

# Criminalization of Freedom of Assembly in Indonesia

*by Mispansyah Mispansyah*

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Research Article

## Criminalization of Freedom of Assembly in Indonesia

Mispansyah<sup>1</sup>, Nurunnisa<sup>1</sup>, Tiya Erniyati<sup>1\*</sup><sup>1</sup>Criminal Law, Faculty of Law, Lambung Mangkurat University, Banjarmasin, Indonesia

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#### \*Correspondence

[tiya.erniyati@ulm.ac.id](mailto:tiya.erniyati@ulm.ac.id)

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### ABSTRACT

This study aims to analyze Law No. 16 of 2017 concerning Social Organizations in accordance with the Rule of Law Principles and find forms of formulative policies to revoke the status of Legal Entities of Community Organizations Association in the future (*Ius Constituendum*). This research is a normative legal research using 3 types of approaches: Statute Approach, Conceptual Approach, Case Approach related to the laws and regulations on Social Organizations. The results of this study indicate that Law No. 16 of 2017, which criminalizes freedom of assembly is not following the principles of the state law and even against the principles of the state law, and has the potential to lead to repressive actions to create a dictatorial ruler. Future formulative policies in realizing freedom of association and assembly, the Law on Community Organizations must continue to guarantee a fair judicial process (due process of law) as regulated in Law Number 17 of 2013 concerning Social Organizations, and the sanctions given are sufficient sanctions. Administratively by suspending or revoking the status of a legal entity association or suspending or dissolving community organizations.

## 1. INTRODUCTION

The affirmation of the State of Indonesia as a state of law is contained in Article 1 paragraph 3 of the 1945 Constitution, which states, "The State of Indonesia is a state based on law". A country is called a state of law, if the existing powers must be divided and separated clearly, as legislative power, executive power, and judicial power. Jimly Asshiddiqie stated that in the Fourth Amendment in 2002, the concept of the State of Law or "Rechtsstaat" which was previously only listed in the Elucidation of the 1945 Constitution, was formulated in Article 1 paragraph (3) which stated, "The State of Indonesia is a state based on law" In the concept of the state law, it is idealized that what should be the commander in the dynamics of state life is law, not politics or economics (2008). According to him, the characteristics of the state law are: (a) Supremacy of Law; (b) Equality before the Law; (c) Due Process of Law; (d) Power Limit; (e) Independent Mixed Organs; (f) Free and Impartial Justice; (g) State Administrative Court; (h) Constitutional Court; (i) Protection of Human Rights; (j) Demokratische Rechtsstaat; (k) Functioning as a Means of Realizing; (l) State Goals (Welfare Rechtsstaat; (m) Transparency and Social Control; (n) Belief in the Only One God;

On July 12th, 2017 the President issued a Government Regulation in Lieu of Law No. 2 of 2017 (Perppu) concerning Amendments to Law No. 17 of 2013 concerning Social Organizations. Then it was approved by the House of Representative RI into Law Number 16 of 2017 (hereinafter simply referred to as the Community Organization Law). UU no. 16 of 2017 omits Article 68 of Law No. 17 of 2013, which regulates the provisions of the mechanism for revocation of the status of legal entities of social organizations through the mechanism of the judiciary, both giving administrative sanctions to the revocation of legal entity status, must go through a court decision (Articles 60 to 80 of Law No. 17 of 2013).

According to the Center for Constitutional Law Studies, Faculty of Law, Padjadjaran University (PSHK FH UNPAD), this law is like a "weapon of mass destruction" against the people's political rights with the potential for criminalization of members of community organizations arbitrarily by the government regime. Because, community organizations can be dissolved without a court decision first. Thus, the Government's subjective assessment will play a role. In addition, PSHK FH UI said that the Perppu Community Organization contradicts the 1945 Constitution which



has guaranteed freedom of association and assembly as one of the universally recognized human rights. Even the right to express opinions verbally and in writing has also become one of the guaranteed constitutional rights since the independence of Indonesia (norman, 2017).

As the Originality of this article, several articles that discuss similar themes but different from this artikel are: the article on Juridical Implications of Government Regulations in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Social Organizations in Indonesia (Dian Kuz Pratiwi, 2017). Then the Position of the Perppu Ormas in the State of Law (Auliya Khasanofa, 2017). Then the article entitled Constitutionality of Perppu Number 2 of 2017 concerning Ormas in View of the 1945 Constitution (M. Beni Kurniawan, 2018). Then the article entitled Problematic Government Regulation in Lieu of Law (PERPPU) No. 02 of 2017 concerning Community Organizations (Study of Islamic Ormas in Metro City) (Choirus Salim, 2018). The article entitled Human Rights Protection on Dissolution Mechanism of Civil Society Organizations (CSOs) Based on Law No. 16 of 2017 (Marfuatul Latifah, 2020). The article with the title Human Rights and Perppu Ormas (Analysis of Legal Protection from the Perspective of Siyashah Syariyyah) (Desip Trinanda, 2020). Then article with the title Dissolution of Islamic Organizations by the Government; Comparative Study of Ormas Law and Islamic Law (Syahrul Mubarak, 2021)

