for purposes that are non-violent and do not commit crimes. Nonetheless, the Human Rights Committee considers the requirement to provide advance notification as a *de facto* interference with the right to freedom of peaceful assembly. Many countries often apply bureaucratic procedures to organize public activities which are a form of freedom of assembly [10].

In the context of the right to freedom of association in Indonesia, the government still makes registration or registration a form of recognition and legitimacy of organizations [11]. Organizations that are not registered will experience obstacles in carrying out their activities, be stigmatized as illegal or illegal organizations, restricted access to state resources, revocation of licenses or disbandment of organizations, and the criminalization of members or sympathizers of certain organizations. Currently, the government has the authority to dissolve an organization without going through a judicial process using the principle of *contraries actus*. Meanwhile, the difference between the court and other agencies is that in carrying out their daily duties, the court always positively and actively pays attention to and implements the various legal regulations that apply in a country [12].

The provisions of Law Number 16 of 2017 authorize the government to impose strict sanctions on social organizations. The most severe punishment received by troubled social organizations is the revocation of legalization from the state which automatically disbands social organizations by itself [13].

This situation certainly gave rise to quite a long debate. The judiciary, which is an institution to uphold the law constitutionally, which is at the same time one of the main principles in the framework of a constitutional state which is substantially to protect human rights, is not involved in the process of imposing sanctions on Community Organization [14]. Community Organizations are at the same time a manifestation of freedom of association as an integral part of human rights which absolutely must be protected under the law [15].

The problem of disbanding social organizations is due to the rise of anti-Pancasila understandings and radicalism which are developing freely in Indonesia (Hakim, 2011). It was recorded that in the previous Government of the Republic of Indonesia, there had been several Community Organizations that were deemed to have violated the spirit and values of the Pancasila and the 1945 Constitution of the Republic of Indonesia.

Even though the activities or movements of these social organizations contain things that are contrary to the principles of life mandated by Pancasila and the applicable laws and regulations, this does not mean that the dissolution process carried out by the government can be taken for granted [17]. Because the authority possessed by the government has the potential to cause partial decisions without considering aspects of justice and expediency [18]. It is natural to understand that the dissolution is based on the fact that the social organization does not uphold the principle of mutual respect and respect so the Government through the Ministry of Law and Human Rights revokes the legal entity status of the social organization which is deemed to have violated the applicable provisions [19].

Indonesia is a constitutional state based on Article 1 paragraph (3) of the 1945 Constitution which has emphasized that "Indonesia is a constitutional state" [20]. The rule of law stated by A.V. Dicey as "The Rule of Law" has characteristics, namely: Supremacy of Law, Equality Before the Law, and Due Process of Law [21]. Therefore, the dilemma of freedom becomes the focus of this research proposal. The assumption that there is no consistency between the implementation of the regulation on freedom of association and the guarantee of the right to freedom of association in society is the reason for the researchers to carry out this research proposal and want to reveal the background and reconstruct the regulation on freedom of association based on the principles of freedom and social justice according to Pancasila democracy [22].

The dissolution of community organizations as stated in Law Number 16 of 2017 concerning Community Organizations has injured the sense of justice in Indonesian society [23]. In this regard, the researcher wants to examine more deeply the mechanism for the dissolution of community organizations that does not injure many people [23]. The title of this research is: "Reconstruction of Community Organization Regulations to Guarantee the Right to Freedom of Organization According to Pancasila Democracy (Study of Regulation of the Right to Freedom of Organization in Indonesia)". Based on the background of the problems above, the formulation of the problem in this dissertation proposal is as follows: (1) Why is the regulatory function of social organizations not maximized in protecting the right to freedom of the community to organize? (2) Has the implementation of social organization regulations not been able to guarantee and protect people's right to organize? (3) What is the concept of regulation of community organizations that can guarantee the right to freedom of community organizations in the future?

