

Ratio of Legis Dissolution of Community Organizations Without Due Process Of Law

Agung Barok Pratama

UIN K.H. Abdurrahman Wahid Pekalongan

Email : agung.avicena@gmail.com

Abstract

This research examines the Authority of the Government in the Dissolution of Community Organizations. The purpose of the research is to find out the ratio legis of the regulation of the dissolution of community organizations without a judicial process and the dissolution of community organizations in a democratic perspective. This research is a type of normative juridical research using prescriptive analysis techniques. The results of this study indicate that the ratio legis of the government dissolving community organizations is an affirmation of the principle of contrarius actus so that the government with its authority can dissolve community organizations without the need to wait and go through the judicial process (due process of law). And the dissolution of community organizations without a judicial process does not reflect a characteristic of a state of law based on democratic principles and ignores the constitutional rights of citizens to guarantee freedom of association, assembly and expression.

Keyword: *Ratio Legis, Contrarius actus, Due Process of Law*

INTRODUCTION

Indonesia is a democratic country, the State of Indonesia as a democracy must uphold placing sovereignty in the hands of the people as contained in the 1945 Constitution of the Republic of Indonesia as described in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia implemented because of the sovereignty of the people. It is the people who should hold true sovereignty.¹ Important factors that are the enforcers of a democratic country are the existence of civil society, the existence of political infrastructure in the form of political parties and community organizations which are hereinafter referred to as mass organizations.

In the 1945 Constitution, in order to realize a strong and independent national life, as well as a fair and democratic life based on law, the state has guaranteed to unite and issue human rights opinions that must be implemented.²

¹ Annisa Humaira, "The Concept of a Democratic State," *Reflection* 3, no. 1 (2010).

² Ellya Rosana, "The Democratic State and Human Rights," *Journal of Binoculars for Islamic Political Aspirations* 12, no. 1 (2016).

The effort to implement the mandate of the Constitution is that CSOs are an organization of the community formed by volunteerism based on the same needs and the same aspirations and wills.³

Community organizations, hereinafter referred to as CSOs, are regulated in Law 17/2013 concerning CSOs which has been amended into Law 16/2017 concerning the Stipulation of Government Regulations in Lieu of Law 2/017 concerning Amendments to Law 17/2017 concerning CSOs into Law. The enactment of Perppu 2/2017 has an impact on the atmosphere of democracy in Indonesia. The reason is, in the Perppu a quo there is a new provision that regulates the dissolution of CSOs that no longer go through the judicial process (*due process of law*). In fact, it is emphasized in article 1 paragraph (3) of the 1945 Constitution as an effort to realize legal protection for the community and also an effort to realize a free and independent judicial power in accordance with the state of law.⁴

It is explained in Article 61 of Law 16/2017, that violating CSOs will be given sanctions starting from a written warning, then assistance and grants will be stopped, then the activities of the CSOs will be temporarily stopped, and continued with the revocation of a letter containing a registered information or commonly called the revocation of legal entity status.⁵

The sanction for the dissolution of CSOs has been regulated in article 68 of Law 17/2017 which explains that, CSOs can have their legal entity status revoked after there is a court decision that has permanent legal force regarding the dissolution of CSOs that have legal entities have been removed. According to the law before it was updated, CSOs can only be dissolved after there is a court decision that has permanent legal force, which aims to dissolve CSOs so that the government is not arbitrary. Now Perppu 2/2017 has been stipulated as Law 16/2017.

In the example of the case of the implementation of the dissolution of CSOs on HTI, the perpu of CSOs is used by the government as a reference in the dissolution of HTI. In 2014 HTI CSOs were already registered as legal entities which then referred to the Perpu on CSOs, so the status as a legal entity with the decree of the Minister of Law and Human Rights in 2017 was revoked.⁶

³ Rian Thera, "Legal Analysis of the Solidarity Action of Islamic Defenders Front Community Organizations in Makassar Reviewed from Law Number 8 of 1985 Juncto Law Number 17 of 2013 concerning Community Organizations," *Student Scientific Journal of the University of Surabaya* 3, no. 1 (2014): 1–15, <https://journal.ubaya.ac.id/index.php/jimus/article/view/1757>.

⁴ Yuslim, *State Administrative Judicial Procedural Law* (Jakarta: Sinar Grafika, 2015).

⁵ Edi Pranoto, "A Socio-Legal Study of the Ratification of the Law on Community Organizations," *Legal Spectrum* 17, no. 1 (2020), <https://doi.org/10.35973/sh.v17i1.1570>.

⁶ Sidik Kahono, Muhammad Junaidi, and A Heru Nuswanto, "Juridical Review of the Provisions of the Contrius Actus Principle According to Law Number 16 of 2017 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 concerning

The process of dissolving HTI began with the revocation of the legal entity status by the Ministry of Law and Human Rights (Kemenkumham) in July 2017. After that, HTI filed a lawsuit with the State Administrative Court (PTUN) but the lawsuit was rejected. Other legal remedies taken by HTI were also unsuccessful, including the application for judicial review of Perppu No. 2 of 2017 to the Constitutional Court (MK), which was also rejected.

The government's decision to dissolve HTI drew criticism from various parties. One of the main criticisms is that this dissolution ignores democratic principles and human rights, in particular the right to assemble and organize guaranteed by the constitution. This criticism highlights that the dissolution of an organization without going through a fair and transparent court process has the potential to violate human rights and legal principles applicable in democratic countries.⁷

Many academics and human rights activists argue that although HTI is considered to have the potential to threaten the integrity of the state and the ideology of Pancasila, the dissolution step should be carried out through a stricter legal process and involve the courts to assess whether the organization's actions are truly harmful to the state. The dissolution of HTI through government regulations without a court process is considered a form of abuse of executive power that can set a bad precedent for freedom of association and assembly in Indonesia.