### 3. RESEARCH METHODS

This research uses normative legal research using 3 types of approaches, the Statute Approach, Conceptual Approach, Case Approach, which is related to the laws and regulations governing Community Organizations. The primary legal material used is legislation related to Social Organizations. Secondary Legal Materials are legal materials obtained from textbooks written by legal experts, legal journals, legal cases, jurisprudence and symposium results related to the research topic. Tertiary legal materials are legal materials that provide instructions, or meaningful explanations of primary and secondary legal materials such as legal dictionaries and encyclopedias and others.

### 4. RESULTS AND DISCUSSIONS

#### 3.1 Criminalization of legal entity of Community Organizations on the contrary to rule of law principles

The researcher explains in advance about the theory in the state law, to assess whether the cancellation of the status of the Legal Entity of the Association of community Organizations carried out by the Government is in accordance with the principles of the state law. The state law (*Rechtsstaat*) is a concept that was born from a struggle in an effort to oppose absolutism so that it is revolutionary and prioritizes the *wetmatigheid* principle which later transformed into *rechmatigheid*. The concept of *Rechtsstaat* rests on a continental European legal system called civil law or Modern Roman Law (Awaluddin, 2014). Friedrich Julius Stahl, the concept of the state law is called a formal legal state, because it emphasizes a government based on laws, according to him the state law is characterized by 4 (four) pillars: (a) Recognition and protection of human rights; (b) The state is based on the trias political theory; (c) Government is held based on the law (*wetmatig bestuur*); (d) There is a state administrative court tasked with handling cases of unlawful acts by the government (*onrechtmatige overheidsdaad*); (FA Hayek, 2011).

According to Elucidation of Articles 1 and 2 of the 1945 Constitution, Several foreign terms used to define the state law are *rechtsstaat*, state law, and *etat de droit*. In various studies of this term, there are actually very significant differences. In the development of the concept of the state law (Todung, 1999), both terms develop, both from the theoretical-conceptual aspect and from the practical-operational framework (Boenterman, 1961).

The existence of recognition and protection of human rights and the existence of an administrative judicial process regarding acts violating the law of the authorities are part of the characteristic points of the state law, this is what the researcher will analyze. The government's action to issue a Government Regulation Before being approved by the House of Representatives into Law No. 16 of 2017 concerning Social Organizations, the regulation was in the form of Government Regulation in Lieu of Law (PERPPU) No. 2 of 2017. The government reasoned because of the emergency and urgency that compel. According to the term emergency, or formerly known as *staat van oorlog en beleg* (SOB), which is in English referred to as a state of emergency is a statement of government which can change the functions of government, warn citizens to change activities, or instruct state agencies to use emergency response plans. Usually, this situation occurs during natural disasters, civil unrest, or after a statement war (Wikipedia, 2018)

In Indonesia, regarding the state of danger and matters of compelling urgency as the basis for the government's action to form a Perppu in the context of saving the interests of the nation and state, the legal basis in Article 12 and Article 22 of the 1945 Constitution affirms that "The President declares a state of Emergency, The conditions governing and the consequences of a state of emergency shall be stipulated by laws". Article 22 states as follows: 1. In the event compelling exigency, the President is entitled to stipulate government regulations in lieu of laws; 2. Such

government regulation shall obtain the approval of the People's Representative Council in its next session; 3. If such government regulation fails to obtain approval, it shall be revoked;

So the right to determine a state of emergency is still controlled by the House of Representative, although the determination of a state of emergency rests with the President.

The form and type of threat will determine the steps and legal actions taken to overcome the situation. In this connection, PERPPU No.23/1959 on Danger, there are three levels of emergency, namely: (1) War emergency; (2) a state of martial law; and (3) Civil Emergency. Examples of the implementation of the state of emergency of war, military emergency and civil emergency of an armed or bloody conflict as regulated in Law No. 23/1959 on PRP can be seen in the cases of Aceh, Poso and Papua.

Extraordinary events, but not declared as an emergency, and the resolution only relies on the provisions of existing laws and regulations in ordinary or normal circumstances, for example the tragic incident that occurred in West Kalimantan, the war between the Dayak and Madura, Case riots in the form of Conflict in Sampit, Central Kalimantan as well as between the Dayaks and Madura which claimed many victims.

