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## **Global Perspectives on Freedom of Association: Indonesia**

**Inna Junaenah**



**IRISH RESEARCH COUNCIL**  
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### **Project Lead**

Professor Maria Cahill

School of Law, University College Cork, Cork, Ireland

[www.associationalfreedom.org](http://www.associationalfreedom.org) | [maria.cahill@ucc.ie](mailto:maria.cahill@ucc.ie)

### **Editors of the Global Perspectives on Freedom of Association collection**

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# Freedom of Association and its Restrictions in Indonesia

*Inna Junaenah<sup>1</sup>*

## I. Introduction

This chapter examines freedom of association in Indonesia, which encompasses the legal recognition of the rights held by civil society organisations. The author follows Salamon, Sokolowski and List by defining civil society organisations in a broad sense, i.e., those organisations that exist outside the institutional structures of the government.<sup>2</sup> Within this definition, the term ‘civil society organisations’ signifies self-governing associations, allowing people to join, participate and or channel their solidarity voluntarily, including both informal and formal registered organisations, as well as those of a religious and secular nature. Salamon et al. provide some instances that exist as a broad grouping of entities, such as the following:

“hospitals, universities, social clubs, professional organisations, day care centers, grassroots development organisations, health clinics, environmental groups, family counseling agencies, self-help groups, religious congregations, sports clubs, job training centers, human rights organisations, community associations, soup kitchens, homeless shelters, and many more”.<sup>3</sup>

The broad sense of association may include the interpretation that an established association manifests sector-based characteristics, such as those in economics and politics.<sup>4</sup> This is why,

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<sup>1</sup> S.H., M.H., PhD, an academia at Department of Constitutional Law, Faculty of Law-Universitas Padjadjaran (Unpad), Indonesia. I thank Ghaniya, a Maldivian PhD graduated from Universiti Teknologi MARA, Malaysia, for language editing of my manuscript. Gratitude also goes to Center for State Policy Studies of Unpad for supporting the author to get connected with this collaboration.

<sup>2</sup> Preface, Lester M Salamon, S Wojciech Sokolowski and Regina List, *Global Civil Society: An Overview* (Center for Civil Society Studies Institute for Policy Studies The Johns Hopkins University 2003).

<sup>3</sup> *ibid* 1.

<sup>4</sup> Economics sector allow an establishment of association of trade union and politics sector is indicated in joining political parties. Numan Sofari Hafid, Tajul Arifin and Ine Fauzia, ‘Hak Berserikat Dan Berkumpul Menurut UUD Pasal 28E Ayat 3 Dan Pasal 21 Ayat 1 DUHAM; Tinjauan Aktivitas Ekonomi Islam’ (2025) 10 *Al-Muamalat: Jurnal Ilmu Hukum & Ekonomi Syariah* 49, 56.

under Elfudllatsani et al.'s notes, several laws<sup>5</sup> recognise a type of alliance including association involving political parties political parties, incorporated organisations, non-governmental organisations and civil society organisations.<sup>6</sup> Following Elfudllatsani et al.'s work, this chapter considers 'associations' through the lens of non-governmental organisations and civil society organisations.

The broad sense of such a meaning allows us to depict Indonesia as home to about 568,884 registered organisations and societal groups, as released by the Ministry of Home Affairs in January 2024.<sup>7</sup> Of the 509 surveyed, 302 entities are classified as incorporated organisations.<sup>8</sup> A similar survey also suggests that 21 entities are affiliated with unincorporated organisations.<sup>9</sup> It indicates that Indonesia also respects unregistered associations as they exist, and no prohibition is explicitly articulated on establishing an organisation. In addition, the main concerns asserted by the 509 organisations vary. The utmost concern is with people empowerment, including among women, children, persons with disabilities, and other marginalised groups (190 organisations). Other prominent concerns articulated in the survey include health (69), human rights and democracy (63), environment and climate change (55), broaden protection for marginalised groups (30), public services (28), SDGs (24), diversity, tolerance, and peace (12), legal aid (6), and labour (3).<sup>10</sup>