The regulation for the dissolution of CSOs was previously regulated in Law 17/2017 concerning CSOs where the dissolution of CSOs must go through a trial process first, this is in accordance with the principle of *due process of law* in the concept of the state of law, but by the government with the amendment of the latest Law on CSOs, namely Law 16/2017 on CSOs which explains that the dissolution of CSOs no longer goes through the court process. However, it was dissolved directly by the government itself. If you look at the characteristics of the state of law according to A.V Dicey itself, the existence of *Due Proceedings of law* is very contrary to the government's actions in dissolving mass organizations which are an arbitrary government or *abuse of power*, therefore it is necessary to have restrictions or controls carried out by the courts which are realized through the state administrative courts in order to eliminate arbitrary actions carried out by government.⁸

Amendments to Law Number 17 of 2013 concerning Community Organizations," *Semarang Law Review (Slr)* 1, No. 1 (2022), <https://doi.org/10.26623/Slr.V1i1.2351>.

⁷ Bayu Marfiando, "The Dissolution of Hizb ut-Tahrir Indonesia (HTI) Reviewed from Freedom of Association," *Journal of Police Science* 14, no. 2 (2020): 13, <https://doi.org/10.35879/jik.v14i2.253>.

⁸ Imam Sukadi, "The Principle of Contrarius Actus as Government Control of Freedom of Association and Assembly in Indonesia," *Pulpit of Justice* 12, no. 2 (2019), <https://doi.org/10.30996/mk.v12i2.2457>.

The revocation of CSOs without going through the due *process of law* can castrate the constitutional rights of citizens to associate and assemble as guaranteed in the constitution. An *executive act* that is too large will have a bad impact on the development of democracy in Indonesia which will fundamentally create absolutism and authoritarianism of power. In this study, we will focus on the ratio of the government authority in dissolving CSOs without legal process and examining the authority of *the government a quo* in the context of a democratic country.

METHOD

This research uses a normative juridical type whose focus of study is in the form of literature studies, from primary legal materials in the form of legislative attractions related to research issues and also secondary legal materials in the form of books, journals, magazines that are relevant to the problem being researched.

The approach model used is a legislative approach and a conceptual approach. In accordance with the type of research and legal materials used, the analysis technique of legal materials in this study uses teleological interpretation techniques, namely by analyzing and identifying laws and regulations to find out the purpose and purpose of the formation of regulations.

DISCUSSION

1. Government's Legis Ratio in Dissolving Mass Organizations without Yudicial Process

The rule of law does not appear suddenly by the will of the ruler of the state, but is formed through an agreement between the government and the people. Although the authority to regulate and make laws is essentially in the hands of the people's representatives in the executive branch, the executive power can establish regulations that apply in general, if and only if the consent has been given by the people's representatives at the time of the passage of the law.⁹ Although it is known that every law that is made is the result of a political compromise between various interests, the main purpose of each law that is made is to improve the legal system that applies in general. Therefore, it is important for lawmakers to understand the applicable principles and will be used as the content of the norms of the legislation process.¹⁰

⁹ Veri Junaidi and Viola Reininda, "The Relationship between the President and the House of Representatives in the Formation of Laws in the Multiparty Presidential Government System," *Machinery Journal* 3, no. 1 (2020).

¹⁰ Agung Baok Pratama, "Measuring the Immunity of Perppu 1/2020 Implementing Officials with the Principle of Equality Before the Law," *Rule of Law* 17 (2021): 1–11.

Understanding the basic thinking (*ratio legis*) in the implementation of government policies to dissolve CSOs can be done by reading academic manuscripts that have been previously prepared in laws and regulations. Ratio legis is a legal reasoning that comes from the logic of thinking, which is the reason or purpose for the birth of legal regulations. To dissolve an CSOs with government policy, it is necessary to consider the *ratio of legis* or the legal reasons underlying the policy. In this case, it is important to understand that the basis or principle of the policy regulated in the legal product must be real, so that the content material formed refers to the need to achieve the purpose for which it is formed.¹¹

The Coordinating Minister for Politics and Legal Affairs gave several reasons why Perppu No. 2/2017 on CSOs was issued. First of all, the Perppu is part of the government's responsibility to protect all Indonesia people. Second, considering that there are as many as 344,039 CSOs active throughout Indonesia in community entities, both at the central and regional levels, CSOs need to be sought and optimized in order to contribute positively to the construction of the national scale. The third reason is because there are mass organization activities that are contrary to the values of Pancasila and the 1945 Constitution which can threaten nationalism and give rise to conflicts of national disintegration. Fourth, Law 17/2017 on CSOs is considered inadequate in preventing the spread of ideologies that are contrary to the content of Pancasila and the Constitution, both in terms of the substance of existing norms, prohibitions, sanctions, and legal procedures. Finally, the definition of teachings and actions that are contrary to Pancasila is considered too narrow because it only includes Atheism, Marxism, and Leninism, even though there are still beliefs other than that they are not in accordance with the content of Pancasila.¹²

In terms of political and legal terms, this Perppu acts as a legal umbrella that provides more leeway for the government in bearing, pursuing, and directing mass organizations. In the theory of constitutional value put forward by Karl Loewenstein, there are three relevant values, namely normative, nominal, and semantic constitutional values. In this case, the newly enacted CSOs Law tends to refer to semantic values, meaning that although it has legal force, it is only a tool or instrument of power. This constitution is only a term because its implementation is always related to the interests of the rulers.¹³

¹¹ Sukadi, "The Principle of Contrarius Actus as Government Control of Freedom of Association and Assembly in Indonesia."