The provisions of Article 22 of the 1945 Constitution of the Republic of Indonesia do not explain the level of the compelling exigency, the notion of "compelling exigency" is the President's subjective assessment. "compelling exigency" that at that time there was a real urgency or crisis in front of the eyes at that time. Article 22 is a constitutional rule, according to Felix Frankfurter (U.S. Supreme Court Justice) regarding the due process of law, he described:

*"Due process, unlike some legal rules, is nota technical conception with a fixed content unrelated to time, place and circumstances....Due process is not a mechanical instrument. It is not yardstick. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process (justice, 1951)."*

According to researcher this PERPPU has a procedural formal and substance defect . Procedural formal defect are:

**First, there is extremely no urgent need** to resolve legal issues by issuing Government Regulation in Lieu of Law Number 02 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Social Organizations, where the living conditions of the nation, state and society are in normal conditions. Even on various occasions, the President can carry out various government and state duties at home and abroad, both as head of state and running the government as usual (normal).

**Second, there is no legal vacuum due to the absence of law.** Considering that the regulation of the life of the nation and state, especially regarding regulating governance and the imposition of sanctions in the dynamics of organizations, has been regulated in detail through Law Number 17 of 2013 concerning Social Organizations. In fact, this newly formed law has never been tested in the judiciary to prove whether or not there is a legal vacuum and/or an inadequate legal situation. In fact, on the pretext of an "Inadequate Law" situation, the President haphazardly issued a Government Regulation in Lieu of Law Number 02 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Social Organizations.

**Third, if only the legal vacuum existed** and the President views that Law Number 17 of 2013 concerning Social Organizations is inadequate, in fact the President can still take normal legislative efforts through the submission of the Draft Amendment to Law Number 17 of 2013 concerning Social Organizations. This is because, while waiting for the Draft Law to be discussed by the parliament (House of Representative - Republic of Indonesia ), the President can still enact Law No. 17 of 2013 concerning existing Community Organizations.

If the emergency situation is related to the context of the existence of a Community Organization that is suspected of endangering the state, of course this accusation must be proven before the court and every citizen, including the government, is obliged to uphold the law, so that they are not allowed to make unilateral accusations, as stated in Article 27 paragraph (1) of the Constitution. 1945. *"All citizens shall be equal before the law and in government and shall uphold the law and the government without exceptions."*

In connection with the decision of the Constitutional Court No.138/PUU-VII/2009, there are 3 (three) conditions for the issuance of a Perppu: First, there is an urgent need to resolve legal issues quickly based on the Act. Second, there is a legal vacuum because the required law does not yet exist or is inadequate. Third, the legal vacuum cannot be overcome by the normal procedures for making laws. The existence of the Perppu is not fulfilled because with the existence of Law Number 17 of 2013 concerning Community Organizations, it is more perfect and adequate regarding the revocation of the status of Legal Entities of Associations, through warnings to the process of State Administrative judicial mechanisms to revoke the status of Legal Entities of Associations of Social Organizations. Therefore, the Perppu Community Organization has no urgency to be published, considering more complete and adequate

procedures and mechanisms related to overcoming the dynamics of organizations. 17/2013, whether through persuasion efforts, the mechanism for administrative sanctions in the form of written warnings, temporary suspension and judicial mechanisms to be able to dissolve community organizations, with the Perppu all these mechanisms and procedures are omitted.

Then according to the researcher, this PERPPU has substance defects, those are: First: transferring the authority to dissolve community organizations from the courts to the government, so that there is no due process law and there is no equality between the government and community organizations (violating the principle of equality before the law), with the enactment of article 80A. Second, the content of the PERPPU shifts the role of the Government as builder of community organizations to destroyer, from nurturing and protecting to threatening and intimidating, due to the abolition of Articles 63 to 80 of Law No. 17 of 2013 (old Community Organization Law). Third, adding new norms that were not previously regulated, in the form of criminalizing members and administrators of community organizations that were disbanded and a number of rubber articles. As stipulated in Article 82A paragraph (1) jo. Article 59 paragraph (3) letters c and d, Article 82A paragraph (2) jo. Article 59 paragraph (3) letter a, b and paragraph 4.

It is surely that the Government as a monopoly on the only interpretation of Pancasila, so that the Government can unilaterally claim that certain community organizations violate Pancasila, impose sanctions to the disbandment of the accused organizations. During the New Order era, there was a single interpretation by the government.