METHODS

This study uses a normative juridical method using 4 research approaches namely statutory (state approach), case approach (case approach), conceptual approach (conceptual approach), and historical (historical) approach. The specifications of the research conducted by researchers and writers are analytical descriptive, namely describing the findings of the research object related to legislation. Marzuki's opinion is that research for legal practice cannot be separated from the statutory approach [24]. Data collection was carried out through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. Therefore, the data collection technique used in this study was a literature study. The data used is secondary data or second-hand data which is data obtained from research subjects as the main data [25]. In normative legal research, data processing is carried out systematically on written legal

materials. Systematization means classifying legal materials to facilitate analysis and construction work [26]. The data analysis to be carried out is a descriptive analysis. The data obtained, collected in the manner described above, the data will be systematically arranged for further content to be analyzed qualitatively, and in the end, what should be done is written down [27].

RESULT AND DISCUSSION

The Regulatory Function of Community Organizations in Protecting People's Right to Freedom to Organize

Freedom of association is an important component of democracy because it empowers everyone to express opinions [28]. The right to organize includes the right to form organizations and join organizations. The right to organize guarantees the protection of the freedom to choose the organization that each individual needs.

Based on the 1948 General Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (KIHP), freedom to organize is a right that cannot be intervened by the state and/or other parties. There are principles of non-discrimination and proportionality and freedom of assembly and association. On the principle of non-discrimination, laws, and state authorities must treat organizations fairly. Vulnerable groups are entitled to legal protection that is effective, unbiased, and from an affirmative perspective.

Meanwhile, on the principle of proportionality, the authority of the state does not exceed the limits of the needs of society [29]. In addition, in this principle, there must be a balance between all conflicting interests. Proportionality is the least restrictive way of serving those interests.

The state must pay attention to the principle of balance, and maintain public safety and public order, without reducing the right of citizens to assemble and organize. This learning will be more interesting if it is done using the debate method so that we can brainstorm and express opinions freely. Besides, that, the state is also obliged to facilitate cooperation or partnership of local organizations with foreign non-profit organizations.

Apart from the state, the security forces also have a significant role, namely as active facilitators and passive observers. As active facilitators, the security forces provide easy access, support, and protection facilities and infrastructure. As passive observers, security forces need to be careful in assessing conditions and swift in providing assistance or treatment. Organizational validity is governed by general legal principles regarding contracts and obligations.

Legal products of Community Organizations and those related to freedom of association can be reviewed through various regulations including:

1. Community organization arrangements according to Law Number 8 of 1985 concerning Community Organizations
2. Regulation of Community organization according to Government Regulation Number 18 of 1986 concerning Implementation of Law Number 8 of 1985 concerning Community Organizations.
3. Law Number 17 of 2013 concerning Community Organizations.
4. Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations.

5. Law Number 16 of 2017 concerning the Stipulation of Government in Lieu of Law Number 2 of 2017 concerning the Amendment to Law Number 17 of 2013 concerning Community Organizations to become Law.

Based on a review of several aspects that have been previously described regarding human rights, social organizations (community organizations), the state and democracy, freedom of association, and research and analysis related to the law on social organizations and freedom of association, it can be seen that there is a common thread that is interconnected and affect one another. Therefore, in making laws and regulations, the government must pay attention to several things, for example protecting the right to freedom of the community to organize in making regulations regarding Community Organizations.

Priyono (2007) defines Community Organization as a system consisting of sub-systems or parts that are interrelated to one another in carrying out an activity. The activity referred to in this case is not an activity that is only momentary in nature, but an activity that will continue to exist and with a regular pattern [24]. In addition, Community Organizations are community organizations that both want to achieve the same goal [24].

The existence of Community Organizations will always exist, whether in a democratic or authoritarian government system. Given the presence of Community Organizations such as interest groups and pressure groups. Community organizations exist to fight for community aspirations and special group agendas. Community organizations are also the liaison between the individual and the community or government [24]. Hikam stated that Community Organizations are a form of civil society that is organized and characterized by voluntary, self-generating, self-supporting, high independence in dealing with the state and attachment to legal norms or values. followed by its citizens.