¹² Marolli, "The Government Issues Perppu No. 2/2017 Regarding Amendments to the Law on Mass Organizations," 2017, https://www.kominfo.go.id/index.php/content/detail/10094/pemerintah-keluarkan-perppu-no-22017-tentang-perubahan-atas-undang-ormas/0/artikel_gpr.

¹³ Muhammad Reza Winata, "Legal Politics and the Constitution of the Authority to Dissolve Legal Entity Community Organizations by the Government," *De Jure Legal*

In principle, the *Contrarius Actus* Principle refers to the principle that a contrary act can be automatically canceled or revoked. In the context of Perppu No. 2 of 2017 which became Law Number 16 of 2017 concerning Community Organizations in Indonesia, the principle of the *Contrarius Actus* implies that the government has the authority to grant permits to community organizations (CSOs) and also cancel the permits if any actions or activities are found that are contrary to the provisions of the applicable law.

In the law, the government is given the authority to issue permits to mass organizations, which is regulated in Article 59 of the *a quo* law. However, if the CSOs take actions that are contrary to the provisions of the law, the government has the authority to revoke the permits that have been granted. This is in accordance with the principle of the *Contrarius Actus* which implies that actions contrary to the law can invalidate a previously granted decision or permission.

However, it is important to note that the granting and revocation of CSOs' permits must be carried out in accordance with the procedures set forth in the law and with due regard to the principles of law, justice and human rights. The government must ensure that the decision to revoke the permit is based on strong evidence and adheres to the principle of presumption of innocence and provides an opportunity for the CSOs to defend themselves.

In addition, the cancellation of CSOs' permits must also be carried out in a transparent and accountable manner. The government must explain the reasons and legal basis on which the license is revoked, as well as provide an opportunity for the mass organization to appeal or file a lawsuit to the court if it is dissatisfied with the decision.

Thus, the principle of *Contrarius Actus* in Perppu No. 2 of 2017 which became Law Number 16 of 2017 provides a basis for the government to grant permits and revoke permits for mass organizations that act contrary to the provisions of the law, but this must be done by paying attention to applicable legal procedures and upholding the principles of justice and human rights.

Law No. 16 of 2017 concerning CSOs was formed on the basis of the need to regulate the *contrarius actus principle* as part of the government's authority in dissolving CSOs that are considered to violate Pancasila and the 1945 Constitution. In consideration of this new law, it is explained that the government has the authority to revoke the license of mass organizations that are contrary to these values. In addition, the government also has the authority of attribution in the dissolution of mass organizations, which is the authority given by the 1945 Constitution or related laws to officials or bureaucratic bodies.

Research Journal 18, no. 4 (2018), <https://doi.org/10.30641/dejure.2018.v18.445-464>. Sidik Kahono, Muhammad Junaidi, and A Heru Nuswanto, "Juridical Review of the Provisions of the Principle of Contrarius Actus According to Law Number 16 of 2017 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Organization," *Semarang Law Review (SLR)* 1, no. 1 (2022): 89, <https://doi.org/10.26623/slr.v1i1.2351>.

The government has the authority to attribute in the dissolution of mass organizations, which means that the government is authorized by the 1945 Constitution or related laws to carry out dissolution actions against community organizations (CSOs). This authority is given to certain officials or bureaucratic bodies appointed by law.

The principle of *contrarius actus* in the context of the dissolution of an organization that has been formed refers to the principle of law that states that an action contrary to the law cannot be used to cancel or dissolve an organization that has been legally formed.¹⁴

In this context, if an organization has been formed in accordance with the applicable law and meets the established requirements, the dissolution of the organization cannot be carried out by referring to the acts or violations of the law that occurred after the organization was established. In this case, the *contrarius actus* principle recognizes that actions or violations of the law committed after the formation of the organization should have been dealt with in other ways, such as through applicable legal mechanisms, courts, or relevant sanctions.

However, it is important to note that the application of the *contrarius actus* principle can vary depending on the laws and legal systems in place in a country. Each country has its own rules and procedures regarding the dissolution of an organization, and there are cases where an organization that has been legally formed can be dissolved based on violations or unlawful acts that occurred after its formation.

The principle of *contrarius actus* emphasizes the importance of legal certainty and protection of the rights of organizations that have been legally formed. It also encourages the government or the competent authority to take action against actions that violate the applicable law or rules in a manner that is in accordance with the applicable legal mechanism, without harming the integrity of the organization that has been legitimately formed.¹⁵

The dissolution of CSOs can be carried out by the government if the CSOs violate the provisions set by law. Examples of violations that may fall into this category are CSOs that violate public security and order, threaten the unity and unity of the nation, carry out activities that violate the law, or violate other provisions regulated in the law.

The process of dissolving CSOs usually involves legal procedures stipulated in relevant laws. Officials or bureaucratic bodies that have attribution authority will study the case, collect evidence of violations, and carry out the steps regulated by law to dissolve the mass organizations concerned. However, it

¹⁴ Nabih Amer, "Analysis of the Dissolution of Community Organizations in the Perspective of the State of Law," *Journal of Legality* 13, No. 01 (2020), <https://doi.org/10.33756/Jelta.V13i01.5417>.

¹⁵ Pratama, "Measuring the Immunity of Perppu 1/2020 Implementing Officials with the Principle of Equality Before The Law."

is important to note that the dissolution of CSOs must be carried out with due regard to legal principles and human rights. Although the government has the authority to dissolve mass organizations, this must be done proportionately and with a clear legal basis. In addition, dissolved mass organizations also have the right to defend themselves and appeal the dissolution decision.¹⁶

The government usually has the authority to attribute in the dissolution of mass organizations as part of efforts to maintain security, order, and social stability in a country. However, the use of this authority must still be supervised and regulated by law in order to protect individual rights and ensure fairness in the process.¹⁷ The government's attribution authority in carrying out legal actions refers to the authority granted by laws or regulations to the government or the authority authorized to carry out actions or decisions that have legal effects.