New Order rulers as the sole interpreter of Pancasila from 1965 until the fall of the New Order regime in 1998, Pancasila became the most powerful idiom and was used as a political tool. Pancasila is used as the only principle in various community, national and state activities. When there are other ideologies that contradict or are not in accordance with Pancasila, those ideologies must be destroyed. This is where the ideological suppression occurred, at that time there was a unilateral interpretation of Pancasila by the New Order regime. This single interpretation from the state is more widely used as a tool to strengthen authoritarianism, as well as close critical understanding of Pancasila (Sudirman, 2008)

**Table 1.** A number of cases of human rights violations committed during the New Order (Firdaus, 2009).

YEAR	Case Description
1965 – 1970	The murder of people associated with the Indonesian Communist Party (PKI). The number of victims is confusing. The most dramatic figure, 1.5 million people.
1970 – 1998	Aceh was made a military operation area. The toll, according to conservative data, was 871. Komnas HAM investigated this case because it was suspected to be related to Suharto.
1974 – 1999	Victims of the Indonesian invasion of East Timor. Victims are estimated at 102 thousand people. 18,600 of them are direct victims of the conflict.
1978 – 1998	The case of military operations in Papua is on the list of suspected links to Suharto. The number of victims is unclear but is estimated to be in the hundreds of millions.
1982 – 1983	Bromocorah was executed without trial. Victims 1. 678 people. Komnas HAM re-opened the case allegedly related to Suharto.
1984	Soldiers opened fire on residents who held a demonstration in Tanjung Priok. According to Komnas HAM's version, at least 24 people were killed, apart from 9 other people who died at the hands of the masses.
1989	Police and soldiers stormed a study group in Talangsari III hamlet, Lampung. The government version, 27 victims. The NGO version of the Night Committee, 246 killed.
1991	Soldiers open fire on protesters near the Santa Cruz cemetery, dili. TNI version, 19 killed. NGO version, at least 271 killed.
1996	4 residents died at the hands of the authorities while processing the establishment of the nipah reservoir in Madura.
1997	Dozens of community leaders were murdered in East Java on charges of witchcraft.

According to Jimly Asshiddiqie, there are two things that need to be considered in the Community Organization Law: first, regarding criminal sanctions that are not too important, second, regarding the decision-making process (the legal process) (Christian, 2017):

1. Arrangements that eliminate the legal process (due process of law), in the case of the dissolution of Community Organization. In the newly approved Community Organization Law, he said, an Community Organization can be dissolved without going through a legal process in court;
2. The Community Organization Law provides a view that the definition of its name is contrary to Pancasila, so it is not only the ideology of Marxism, Leninism, communism, and atheism, but also other ideas that intend to change Pancasila and the 1945 Constitution of the Republic of Indonesia;

3. The newly approved Community Organization Law provides severe penalties and tends to be irrational for those Community Organization deemed to have committed violations. The punishment, he said, ranged from five years to 20 years, and some even up to life. This legal sanction is too severe and irrational;

The prohibition for community organizations is contained in Article 59 of the new Community Organization Law, which says:

1. Organizations are prohibited from:
  - a. Using the same name, emblem, flag, or attributes as the name, emblem, flag, or attributes of a government institution;
  - b. Using without permission the names, symbols, flags of other countries or international institutions/agencies as the names, symbols, or flags of Community organization; and/or;
  - c. Using a name, symbol, flag or graphic that has similarities in principle or in its entirety to the name, symbol, flag or image of another community organization or political party;
2. Organizations are prohibited from:
  - a. Receive from or give to any party donations in any form that is contrary to the provisions of laws and regulations; and/or
  - b. Raising funds for political parties;
3. CSOs are prohibited :
  - a. commit acts of hostility against tribes, religion, race, or class;
  - b. commit abuse, blasphemy or desecration, to the religion professed in Indonesia;
  - c. commit acts of violence, disturb the peace and order common, or damaging facility public and social facilities; and/or;
  - d. do activities which is the duty and authority of law enforcement in accordance with the provisions legislation;
4. CSOs are prohibited:
  - a. use the name, emblem, flag, or symbol of an organization that has similarities to the main thing is or in;
  - b. its entirety with the name, emblem, flag, or symbol of a separatist movement organization or prohibited organization.
  - b. carry out separatist activities that threatens sovereignty Unitary state Republic of Indonesia; and/or; adopt, develop, and spread the teachings or contradictory understanding with Pancasila. (given the researcher's thickness)

In the explanation of Article 59 paragraph (4) letter c of the Law No. 16 of 2017 "What it means by "teachings understandings that are contrary to Pancasila" include the teachings of atheism, communism/marxism-Leninism, or other understandings that aim to replace/change Pancasila and the 1945 Constitution of the Republic of Indonesia. However who has the right to interpret other understandings that are considered contrary to Pancasila, in this case the government, because the legal process to declare an organization has violated Article 59 paragraph (4) letter c of the prohibition rests with the authorities/government.

According to the researcher, based on the legal procedure for the revocation of the Legal Entity Associations status of Community Organization which is in the hands of the Government, this means that the Community Organization Law transferring the judicial authority to the government, thus means that this law on community organizations has omitted the due process of law, which is through the court as an institution that provides justice for all parties, because if there is no judicial process, then there is no self-defense process against community organizations. which are accused of having an understanding that is contrary to Pancasila. According to Refly Harun with the presence of The legal process in court in dissolving an community organization can also prevent abuse of authority by future presidents (Then, 2017). According to the director of Imparsial Al-Araf, there are several very dangerous articles in the revision of the Community Organization Law, opening up great potential for abuse of power, for example the terms "threatening" the NKRI and Pancasila, the level of which is unclear if the interpretation is left to the authorities (Yahya, 2017).