In Indonesia, community organizations in all their forms exist, grow and develop in line with the history of the development of social, national, and state life. From a regulatory standpoint, before independence in 1945, Community Organizations in Indonesia were limited to officials (Dutch people and their descendants), while indigenous people were under the supervision of the Dutch government. At that time the rules used were Staatsblad 1870-64 concerning associations. In these rules, it is said that an association is a group of people who organize themselves for a particular interest. While the Foundation is a collection of assets set aside for certain purposes. After independence, Community Organizations were regulated in the 1945 Constitution. Two clauses guaranteed expressly and one article ordered them to be stipulated in the law, namely Article 28 C paragraph (2) which stated that every person has the right to advance himself in fighting for his rights legally. collectively to build society, nation, and country. Article 28E paragraph (3) reads that everyone has the right to freedom of association, assembly, and expression. Furthermore, Article 28 states that the freedom to associate and assemble, express thoughts, and write is stipulated by law.

Community organizations were originally regulated by the New Order government by issuing Law Number 8 of 1985 concerning Community Organizations. Furthermore, after the Community Organization reform Law No. 8 of 1985 was replaced by Law Number 17 of 2013 concerning Community Organizations. Then Law No. 17 of 2013 was replaced by Legislation No. 2 of 2017 and determined to become Law No. 16 of 2017. In Law No. 17 of 2013 Article 5

states that the goals and functions of Community Organizations are to increase community participation and empowerment, maintain religious values and belief in God Almighty, preserve and maintain norms, values, morals, ethics, and culture that live in society; preserving natural resources and the environment; develop social solidarity, cooperation, and tolerance in social life, maintain, maintain and strengthen the unity and integrity of the nation and realize the goals of the state. While the function of Community Organizations is regulated for channeling activities under the interests of members and/or organizational goals, fostering and developing members to realize organizational goals, channeling community aspirations, fulfilling social services, and community participation to maintain, maintain, strengthen national unity and integrity; maintenance and preservation of norms, values, and ethics in the life of society, nation, and state.

The basic reason for the community to create Community Organizations is because of a need [24]. In Community Organizations, the community can plan together to achieve a goal and convey aspirations to the government. The existence of Community Organizations is also a manifestation of human rights mandated by the Constitution and must be regulated in law. Therefore, rules for Community Organizations are necessary so that people get legal protection. The legitimacy of freedom of association, assembly, and expression is important to regulate. But not a rule that ignores human rights. In addition, the Law on Community Organizations can directly or indirectly maintain a harmonious relationship between the authorities (political superstructure) and society (political infrastructure) within a country [30]. In other words, the government and community organizations will not be able to act arbitrarily in using their freedom. Therefore, it is necessary to regulate restrictions on freedom of association and assembly in law.

Restrictions by the government on freedom of association and assembly must be measured by considering the legitimacy and social needs of the degree of restriction on human rights which is the duty of the courts [31]. In a rule-of-law state, all restrictions on the human rights of citizens must be carried out based on due process of law to ensure objectivity and prevent state arbitrariness. There is no justification for the state to reduce the due process of law rights [32].

Article 28J of the Constitution of the Republic of Indonesia does allow the state to place restrictions on human rights. However, restrictions must still be carried out correctly and cannot be done arbitrarily. The Constitution of the Republic of Indonesia regulates the limitation of human rights in Article 28J which reads:

"In carrying out his rights and obligations, everyone is obliged to comply with the restrictions determined by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill just demands under moral considerations, religious values, security and public order in a democratic society"

The mechanism for limiting human rights has been further explained in the Convention on Civil and political rights and some basic principles regarding human rights. Limitations on the right to freedom of association are regulated in Article 22 paragraph (2) of the International Covenant on Civil and Political Rights as follows:

"No restrictions may be placed on the exercise of this right, except when these are prescribed by law and necessary in a democratic society in the interests of national security and public

safety, public order, the protection of public health or morals, or the protection of to the rights and freedoms of others."