2. Government Authority in Dissolving Community Organizations from a Democratic Perspective

Forming an organization is a form of implementation of the natural right of human beings as social beings to unionize. The formation of an organization can also be considered as an expression of beliefs and ideas agreed upon by citizens, as well as the media to convey ideas and opinions. Therefore, all organs or institutions established are the embodiment of independence and freedom of thought. The Constitution states that Indonesia is a country of law that upholds the basic principles of democracy that are in the same soul as Pancasila. Democracy is a form of institutionalization process of people's freedom, where these freedoms often contradict each other, but on the basis of differences, the people are united in a common goal. The main purpose of democracy is to control the wishes or desires of the rulers of the country who tend to be tyrannical and arbitrary.¹⁸

The conception of the state of law has the consequence that law must be the main guide in the state. A state of law (*rechtsstaat*) has a characteristic in the limitation of state power (executive).¹⁹ If the power to dissolve community organizations (CSOs) is only concentrated in the executive, then the state will

¹⁶ Moh. East Java, "Analysis of the Dissolution of Community Organizations in the Perspective of the Principle of Contarius Actus in the State of Law," *Journal of Development Law Paradigm* 6, No. 02 (2021), <https://doi.org/10.25170/Paradigma.V6i02.2637>.

¹⁷ Herman Herman And Hendry Julian Noor, "The Doctrine of Legal Action of State Administration Making Decisions (Beschikking)," *Journal of Legal Communication (Jkh)* 3, No. 1 (2017), <https://doi.org/10.23887/Jkh.V3i1.9240>.

¹⁸ Moh. Mahfud MD. *Democracy and Constitution in Indonesia* (Jakarta: PT. Rineka Cipta, 2000)

¹⁹ Zulkarnain Ridlwan, "INDONESIAN STATE OF LAW IS THE OPPOSITE OF NACHTWACHTERSTAAT," *FIAT JUSTISIA: Journal of Law* 5, no. 2 (2014), <https://doi.org/10.25041/fiatjustisia.v5no2.56>.

turn into a country that is intolerant of union and opinions, then it is not the character of the state of law described by A.V. Dicey.²⁰

Plato's definition of the state of law by an ancient Greek philosopher said that the state of law was built on the nobility of the law that was established and was not just used as an instrument of power to act arbitrarily and abuse its authority. A.V. Dicey revealed three characteristics of the state of law, namely (1) *supremacy of law*, *equality before the law*, and certainty of the due *process of law*.²¹

One form of implementation of Article 28E of the 45th Constitution is the existence of regulations regarding CSOs. However, Article 3 paragraph (1) of Law 12/2011 concerning PPUU emphasizes that the 1945 Constitution is the basic norm for all laws and regulations, as seen by Kelsen and Nawiaky. Therefore, the consequences are: (1) Regulations that are lower in degree cannot override the degree above them and (2) the content of the 45th Constitution becomes the basis for the formation of all laws and regulations. Thus, all regulations under it do not have to be in harmony with the Constitution. Regarding the dissolution of CSOs in Law 16/2017, there is a polemic on the application of the *contrarius actus* principle which is affirmed by the government as an argumentative postulate in withdrawing the determination or decision that has been made, even though in Law 17/13 concerning CSOs has not adhered to the principle of *contrarius actus*, the mechanism for dissolving CSOs first through the trial process until the fall of the judge's decision on permanent legal matters. Therefore, it cannot be justified to impose sanctions on CSOs that have not been proven to adhere, develop, and spread teachings or understandings that are different from Pancasila and the 45th Constitution without first carrying out a fair legal process.²²

The principle of *contrarius actus*, which is one of the principles in the State Administrative Law, gives the government the authority to revoke decisions or regulations that it has made. However, such withdrawal must be made by the institution that makes the decision or regulation. This principle was then adopted in Ps. 61 and 62 (3) of Law 16/2017 which explains that "the imposition of punishment in the form of administrative sanctions in the form of revocation of registered certificates and withdrawal of legal entity status" is a direct and immediate sanction that can be given by the Minister of Home Affairs or the

²⁰ Thera, "Legal Analysis of the Solidarity Action of the Islamic Defenders Front Community Organization in Makassar Reviewed from Law Number 8 of 1985 Juncto Law Number 17 of 2013 concerning Community Organizations."

²¹ Wahyudi Djafar, "Reaffirming the Commitment of the Rule of Law: A Note on the Trend of the Rule of Law Deficit in Indonesia," *Constitutional Journal* 7, no. 5 (2016): 151, <https://doi.org/10.31078/jk757>.

²² Imam Sarifuddin, "Juridical Review of the Dissolution of Mass Organizations in Law Number 16 of 2017 concerning Community Organizations in the Concept of the State of Law," *Repository.Uinjkt.Ac.Id*, 2019.