Due process of law is a constitutional guarantee that ensures there is a fair legal process that gives a person the opportunity to know about the process, and has the opportunity to have his/her statement heard as to why his/her rights to life, liberty and property are deprived or removed. This process confirms the constitutional guarantee that the law will not be enforced irrationally, arbitrarily, or capriciously (Atif, 2017). Therefore, the existence of a judiciary does not automatically fulfill the due process of law, if it is not carried out in a reasonable, just and proper manner. For example, the existence of a court after the government revoked the rights of citizens to associate and assemble as is done by the new Community Organization Law. This kind of process is clearly an undue process, because the

damage has been done, without any chance for self-defense. It is not a defense to be made after the injury and loss has been incurred (Atif, 2017).

The abolition of the judicial process in the revocation of the Legal Entity Associations of community organizations as carried out by the Community Organization Law, this is a strong signal that the government has ignored the principle of the state law, and has replaced it with a state of power. In a state of power, law is nothing more than an accessory, not a foundation in the state. The indicator of state power is the state as a monopoly on the interpretation of truth.

<sup>2</sup> The first case that became a victim of the Law on Community Organizations (Law No. 16 of 2017) was the revocation of the Legal Entity Associations of Community Organization, in the process of revocation the Government ignored legal procedures, even according to Muhammad Ismail Yusanto as spokesman for the Community Organization Legal Entity Associations Hizbut Tahrir Indonesia (HTI) who became the first victim of the revocation Legal Entity Associations Community Organization, stated that the government did not comply with the applicable legal procedures as stipulated in Perppu No. 2 of 2017. Muhammad Ismail Yusanto explained that the Legal Entity Associations HTI Community Organization had never received a warning letter from the government before the discourse on the revocation of Legal Entity Associations HTI. Even in interviews with various media, Muhammad Ismail Yusanto emphasized that until the government decided to revoke the HTI Community Organization Legal Entity Associations, the administrators had never received a warning letter (Kristian, 2017).

Thus, from the case example, it is clear that the due process of law was ruled out in the process of revoking the community organization's Legal Entity Associations. The truth that is interpreted by the ruler, and is identical to the desire of the ruler, is not what the law says. When the rulers feel that the law is an obstacle, instead of obeying it, the law is immediately removed. Finally, a law that has the face of a ruler is presented, which is far from the aspirations of the people.

Referring to the characteristics of the state law, one of which requires a fair judicial process (due process of law), the state must uphold the law, and guarantees human rights. According to Albert Venn Dicey, the concept of the state law which he popularized in 1885 through his book with the titled : introduction to the study of the law constitution, developed in Anglo Saxon countries, while the concept of the state law has the main benchmarks, which are: 1) The supremacy of law; 2) Equality before the law; and 3) The constitution based on individual rights; (Albert, 1979).

The concept of the state in other terms, the state law, was formulated by Bangkok in 1965 by the International Commission of Jurists, Which are: 1) The existence of constitutional protection; 2) The existence of an independent and impartial court; 3) There are free elections; 4) The existence of freedom of expression and association; 5) There is an opposition task; 6) There is civic education; 7)) (Sri, 2005)

According to D.Mutiara the state law is;

*"A country whose structure is regulated as well as possible in the law so that all powers of the instruments of government are based on law. the people may not act independently according to their will which is against the law. The state law is a country that is ruled not by people, but by law. Therefore, in a state law, the rights of the people are fully guaranteed, the obligations of the people must be fulfilled entirely by submitting and obeying all government regulations and state laws (Mutiara, 2010)."*

Based on the researcher's observations both through the media and meeting with HTI activists, after the revocation of the HTI Legal Entity Associations, there were accusations and labels that this organization was forbidden, and the individuals were not allowed to carry out da'wah activities, even though their activities no longer used the name of the organization whose Legal Entity Associations has been revoked. The prohibition of individual activities is carried out against those who are considered to have a relation or affiliation with the HTI Organization, for example this happened to Felix Xiauw who was rejected and dismissed the recitation program inviting him.

Allegations of "others" spread everywhere, those who were pro-shariah and the concept of an Islamic state were targeted, for those with academic status they were bullied and dismissed from their positions, as happened to Professor Suteki of the Faculty of Law, Diponegoro University. Hikma Sanggala student on August 27, 2019 received a letter from the Chancellor of the Kendari State Islamic Institute No.0653 year 2019 regarding Disrespectful Dismissal as a Student of IAIN Kendari. One of the reasons for his dismissal was because he spread misguided Islamic understanding and radicalism and was contrary to national values.