Restrictions may be made if based on law and necessary in a democratic society in the interests of national security and public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Limitation clauses can be found in the principles recognized by the international community, namely [32]:

- **First**, based on the law (prescribed by law/conformity with the law). No restrictions may be imposed except based on national law [33]. However, the law that limits these rights must also not act arbitrarily and without reason. Legal rules that limit the implementation of human rights must be clear, firm, understandable, and accessible to anyone (Asshiddiqie, 2010). The state is obliged to provide adequate safeguards and remedies against arbitrary determination or determination of human rights restrictions. Compulsory law is to be accessible, not ambiguous, and made carefully and thoroughly to enable each individual to see whether an action is against the law or not.
- **Second**, it is needed in a democratic society [35]. The burden of imposing these restrictive conditions rests with the state which establishes restrictive measures by demonstrating that such restrictions will not interfere with the functioning of democracy in society. The model of a democratic society can refer to a society that recognizes and respects the human rights listed in the UN Charter and the Universal Declaration of Human Rights (DUHAM).
- **Third**, to protect public order (public order / public order). The phrase 'public order' means several rules that ensure the functioning of society or a set of basic principles that live in society [31]. Public order includes respect for human rights. Public order must be seen in a limited context. The state or state agency responsible for maintaining public order must be able to control the use of power through parliament, courts, or other competent independent body.
- **Fourth**, the International Covenant on Civil Rights and Political Rights also includes the term 'necessary' in provisions that contain restrictions including in Article 22 which regulates the right to associate which also applies to restrictions on the right to organize [36]. This shows the intention of the drafters of the agreement to limit the application of restrictions on rights only to situations where there is a real need for these restrictions. To state that the need exists, the basic requirement that must be met is that the restrictions are in line with the spirit and what is written in the agreement. Restrictions and arrangements made by the state must still guarantee and not jeopardize important aspects of freedom of association, including guarantees of freedom of association.

The regulatory function of Community Organizations is none other than to protect, respect and respect the rights of other individuals, and the rights of other Community Organizations as well so as not to attack each other and fight with violence, apart from that, as has been described, it is also to protect Organizations. Society from the arbitrariness of the government. Because the current regulations for Community Organizations are still not good and ideal so that they can guarantee protection for Community Organizations, it is necessary to make new regulations that are more ideal.

Implementation of Community Organization Regulations Cannot Guarantee and Protect the Community's Right to Organize

Looking back at Law Number 17 of 2013 concerning Community Organizations, the mechanism for the dissolution of a community organization must go through a court decision. However, after the enactment of Law Number 2 of 2017 concerning Community Organizations, the mechanism for dissolving a social organization is no longer through court decisions and judicial processes. The government through the Minister of Home Affairs or the Minister of Law and Human Rights can impose administrative sanctions in the form of revocation of registered certificates and revocation of the legal status of a social organization for its activities that seriously threaten state sovereignty. This authority is assessed [37].

This provision seems to give unlimited authority to the Minister of Home Affairs or the Minister of Law and Human Rights to determine whether the status of a social organization is against Pancasila or not. Even with the takeover, changing the status of a social organization (up to the dissolution of the community organization) does not take a long time. However, the implementation of this principle does not yet reflect a good democratic system between the separation of the executive and judiciary. In addition, Law Number 17 of 2013 concerning Community Organizations which has been passed also does not reflect the protection of human rights. The dissolution of the executive branch can lead to a subjective assessment by the government of these social organizations[38]. The government could disband a social organization that was considered to be contrary to Pancasila and anarchy without going through a legal process based on Law Number 8 of 1985, but the government did not want to make that decision because the government was trying not to overdo it in using power so that it was not authoritarian.¹

It is an undeniable fact that the existence of Government Regulation Number 2 of 2017 concerning Community Organizations and then passed into Law Number 16 of 2017 concerning Community Organizations has brought a gloomy wind to society with many people or parties submitting requests for judicial review of two regulations issued by the government. It was noted that there were 7 (seven) requests for judicial review of Government Regulation Number 2 of 2017 concerning Community Organizations and as many as 3 (three) requests for judicial review of Law Number 16 of 2017 concerning Community Organizations [39]. This proves that the application of regulations related to Community Organizations has not been able to guarantee and protect people's right to organize.