Ministry of Law and Human Rights against CSOs that are considered to endanger the integrity and authenticity of the Republic of Indonesia. Therefore, the withdrawal of the decree on the establishment of mass organizations is based on the principle of *contrarius actus*, so that officials who have the authority to issue decisions also apply to the recipients without going through the examination process first in court.²³

The promulgation of new regulations related to CSOs makes the dissolution process easier and does not require court channels as stipulated in Law 17/2013. This can be seen from Articles 61 and 62 paragraph (3) of Law 16/2017, the provisions contained in it state that the government is authorized to directly revoke the status of an organization's legal entity as an administrative sanction by the Minister of Home Affairs and the Minister of Law and Human Rights. In contrast to Law 17/2013, where the government must first make dialogue efforts before imposing administrative sanctions in accordance with the obligations and prohibitions regulated.²⁴ However, this new regulation has legal consequences that can hurt the sense of justice and deprivation of citizens' civil rights, because the government can at any time dissolve mass organizations that are considered not in line with the (political) interests of the rulers without going through the process of incarceration in court first.²⁵

In the previous regulation, the legal process for CSOs suspected of violating the regulations until the court examination was a form of implementation of the principle of presumption of *innocence* (*presumption of innocent*).²⁶ The principle says that a person must not be considered guilty until he is decided by a guilty judge, in this context CSOs still have the right to defend themselves and provide information in the examination process in court. However, in the latest regulation on CSOs, the judicial process has been abolished and this is considered detrimental to the values of democracy and justice. Criticism of the dissolution of CSOs without a court decision is based on the perspective of Human Rights, especially regarding the rights to freedom of association, assembly and opinion as stipulated in Article 28E paragraph (3) of the 1945 Constitution. If the government has the authority to dissolve CSOs without going through a court forum, then this can give rise to the practice of authoritarianism like during the New Order period. In addition, this can also

²³ Sarifuddin.

²⁴ Yonnawati Yonnawati, "Law Enforcement of Administrative Sanctions Against Licensing Violations," *Malahayati Law Journal* 3, No. 1 (2022), <https://doi.org/10.33024/Jhm.V3i1.7132>.

²⁵ Kahono, Junaidi, and Nuswanto, "Juridical Review of the Provisions of the Contrarius Actus Principle According to Law Number 16 of 2017 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Organization."

²⁶ A. Saiful Aziz, "Reconceptualization of the Interpretation of the Principle of Presumption of Innocence," *Iqtisad* 4, No. 1 (2018), <https://doi.org/10.31942/Iq.V4i1.1998>.

provide great and unlimited power, because the subjectivity of the authority attached to the position can arbitrarily dissolve organizations/institutions without going through a fair and balanced judicial process as adhered to by the rule of law.

Although the law allows CSOs to be dissolved, the process must be carried out fairly and in accordance with democratic principles. The government should not have too much authority in dissolving CSOs because this can lead to authoritarian behavior. Law enforcement as desired in the latest CSOs Law will certainly create authoritarianism in its enforcement and tend to be repressive and make the law an instrument of power politics in suppressing all interests that are not in line. Authoritarianism in the dissolution of mass organizations can also produce tyranny of power (*matchsstaat*) which is contrary to the characteristics of a state based on law (*rechtsstaat*).²⁷

The concept of the rule of law is a principle that underlines that the state must be under the influence and control of the law.²⁸ This concept emphasizes the need for legal certainty, fair and equal treatment before the law, and limitation of power. In Introduction to Constitutional Law, Jimly Asshiddiqie explained that the characteristic of the state of law or *rechtsstaat* is the limitation of power in the implementation of state power. The term is also known as "legal state" in United Kingdom and "*rechtsstaat*" in Netherlands and Germany. In general, the concept of the state of law refers to a system of government in which the power of the state is limited by law.²⁹ This means that the government must operate and act in accordance with the applicable legal rules, and must not act arbitrarily or beyond the limits that have been set by the law. In a state of law, no individual or group is above the law or exempt from legal obligations.

This limitation of power is important to maintain the balance of power between the government and citizens and protect individual rights. With clear and transparent legal rules, everyone has a guarantee of legal certainty and protection against abuse of power. The term "legal state" or "state based on the rule of law" is used in United Kingdom to convey the same concept, namely a state based on the rule of law. Meanwhile, the term "*rechtsstaat*" is used in Netherlands and Germany, which literally means "state of law." In this context, Jimly Asshiddiqie explained that the main characteristic of the state of law is the

²⁷ Nurul et al. Qomar, "The State of Law or State of Power (*Rechtsstaat* or *Machtstaat*)," 2018, no. 1 (2018).

²⁸ Stanley Greenstein, "Preserving the Rule of Law in the Era of Artificial Intelligence (AI)," *Artificial Intelligence and Law* 30, no. 3 (2022), <https://doi.org/10.1007/s10506-021-09294-4>.

²⁹ Bobi Aswandi and Kholis Roisah, "The State of Law and Pancasila Democracy in Relation to Human Rights (HAM)," *Journal of Indonesia Legal Development* 1, No. 1 (2019), <https://doi.org/10.14710/Jphi.V1i1.128-145>.

limitation of government power by law, which aims to protect the rights of citizens and prevent the abuse of power

Although civil society organizations (CSOs) can be revoked from their legal status through the new norms, it is important to ensure that the dissolution procedure is carried out in accordance with the principle of equality *before the law* and by respecting democratic principles.³⁰ The government should not have a monopoly in the decision to dissolve CSOs by ignoring the role of other state institutions, because this can lead to an increase in the government's authoritarian attitude. As a result, the resulting laws will tend to be repressive and prioritize the interests of the ruler over the people.³¹

The authority concentrated in the executive power to dissolve CSOs can lead to a ruling state rather than one based on law. The concept offered is that the exercise of power is limited by law and does not avoid the concentration of power. Jimly Asshiddiqie took the opinion of Julius Stahl and stated that a state is called a state of law if it meets four important elements³², namely:

1. Human Rights Protection: The state of law must protect the human rights of citizens in a fair and equal manner. This includes basic rights such as the right to freedom of expression of ideas and opinions, the right to freedom of expression, the right to freedom of religion, the right to assembly, and so on.
2. Division of Power: The state of law must apply the principle of division of power between government institutions, such as legislative, executive, and judicial powers. This principle prevents excessive concentration of power in the hands of one party and avoids abuse of power.
3. Rule of Law: The law state must run the government according to positive legal provisions. This means that every government action or policy must be based on clear legal principles and be in line with applicable legal principles.
4. Existence of State Administrative Court: The state of law must have a judicial system that examines disputes between citizens and the government in an administrative context (state administration). This judicial system aims to ensure justice and ensure that government actions are in accordance with the law.