The symbol of Islam has also become a bad/negative stamp/label, for example, officers prohibit people from carrying flags bearing the words monotheism, which has often been carried by HTI organizations, because some think that it is the flag of community organizations, so it is not uncommon to accuse each other and division in society. For example, in the case of the burning of the monotheism flag in the Limbangan Garut area, West Java, when journalists

asked about the burning carried out by 3 (three) people dressed in certain community organizations, they thought it was the organization's flag that had been revoked. So, after the government's decision to revoke the Legal Entity Associations of Social Organizations, there was a violation of the rights to express opinions and expression and the activities of enjoining amar ma'ruf nahi munkar, because it is branded/labeled as a prohibited organization and the individual is prohibited from carrying out personal activities, even though it is only in the form of da'wah activities. The government seems to let it go, there is a potential for hostility in the community, with the language that it is submitted to the legal process or handed over to law enforcement. According to the researcher, this cannot be ignored, and the enactment of the Community Organization Law (UU No. 16 of 2017) adds to the potential for human rights violations, which are carried out by unscrupulous officials, the community and authorities, because of the prohibition on carrying out activities and carrying the symbols of community organizations that have been revoked by the Legal Entity Associations- because it has been banned by the government. with the language that it is submitted to legal proceedings or submitted to law enforcement. According to the researcher, this cannot be ignored, and the enactment of the Community Organization Law (UU No. 16 of 2017) adds to the potential for human rights violations, which are carried out by unscrupulous officials, the community and authorities, because of the prohibition on carrying out activities and carrying the symbols of community organizations that have been revoked by the Legal Entity Associations- because it has been banned by the government.

In addition, its members are threatened with punishment if they continue to carry out activities related to their Organization. Even criminal sanctions haunt the management and members of community organizations whose Legal Entity Associations has been revoked and disbanded, which is contained in Article 82A, which are:

Any Community Organization that becomes a member and/or administrator of an Community Organization who intentionally and directly or indirectly violates the provisions as referred to in Article 59 paragraph (3) letter c and letter d shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 1 (one) month. (one year).

Any Community Organization that becomes a member and/or administrator of an Community Organization who intentionally and directly or indirectly violates the provisions as referred to in Article 59 paragraph (3) letters a and b, and paragraph (4) shall be sentenced to life imprisonment or imprisonment. a minimum of 5 (five) years and a maximum of 20 (twenty) years.

In addition to imprisonment as referred to in paragraph (1), the person concerned is threatened with additional punishment as stipulated in the criminal legislation.

The second case, is The second Legal Entity Associations-ILUNI UI dated August 15, 2017 based on the decision of the Minister of Law and Human Rights Number: AHU-31 AH.01.08 of 2017 concerning the revocation of the decision of the Minister of Law and Human Rights Number: HU-0068127-AH.01.07 of 2016 concerning the ratification of the establishment of the ILUNI UI association. The revocation of the status of Legal Entity Associations-ILUNI UI, according to the researcher's analysis, is because this organization often criticizes the government and seems to be at odds with the government.

Sentencing to freedom of assembly, abbreviated as BHP in Law Number 16 of 2017 is a form of criminalization, which is a process of determining an act of a person as an act that can be punished, this process ends with the formation of a law where the act is threatened with sanctions in the form of criminal (Sudarto, 1983). The requirements for an act to be categorized as a crime are: first, if it is contrary to the moral values of the community, then the norms in criminal law must regard to the moral values of the community, if it is contrary to the moral values of the community, then the norms of criminal law qualify as crimes that are subject to criminal sanctions, for example abortion, suicide (Salman Luthan, 2009). If we look at the criminalization of the Legal Entity Association (BHP) of Community Organizations that the Government has revoked from the BHP from the aspect of moral values, there is no conflict with the moral values of the community, so this first criminalization requirement does not fulfill this.

According to Bassiouni, the decision to criminalize and decriminalize must be based on specific policy factors which considers many factors: (Salman Luthan, 2009)

- a. Balance between the facilities used and the objectives,
- b. Cost analysis towards the results achieved in correlation with the objectives.



- c. Assessment or appraisal of the objectives in relation with other priorities in allocating human resources, and
- d. The social effect of criminalization and decriminalization viewed from its secondary effects

Other views had been stated by Soedarto which states that in facing criminalization, these matters should be considered:

- a. The use of criminal law should consider the objectives of national development which is to realize a just and prosperous society in a material and spiritual abundance based on Pancasila. Therefore, criminal law is aimed to fight crimes and support this fight for the prosperity and security of the society.
- b. Actions that are being prevented or overcome by criminal law must be an undesirable action which brings about material or spiritual loss to the society.
- c. The use of criminal law should also consider the cost and benefit principle.
- d. The use of criminal law must also consider the working capacity of law enforcement institutions to avoid overcapacity

According to Moeljatno, There are three criterias of criminalization in criminal law reformation process, which are:

- a. First, the stipulation of an act as a prohibited act (criminal act) must be in accordance with the legal feelings that live in society.
- b. Second, are the threat of punishment and the sentencing the main way to prevent the violation of these prohibitions
- c. Third, is the government, by using the its instruments , really capable of actually carrying out threats of criminal punishment if it turns out that someone violates the prohibition.