Looking back at the events of 19 July 2017 regarding the dissolution of the Hizbut Tahrir Indonesia Community Organization (HTI) which was considered to have deviated from Pancasila and an ideology that threatened the integrity of the Unitary State of the Republic of Indonesia. The government dissolved the community organization due to 3 (three) reasons. First, because Hizbut Tahrir Indonesia (HTI) is seen as not under the goals of community organizations to participate in development to achieve the goals of the Unitary State of the Republic of Indonesia they are considered to have a negative influence on achieving Indonesia's ideals. Second, Hizbut Tahrir Indonesia (HTI) is seen as not guided by Pancasila and contrary to the Unitary State of the Republic of Indonesia because it adheres to the ideology of the caliph

¹ ImamiSukadi, "AsasiContrariusiActusiSebagaiiKontrolipemerintah Terhadap Kebebasan Berserikat Dan Berkumpul Di Indonesia", Jurnalimimbarikeadilan, Vol. 12 No. 2, Agustus 2019 – Januari 2020, hlm. 183.

which is considered to be contrary to Pancasila. And third, concerning his activities that are troubling the community, even the former TNI Commander Wiranto said that so far HTI activities have caused clashes in society which have caused threats to security and order as well as the integrity of the Unitary State of the Republic of Indonesia. Furthermore, the author will explain what points of inconsistency are in decision number 39/PUU-XV/2017 regarding the request for judicial review by a party who considers their constitutional rights and/or authorities to be harmed by the enactment of a regulation, in this case, Hizbut Tahrir Indonesia (HTI) [40], In this decision it can also be seen that there is an inconsistency in Government Regulation Number 2 of 2017 concerning Community Organizations as follows:

- a. The inconsistency of Government Regulation Number 2 of 2017 concerning Community Organizations towards the constitutional rights of citizens, with the issuance of Government Regulation Number 2 of 2017 concerning Community Organizations is considered to violate the constitutional rights of citizens to associate, assemble and express opinions [41]. The Petitioner in his Petition feels the need to organize his preaching activities as the obligation of a Muslim in the form of a social organization, therefore the Petitioner is interested in joining Hizbut Tahrir Indonesia's (HTI) missionary activities. Whereas the applicant's right to organize has disappeared with Government Regulation Number 2 of 2017 concerning Community Organizations which states in Article 59 paragraph (4) letter c "Public organizations are prohibited from adhering to, developing, and spreading teachings or understandings that are contrary to Pancasila". Articles that are considered to have multiple interpretations, as the author has described in the previous discussion, causing ambiguity in the context of practice in society, these articles are interpreted unilaterally by the government. The government defines understandings that are contrary to Pancasila, including atheism, communism/Marxism-Leninism, or other ideologies that aim to replace or change Pancasila [42]. The fact is that the Petitioner is a Muslim who believes in the teachings of the Islamic religion and through his da'wah activities the Petitioner helped establish and foster Hizbut Tahrir Indonesia (HTI). In this article, it is as if the Government has the authority to judge whether a social organization is spreading an ideology that is contrary to Pancasila or not. Of course, to determine the existence of an understanding that is contrary to Pancasila, it must be proven first through the judicial process. This is very inconsistent with the implementation of Government Regulation Number 2 of 2017 concerning Community Organizations in the constitutional rights of citizens.
- b. Inconsistency in Government Regulation Number 2 of 2017 concerning Community Organizations towards Human Rights Hizbut Tahrir Indonesia (HTI) was disbanded without any judicial process. Article 61 paragraph (3) Government Regulation Number 2 of 2017 concerning Community Organizations allows the government to act unilaterally in determining whether a social organization is contrary to Pancasila or not, then the Government can immediately take action in the form of imposing sanctions on the revocation of registration information and even revoking the status of a legal entity. has been granted without allowing the accused social organization the right to reply. Of course, this is evidence of the arbitrariness by the Minister of Law and Human Rights as a representative of the government which has the right to revoke the legal status of a social organization without granting the right to the social organization concerned to provide an answer or defense, clearly contrary to the rule of law principle and Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This is compounded by the existence of criminal sanctions as contained in

Article 82A paragraph (1), this proves that there is a discrepancy with the constitution because the constitution guarantees the constitutionality of its citizens to associate and assemble including creating a social organization, but Government Regulation Number 2 of 2017 concerning Community Organizations instead threatens with criminal penalties, once again this is an authoritarian act that gives rise to the arbitrariness of human rights. Whereas Indonesia as a rule of law must guarantee the application of the principle of a correct, fair, and balanced examination if it is declared to have violated the law. Due to Law The right to obtain or obtain a fair and proper legal process should not be separated from human rights for a country that upholds the law.