In addition, A. V. Dicey also stated several characteristics of "*The Rule of Law*"³³, namely:

³⁰ Pratama, "Measuring the Immunity of Perppu 1/2020 Implementing Officials with the Principle of Equality Before The Law." *The Rule of Law*, Volume 17 (2021).

³¹ Moh. Mahfud MD, *Politics of Law in Indonesia* (Jakarta: LP3ES, 1998).

³² Jimly Asshiddiqie, *The Constitution and Constitutionalism of Indonesia* (Jakarta: Konstitusi Press, 2004).

³³ Zaid Afif, "The Concept of the Rule of Law State in Indonesia's Constitutional System," *Pioneer Journal of LPPM Asahan University* 2, no. 5 (2018).

1. The Rule of Law: The law is considered the supreme authority that binds all individuals and governments. No entity is stronger than the law, including the government, and everyone must be subject to the same law.
2. Equality Before the Law: All individuals, indiscriminately, must be treated fairly and equally by the law. There is no discrimination or unfair special treatment of a person based on social status, wealth, or power.
3. Protection of Individual Rights in Due Process of Law: each individual has the right to equal legal treatment and access to the law without discrimination. The legal process should be in line with the principles of justice and provide protection against abuse of power by the government.

By fulfilling the elements mentioned by Jimly Asshiddiqie and the characteristics mentioned by A. V. Dicey, a country can be considered a state of law based on law if it has the characteristics mentioned above.³⁴

The dissolution of a community organization without going through a clear legal procedure is an act that is contrary to the basic principles of the state of law. The principle of the rule of law, which should be upheld, demands that every government action, including the dissolution of an organization, be carried out in accordance with applicable law and through a transparent and accountable process. When the government takes steps to dissolve an organization without going through a proper legal process, it can be seen as a form of abuse of power that has the potential to weaken the foundations of the rule of law itself.³⁵

The thought of Julius Stahl, a legal expert known as the concept of the state of law (*Rechtsstaat*), emphasizes that the state of law must protect the human rights of every citizen. One of the rights guaranteed in the state of law is the right to association and assembly, including the right to form a community organization. According to Stahl, the existence of these rights is not just a formality, but an essential element of individual freedom in society. The state of law not only aims to enforce the law, but also to guarantee the freedom and welfare of its citizens.

Furthermore, Stahl emphasized the importance of having an independent judicial institution, especially the state administrative court, which functions as a protector of people's rights in disputes with the government. This institution has a crucial role in ensuring that government actions are not arbitrary and remain within the established legal corridor. Without a supervisory mechanism through the judiciary, the government has the potential to act indefinitely, which can result in violations of the basic rights of citizens.

³⁴ Afif.

³⁵ Kahono, Junaidi, and Nuswanto, "Juridical Review Of The Provisions Of The Principle Of Contrarius Actus According To Law Number 16 Of 2017 Concerning The Stipulation Of Government Regulations In Lieu Of Law Number 2 Of 2017 Concerning Amendments To Law Number 17 Of 2013 Concerning Community Organizations."

The dissolution of civil society organizations without regard to these principles not only ignores the rights of citizens, but also potentially violates the constitution, which is the supreme legal foundation in the country. The Constitution guarantees freedom of association and assembly as part of human rights that should not be reduced under any circumstances. Therefore, government actions that violate these rights without a strong legal basis and without a fair legal process, can be considered a violation of the constitution.

In the context of the state of law, any action that harms the rights of individuals, including the dissolution of community organizations, must go through an open and accountable legal process. When the state ignores these principles, the risk is the erosion of public trust in the legal system and government. Furthermore, it could open the door to authoritarian practices that threaten democracy and civil liberties that the rule of law is supposed to uphold.

Overall, the dissolution of civil society organizations without clear legal procedures not only violates the rights of citizens, but also has serious implications for the sustainability of the principle of the rule of law and constitutional protection in Indonesia. Therefore, every action taken by the government must always be based on the law and implemented in a transparent manner, in order to maintain legal integrity and justice for all citizens.

CSOs are a forum for the realization of freedom of association, assembly and expression of opinions for civil servants. In a country that adheres to democracy in its government, the state has an obligation to provide guarantees of protection of human rights. No exception, the revocation of the legal status of a mass organization, it is necessary for the state to act in accordance with relevant laws, not laws made for the benefit of power alone, that it is appropriate for the community to be given fair and undiscriminatory legal cases. The process of dissolving CSOs must first go through the process of a mechanism with the character of the state of law (*due process of law*) by an independent court.³⁶ This legal process is very urgent for justice seekers who in factual conditions have a position that is not stronger, meaning because the dissolution that can be carried out at any time and is subjective will have the potential to cause arbitrary actions against citizens. This model of disbanding oramas also seems unfair and balanced.³⁷ In Article 28 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that every individual has the right to freely associate, assemble, and express opinions. However, the latest rules regarding

³⁶ Supardi and Andi Safriani, "Antinomy of the Contrarius Actus Principle with the Principle of Due Process of Law in the Dissolution of Community Organizations Without Going Through Court Proceedings," *Alauddin Law Development Journal* 4, no. 2 (2022), <https://doi.org/10.24252/aldev.v4i2.17217>.