Based on the criteria for criminalization, the case of revocation of the BHP of the HTI Ormas which has been conveying Islamic thoughts in all aspects of life, including corrections to government policies that are considered contrary to Islamic teachings, therefore does not meet the requirements of the criminalization above. The issuance of the Perppu which has become Law No. 16 of 2017 which includes criminal sanctions for mass organizations that have other understandings is more of a political act, not based on law.

Likewise, the revocation of the ILUNI UI BHP, which is a social organization, also does not meet the criteria for criminalization according to the legal experts above, so its actions are only political acts and arbitrary actions that violate the principles of the rule of law as stated in the 1945 Constitution. This is in line with with various studies published in various journal articles such as: Aulia Khasanofa's article which discusses the position of the Perppu Ormas in the Indonesian rule of law, according to him, this Perppu creates a subjective interpretation of the President according to his will, this Perpu should not be easily formed and published, and the formation of the Perppu can lead to arbitrary actions. authority. (Aulia Khasanofa, 2017). Likewise, M. Beni Kurniawan's article emphasized that freedom of association and assembly is one of the derivations of civil and political rights as stated in the Universal Declaration of Human Rights Article 20 of the UDHR Charter "everyone has the rights to freedom of peaceful assembly and association" paragraph (2) "No one may be compelled to belong to an association." Then the guarantee of freedom of association and assembly is stated in the 1945 Constitution Article 28 E paragraph (3) that "everyone has the right to freedom of association, assembly and expression (M. Beni Kurniawan, 2018). Likewise Rizki Robiatul Aisyiah Ismail's article which states that the Perppu Ormas actually imposes restrictions on freedom (Rizki Robiatul Aisyiah Ismail, 2019).

Based on the explanation above, the researcher can conclude that the revocation of the status of the Legal Entity of the Association of Community Organizations regulated in the revised Community Organization Law (UU No. 16/2017), is not in accordance with the principle of the state law and even contradicts the principle of the state law, and has the potential to lead to repressive actions and produce dictators. This can be seen from the beginning of the formation of this Law through the PERPPU, which has formal procedural defects and substance defects.

### ***3.2 Formulative policy of revocation of legal entity status of associations of community organizations in the future (Ius Constituendum)***

In forming a statutory regulation, it must have a juridical basis, which is a legal basis that forms the basis for the authority to form and amend the law. Sociological basis, the provisions must be in accordance with the general belief or legal awareness of the community. It is important that the laws made are obeyed by the people. The political foundation is the line of political policy that becomes the next basis for policies and directions for the management of the state government. Legal products are strongly influenced – even determined – by the holders of political power. Thus, it appears there that the political construction of each ruler will affect the style and character of the law. (Suteki, 2018). Likewise with the Perppu Ormas which has become Law No. 16 of 2017.

As a guarantee of fair legal protection, of course, the revocation of the Legal Entity Associations of Community Organization status must still have legal procedures through the courts, to assess whether the Legal Entity Associations Community Organization have violated the prohibition provisions in the Community Organization Law.

According to Willy DSVoll, policy in practice has 2 (two) meanings, such as follows:

1. Policy in the sense of freedom, which exists in a certain subject (or which is equated with a subject), to have an alternative that is accepted as the best based on the values of living together or a certain country in the use of certain powers that exist in certain subjects in overcoming human problems in relationships. living together in the country;
2. Policy in the sense of a way out, to overcome human problems in relation to living together or a certain country, as a result of the use of freedom of choice which is accepted as the best based on the values of living together or a particular country; (Willy, 2013).

Based on this understanding, in other words:

1. Policy is the scope of certain freedoms in taking alternatives that are accepted as the best based on the values of a certain society or country in overcoming human problems in a series of living together or in a certain country at a certain time and place;
2. The solution in overcoming human problems is the result of freedom in choosing the best at a certain time and place based on the values of a particular society or country; Willy, 2013)

The importance of policies formulated in the form of legislation to guarantee and provide fair legal protection to the community. So that a similar case in the form of revocation of the Legal Entity Associations status of community organizations without a warning letter does not happen again. The Director General of National Unity and Politics (Kesbangpol) of the Ministry of Home Affairs, Soedarmo, considers that the government does not need to issue a warning letter (SP) for the disbandment and prohibition of the activities of HTI Organizations (Nadlir, 2017).