The Concept of Community Organization Regulations That Can Guarantee the Right to Freedom of Community Organization in the Future

Social organizations as a forum for the realization of human rights must be protected by the state. Community organizations are the embodiment of the right to associate, gather and express opinions. Maulana said that human rights are essentially the greatest gift or gift given by God to every human being. Human rights are inherent in human beings and are universal. On the side of the universality of human rights, this means that humans were created by God completely with the capacity that allows each human being to do what he wants. However, on the other hand, there is also a responsibility that must be borne by humans in developing or carrying out their duties as God's creatures. Therefore, human rights cannot be seized and deleted by the state and government. The state is obliged to respect, fulfill and protect human rights.

The current Law on Community Organizations, namely Law No. 16 of 2017 is a form of state and government responsibility in guaranteeing human rights as mandated by the 1945 Constitution of the Republic of Indonesia. However, in this law, there are still deficiencies that threaten freedom of association, assembly, and expression of opinions which are the embodiment of human rights from the formation of organizations Public. So that it can be said that this law has not totally or completely guaranteed and carried out the protection of human rights, especially in terms of freedom to organize.

This can be seen from the existence of several provisions which either explicitly or implicitly have limited and even deprived the right to organize and run it as well as the right to express opinions, namely:

- a. Has not fully protected freedom of association, assembly, and expression;
- b. Limits in exercising the expression and freedom of community organizations under constitutional paths based on the ideals and will of Pancasila and the 1945 Constitution of the Republic of Indonesia. Although these limitations have a good purpose, namely that the implementation of the duties of Community Organizations has value and benefits for society;
- c. The government can unilaterally dissolve Community Organizations. Dissolution of Community Organizations in Law No. 16 of 2017 does not yet reflect the basic principles of a rule of law and democracy which requires the protection of human rights and division of powers;

Indonesia is not only a state of law, but a state of law that upholds democracy. Hans Kelsen argues that one of the essences of democracy lies in whether there is a compromise that unites differences of opinion to determine an order for the foundation of a country. Compromise is the

main condition in determining whether a country adheres to democratic principles or not. The following are some guidelines for understanding a country characterized by democratic principles, including [43]:

1. There is the will of the majority and the will of the minority;
2. The will of the majority cannot become absolute domination;
3. There is a compromise between the will of the majority and the will of the minority in addressing a problem and in forming an order;
4. There is no compulsion in religion and belief;
5. There is freedom of speech, freedom of the press, and opinions too, as well as to express opinions guaranteed to exist either through the constitution or through customary agreements that occur in a country;
6. A healthy compromise means there is no conflict of interest between the will of the majority and the will of the minority which usually turns into anarchy.

It has been said before that the current regulation of Community Organizations (UU No. 16 of 2017) has not been able to guarantee and protect the right to freedom of community organizations. When compared with the United Kingdom and America, in Indonesia there are many limitations in organizing. In America and England, there is no such thing as ideological restrictions within an organization, because this is a clear violation and an example of restraint in expressing oneself within an organization. In addition, in England, the dissolution or banning of Community Organizations is only carried out if there is truly strong evidence stating that the Community Organization has committed an offense. An example is what happened to Hizb ut-Tahrir where the proposal to ban it has been around for a long time, but until now the decision to ban this organization has not been officially issued. It is no different from England, in the United States organizations such as the Ku Klux Klan (KKK) have not been disbanded by the government and is still active today. America and England will only carry out the prohibition and dissolution through the courts, not unilaterally from the government because they adhere to the principle of due process of law.