³⁷ M. Beni Kurniawan, "The Constitutionality of Law Number 16 of 2017 concerning the Determination of Perppu Number 2 of 2017 concerning Mass Organizations Reviewed from the 1945 Constitution and the Concept of the State of Law," *Journal of Law and Development, Faculty of Law, University of Indonesia* 48, no. 2 (2018): 268

community organizations (CSOs) are contrary to this article. The rule has a centralistic nature and dominance by government institutions (executive power) which gives birth to authoritarian regimes.³⁸

In his dissertation, Muchamad Ali Syafa'at explained that the state can revoke the legal status of organizations by restricting civil rights, for limited reasons such as maintaining the stability of state security, protecting the community from threatening dangers, preventing the occurrence of treason, guaranteeing health and morals, and protecting other civil rights. However, to ensure that the dissolution of the organization is carried out correctly and there must be provisions that are constitutionally stipulated as the reason for the dissolution of the organization. In addition, to determine whether an organization meets the reasons for dissolution, there must be a fair, *equal*, based on legal facts and decisive and objective evidence. Therefore, the dissolution or revocation of the legal status of an CSOs should be taken through a judicial mechanism.³⁹

In a democratic state of law, freedom of association and assembly is guaranteed in the 1945 Constitution, as explained in Article 28E (3). Community organizations (CSOs) are an integral part of social, national, and state life, which are expected to participate in achieving national goals and policies within the framework of the Republic of Indonesia with the ideology of Pancasila. The existence of CSOs is urgently needed in carrying out the function of social control over the state, to ensure a good democratic system, legal regulations such as Law 16/2017 on CSOs are needed, which guarantee the right to freedom of association and organization as part of civil and political rights.

In any case of dissolution of an organization that already has legal entity status, it is important to ensure that the process is carried out with respect to the principles of law, justice and human rights. Organizations affected by the dissolution should be given the opportunity to defend themselves and present relevant arguments or evidence. The decision to dissolve must be based on clear facts and laws, and be carried out through a fair and transparent procedure.

Restrictions on civil liberties without going through the examination mechanism at the trial are actions that are contrary to the principle of the rule of law and *due process of law*. The argument that the opportunity to access lawsuits through the State Administrative Court will only test the technical authority, that state administrative officials act and behave based on the authority given and regulated in the law. The concept of *Due Process of Law* requires the law to be the commander without any exceptions, and law

³⁸ Istiana Hermawati, "Criticism of the Failure to Implement Development in Indonesia and Alternative Solutions," *Sosio Informa* 7, No. 2 (2016), <https://doi.org/10.33007/Inf.V7i2.905>.

³⁹ Muchamad Ali Safa'at, *Dissolution of Political Parties: Arrangements and Practices of Dissolution of Political Parties in the Struggle of the Republic*.

enforcement must be based on the criteria in the law itself so that all forms of reasons for law enforcement that are not based on the rules that govern it are not accepted.

The enforcement of *the rule of law* is a benchmark to distinguish between good and bad laws, which results in fair and unfair laws. The essence of affirming the concept of *the rule of law* is to provide a guarantee of legal protection against what society considers social justice. With a good legal system and instruments, the state can become a true state of law, where justice to protect human rights and civil rights can be enjoyed by all citizens.⁴⁰

CLOSING

CONCLUSION

The Ratio of Legis to the enactment of the Government Regulation of Law No. 2/2017 which has now become Law 16/2017 concerning CSOs, namely because there is no accommodative administrative legal principle, in this case the *principle of contrarius actus*, therefore, in Law 16/2017 it was formed to fulfill the *principle of contrarius actus* so that the government with its authority can dissolve the orams without the need to wait and go through the judicial process (*due procces of law*). In essence, *the principle of contrarius actus* has been attached to state administrative positions that are given authority by attributes. This was done as a reaffirmation of the implementation of the government's authority to withdraw the permit to establish mass organizations if it was considered to violate the provisions of its establishment.

The government's authority to dissolve CSOs without a judicial process does not reflect a characteristic of the state of law based on democratic principles and ignores the constitutional rights of citizens to the guarantee of freedom of association, assembly and expression. The authority that the government currently has will have the potential to abuse authority because the government can freely assess a mass organization subjectively. The dissolution of mass organizations that are not based on democratic principles can also involve abuse of power by the government, corruption, injustice, or discrimination against certain groups. Such actions violate democratic principles that protect freedom of organization, pluralism, and freedom of opinion.

REFERENCES

- Afif, Zaid. "The Concept of the Rule of Law State in Indonesia's Constitutional System." *Pioneer Journal of LPPM Asahan University* 2, no. 5 (2018).
Amer, Nabih. "Analysis of the Dissolution of Community Organizations in the

⁴⁰ Jimly Asshidique, *Freedom of Association, Dissolution of Political Parties and the Constitutional Court*,.