According to Barda Nawawi Arief, the policy consists of formulation policy, application policy and execution policy. According to Refly Harun, the regulation regarding Community Organization in the future, the government must prioritize persuasive efforts (Christian, 2017). Broadly speaking, there are 3 things that must be revised to the Community Organization Law (UU No. 16/2017), which are: First, there is a guarantee of a fair legal process (due process of law) through the courts. Second, it does not criminalize thoughts in the form of understanding religious teachings. Third, eliminate irrational criminal sanctions for management and members whose Legal Entity Associations status has been revoked. It is enough to give an administrative sanction in the form of revocation of Legal Entity Associations status and not to be given a permit for community organization activities. Fourth, the government must not be the sole interpreter of Pancasila, everything must be submitted to the judicial process.

As for future formulative policies towards revocation of Legal Entity Associations Community Organization status. The guarantee of due process of law in the Community Organization Law must be returned as regulated in the Community Organization Law (UU No.17/2013, but if it is deemed too long, then the period can be shortened.

The following is a brief summary of the procedures for the dissolution of an Community Organization as a legal entity:

1. The application for the dissolution of an Community Organization as a legal entity, as mentioned above, is submitted to the district court by the prosecutor only upon a written request from the Minister of Law and Human Rights. (Article 70 paragraph (1));
2. The application is submitted to the head of the district court according to the legal domicile of the Community Organization (Article 70 paragraph (2)); accompanied by evidence of the imposition of administrative sanctions by the Government or Regional Government.[Article 70 paragraph (3)] ;
3. In the event that the application is not accompanied by evidence of the imposition of administrative sanctions, the application for the dissolution of an Community Organization as a legal entity cannot be accepted.[Article 70 paragraph (4) ] ;
4. After the application is submitted, the district court shall determine the trial day within a maximum period of 5 (five) working days from the date of registration of the application.[Article 70 paragraph (5) ]The summons for the first examination hearing must be properly received by the parties no later than 3 (three) days prior to the trial.[Article 70 paragraph (6)];
5. In the hearing of the CSOs as the respondent, they are given the right to defend themselves by providing information and evidence at trial.[Article 70 paragraph (7)];
6. The application for the dissolution of an Community Organization must be decided by the district court within a maximum period of 60 days from the date the application is recorded and must be pronounced in a trial

open to the public.[Article 71 paragraph (1) ]This period can be extended for a maximum of 20 days with the approval of the Chief Justice of the Supreme Court;

7. The district court shall deliver a copy of the decision on the dissolution of the Community Organization to the applicant, the respondent, and the Minister of Law and Human Rights within a maximum period of 7 (seven) days from the date the decision is pronounced in a trial open to the public. (Article 72);

The dissolution of the Community Organization is carried out through a court decision that has permanent legal force, after which the government imposes sanctions on the revocation of legal entity status. With the revocation of the Legal Entity Associations of Community Organization status, the community organizations cannot carry out activities publicly and receive financial assistance from the government, administrative sanctions in the form of revocation of the Legal Entity Associations status of the community organizations, this is quite fair and effective because the essence of people to associate and gather is the philosophy of the formation of organizations in the form of Legal Entity Associations, by being revoked, they cannot carry out organizational activities.

#### 4. CONCLUSION

The revocation of the legal entity association status of Community Organizations as regulated in the revised Community Organization Law (UU No.16/2017), constitutes a criminalization of freedom of assembly and opinion, is not in accordance with the principle of the state law and even contradicts the principle of the state law, and has the potential to lead to repressive actions and dictator. There are defects in the Law Process on Community Organizations through the Making of Perppu: First, formal procedural defects and substance defects. Here are Procedural formal defects as required in the Constitutional Court Decision No. 138/PUU-VII/2009: (1) there is an urgent need to resolve legal issues quickly based on the law, (2) there is a legal vacuum because the required law does not yet exist or is inadequate, (3) the legal vacuum cannot be overcome by procedures normal law making. Second, Substance defects by: (1) omitting the role of the judiciary in a fair legal process (due process of law), (2) criminalizing of thoughts and teachings (including religious teachings) in the form of criminal sanctions that can become a rubber article overrides the management and members and administrators who revoked as well as disbanded, (3) making the Government a monopoly of interpretation on Pancasila, so that the government can unilaterally claim certain community organizations violate Pancasila, impose sanctions up to the disbandment of mass organizations that accused (back to the New Order Regime).

Formulative policies to guarantee freedom of assembly and opinion, in the future, if there are Community Organizations that violate the laws and regulations, then the procedure for imposing sanctions until the revocation of Legal Entity Associations status must continue through the due process of law, and sanctions against community organizations are sufficient for administrative criminal sanctions. not in the form of imprisonment, because the sanctions in freedom of association and assembly, only in the form of revocation of the Legal Entity Associations of social organizations.

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