Therefore, the authors argue that for the concept of regulation of community organizations (Public Organizations) in the future to be able to guarantee the right to freedom of association in the community, it is no longer using the dissolution provisions, but prohibiting them until a certain time limit and can be allowed to operate again if they show good faith and the ban has expired. However, imposing sanctions prohibiting Community Organizations from carrying out their activities for some time must be based on a court decision. Therefore, the next important point that must be added to future Community Organization regulations, according to the author, is the application of the law through the courts.

The application of the law through the courts can maintain the consistency of a rule of law in which one of the indicators is a clear division of powers between the executive and judicial functions, so that abstract laws can be applied to individuals through judge decisions, and can control the executive power to impose dissolution sanctions on problematic social organizations. It must be admitted that the judiciary does have a strong function in balancing and supervising the performance of the executive and legislature, especially when it comes to the application of law which concerns many people. Problems regarding freedom of association which are the contents of human rights as a pillar in a rule of law cannot be discussed and determined unilaterally without going through due diligence from the courts related to the

application of the law by the executive and legislature. Every policy issued by the government must be tested in an independent and impartial court to provide legal certainty and justice to troubled social organizations.

Through the explanations that have been given, according to the author, the role of the court (point 2 that must exist in the concept of future Community Organization regulations) is very important as a tool for the state in trying social organizations that are proven and the evidence is strong and violates state regulations relating to freedom of association and assembly. The judge has clear parameters for measuring the occurrence of a violation of the law committed by a social organization. The parameters that are used as benchmarks for judges can be accepted by the parties because they have gone through an assessment process first by the government through the imposition of administrative sanctions that have been given to social organizations that have violated the rules so that the judge as the final assessor examines formally and materially whether the sanctions that have been given. If this is under the applicable laws and regulations or with the discovery of a new law, the judge can annul the sanctions imposed by the government on problematic organizations. However, the settlement process in court takes quite a long time, making it difficult to anticipate the activities of problematic social organizations that have the potential to do things that are dangerous to the state. Therefore, to overcome this, it is necessary to arrange dispute resolution in court by using the principles of fast, simple, and low-cost justice to be able to overcome the dispute resolution process.

Referring to Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which emphasizes that justice is carried out simply, quickly, and at low cost so that this can be used as an *ius constituent* and a model for resolving disputes over the dissolution of social organizations. This concept is very important to guarantee the right to freedom of community organization (because with this if it is not proven guilty of committing an offense then the Community Organization cannot be brought to court, and if it reaches court the Community Organization has the right to defend, as well as a decision against the Organization Communities are based on independent and free judges' considerations, not based on government decisions that are full of specific intentions) and rearrange the dissolution of Community Organizations that have occurred until now after the Law on Community Organizations was issued.

CONCLUSION

The regulatory function of mass organizations is none other than to protect, respect, and appreciate the rights of other individuals, the rights of other mass organizations are not to attack each other and fight with violence, apart from that, as has been described, it is also to protect mass organizations from arbitrariness. government's authority. Because the current Ormas regulations are still not good and ideal so that they can guarantee protection for the Ormas, it is necessary to make new regulations that are more ideal.

It is an undeniable fact that the existence of Government Regulation Number 2 of 2017 concerning Community Organizations and then passed into Law Number 16 of 2017 concerning Community Organizations has brought a gloomy wind to society with many people or parties submitting requests for judicial review of two regulations issued by the government. It was noted that there were 7 (seven) requests for judicial review of Government Regulation Number 2 of 2017 concerning Community Organizations and as many as 3 (three) requests for judicial

review of Law Number 16 of 2017 concerning Community Organizations. This proves that the application of regulations related to Community Organizations has not been able to guarantee and protect people's right to organize.

It has been said before that the current Ormas arrangements (Law No. 16 of 2017 concerning Community Organizations) have not been able to guarantee and protect the right to freedom of community organizations. When compared with the United Kingdom and America, in Indonesia there are many limitations in organizing. Therefore, the concept of regulation of community organizations (Ormas) in the future must be able to guarantee the right to freedom of association in society.

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