- Perspective of the State of Law." *Legality Journal* 13, no. 01 (2020). <https://doi.org/10.33756/jelta.v13i01.5417>.
- Aswandi, Bobi, and Kholis Roisah. "The State Of Law And Pancasila Democracy In Relation To Human Rights (HAM)." *Journal of Legal Development Indonesia* 1, no. 1 (2019). <https://doi.org/10.14710/jphi.v1i1.128-145>.
- Aziz, A. Saiful. "Reconceptualization Of The Interpretation Of The Principle Of Presumption Of Innocence." *Iqtisad* 4, no. 1 (2018). <https://doi.org/10.31942/iq.v4i1.1998>.
- Djafar, Wahyudi. "Reaffirming the Commitment of the Rule of Law: A Note on the Trend of the Rule of Law Deficit in Indonesia." *Journal of Constitutional* 7, no. 5 (2016): 151. <https://doi.org/10.31078/jk757>.
- Greenstein, Stanley. "Preserving the Rule of Law in the Era of Artificial Intelligence (AI)." *Artificial Intelligence and Law* 30, no. 3 (2022). <https://doi.org/10.1007/s10506-021-09294-4>.
- Herman, Herman, and Hendry Julian Noor. "The Doctrine Of The Legal Action Of The State Administration Makes Decisions (Beschikking)." *Journal of Legal Communication (JKH)* 3, no. 1 (2017). <https://doi.org/10.23887/jkh.v3i1.9240>.
- Hermawati, Istiana. "Criticism Of The Failure To Implement Development In Indonesia And Alternative Solutions." *Sosio Informa* 7, no. 2 (2016). <https://doi.org/10.33007/inf.v7i2.905>.
- Humaira, Annisa. "The Concept of a Democratic State." *Reflection* 3, no. 1 (2010).
- East Java, Moh. "Analysis Of The Dissolution Of Community Organizations In The Perspective Of The Principle Of Contrarius Actus In The State Of Law." *Journal of Development Law Paradigm* 6, no. 02 (2021). <https://doi.org/10.25170/paradigma.v6i02.2637>.
- Junaidi, Veri, and Viola Reininda. "The relationship between the President and the House of Representatives in the formation of laws in the multiparty presidential government system." *Journal of JENTERA* 3, no. 1 (2020).
- Kahono, Sidik, Muhammad Junaidi, and A Heru Nuswanto. "Juridical Review of the Provisions of the Contrarius Actus Principle According to Law Number 16 of 2017 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Organization." *Semarang Law Review (SLR)* 1, no. 1 (2022): 89. <https://doi.org/10.26623/slr.v1i1.2351>.
- . "Juridical Review Of The Provisions Of The Principle Of Contrarius Actus According To Law Number 16 Of 2017 Concerning The Stipulation Of Government Regulations In Lieu Of Law Number 2 Ofn 2017 Concerning Amendments To Law Number 17 Of 2013 Concerning Community

- Organizations." *Semarang Law Review (SLR)* 1, no. 1 (2022). <https://doi.org/10.26623/slr.v1i1.2351>.
- Marfiando, Bayu. "The dissolution of Hizb ut-Tahrir Indonesia (HTI) is reviewed from the freedom of association." *Journal of Police Science* 14, no. 2 (2020): 13. <https://doi.org/10.35879/jik.v14i2.253>.
- Marolli. "The Government Issues Perppu No. 2/2017 concerning Amendments to the Law on Mass Organizations," 2017. https://www.kominfo.go.id/index.php/content/detail/10094/pemerintah-keluarkan-perppu-no-22017-tentang-perubahan-atas-undang-undang-ormas/0/artikel_gpr.
- Pranoto, Edi. "Socio-Legal Study Of The Ratification Of The Law On Community Organizations." *Legal Spectrum* 17, no. 1 (2020). <https://doi.org/10.35973/sh.v17i1.1570>.
- Pratama, Agung Baroque. "Measuring the Immunity of Perppu 1/2020 Implementing Officials with the Principle of Equality Before the Law." *Rule of Law* 17 (2021): 1–11.
- Qomar, Nurul et al. "The State of Law or State of Power (Rechtsstaat or Machtstaat)." 2018, no. 1 (2018).
- Ridlwani, Zulkarnain. "The Indonesian Legal State Is The Opposite Of Nachtwachterstaat." *Fiat Justisia: Journal of Legal Sciences* 5, no. 2 (2014). <https://doi.org/10.25041/fiatjustisia.v5no2.56>.
- Rosana, Ellya. "A democratic and human rights state." *Journal of Islamic Political Aspiration Binoculars* 12, no. 1 (2016).
- Sarifuddin, Imam. "Juridical Review of the Dissolution of Mass Organizations in Law Number 16 of 2017 concerning Community Organizations in the Concept of the State of Law." *Repository.Uinjkt.Ac.Id*, 2019.
- Sukadi, Imam. "The Principle of Contrarius Actus as Government Control of Freedom of Association and Assembly in Indonesia." *Mimbar Keadilan* 12, no. 2 (2019). <https://doi.org/10.30996/mk.v12i2.2457>.
- Supardi, and Andi Safriani. "Antinomy of the Contrarius Actus Principle with the Principle of Due Process of Law in the Dissolution of Community Organizations Without Going Through the Court Process." *Alauddin Law Development Journal* 4, no. 2 (2022). <https://doi.org/10.24252/aldev.v4i2.17217>.
- Thera, Rian. "Legal Analysis of the Solidarity Action of Islamic Defenders Front Community Organizations in Makassar Reviewed from Law Number 8 of 1985 Juncto Law Number 17 of 2013 concerning Community Organizations." *Student Scientific Journal of the University of Surabaya* 3, no. 1 (2014): 1–15. <https://journal.ubaya.ac.id/index.php/jimus/article/view/1757>.
- Winata, Muhammad Reza. "Politics, Law and Constitutionality of the Authority to Dissolve Legal Entity Community Organizations by the Government."

JSH**Supremasi Hukum: Jurnal Penelitian Hukum**

P-ISSN: 1693-766X ; E-ISSN: 2579-4663, Vol. 33, No 2, Agustus 2024, 92-109

<https://ejournal.unib.ac.id/supremasihukum/index>

DOI: <https://doi.org/10.33369/jsh.33.2.92-109>

De Jure Legal Research Journal 18, no. 4 (2018).
<https://doi.org/10.30641/dejure.2018.v18.445-464>.

Yonnawati, Yonnawati. "Enforcement Of Administrative Sanctions Against Licensing Violatoons." *Malahayati Law Journal* 3, no. 1 (2022).
<https://doi.org/10.33024/jhm.v3i1.7132>.

Yuslim. *Procedural Law of the State Administrative Court*. Jakarta: Sinar Grafika, 2015.