Drawing from Rukmana Amanwinata's doctoral thesis, Raja Adil Siregar highlights the crucial value of freedom of association, as it allows individuals to channel their aspirations, assert their collective interests, and participate in decision-making processes.<sup>11</sup> This chapter emphasises the concept of civil society organisations in relation to the freedom of association within the legal framework centred on the 1945 Constitution, the Human Rights Act No. 39 of 1999, and the Civil Society Organisations Act of 2013, with its amendment in 2017. As for a brief introduction to Indonesia, the Constitution also grants the President the authority to participate in international agreements, one of which may include ratifying a covenant under

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<sup>5</sup> Such as the act regulating political parties, inherited Dutch colonial law in *Staatsblad* No. 64 of 1870, the Environmental Act 1982, and the Civil Society Organisation Act No. 2 of 2017.

<sup>6</sup> Bahar Elfudllatsani, Isharyanto and Agus Riwanto, 'Kajian Mengenai Kebebasan Berkumpul Dan Berserikat Pasal 28E Ayat (3) Undang-Undang Dasar 1945 Melalui Organisasi Kemasyarakatan Kaitannya Dengan Teori Kedaulatan Rakyat Dan Hak Asasi Manusia' (2019) 7 *Jurnal Hukum dan Pembangunan Ekonomi* 52, 56.

<sup>7</sup> INFID, 'Laporan Survei Kondisi Eksisting Dan Kapasitas Kelembagaan OMS Di Indonesia' (2024) 1.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid* 34–35.

<sup>11</sup> Raja Adil Siregar, 'Tinjauan Yuridis Terhadap Kebebasan Berserikat, Berkumpul Dan Mengeluarkan Pendapat Berdasarkan Undang-Undang Nomor 17 Tahun 2013 Tentang Organisasi Kemasyarakatan' (2015) 2 *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 1, 6 <<https://www.neliti.com/publications/34427/tinjauan-yuridis-terhadap-kebebasan-berserikat-berkumpul-dan-mengeluarkan-pendap>>.

United Nations initiatives.<sup>12</sup> The legal framework underpinning freedom of association, therefore, includes Act No. 12 of 2006, which ratifies the International Covenant on Civil and Political Rights.<sup>13</sup> The Convention binds Indonesia as a State Party to the United Nations, and it was ratified in 2006.<sup>14</sup>

The Civil Society Organisations Act 2013 as amended in 2017 encourages associations to be aligned with the primary purposes of the nation-state of Indonesia. Any violation of this alignment may result in a restriction. Since the 2017 amendment, there have been few discussions or criticisms regarding the provisions that removed the role of the court in the process of banning an association. Instead, recent regulations have been enacted with provisions deemed to address criticism of organisations over the Government's policies. In addressing this, this chapter highlights the queries on the extent of legal positions underpinning the freedom of association. It seeks to establish whether the constitution recognises the right to freedom of association, by the extent of the rights translated into legislation and any indications to restrict particular behaviour of associations.

This chapter proceeds as follows: Part II considers the nature of freedom of association as a constitutional right and in light of background controversies between those involved in drafting the 1945 Constitution. Part III outlines the scope of the right to freedom of association as protected under the terms of the Civil Society Organisations Act 2013 as amended in 2017. Part IV, meanwhile, draws attention to various ways in which the autonomy of civil society organisations is compromised and the right to freedom of association is restricted. A conclusion reflects on the contours of the right within Indonesia's legal and political culture.

## **II. Freedom of Association as a Constitutional Right**

Fundamentally, freedom of association is recognised by the 1945 Constitution.<sup>15</sup> Articles 28 and 28 (3) of the 1945 Constitution consider freedom of association as one package with the freedom of assembly and freedom of thought, both in oral and written form, and further to be governed by law. As sourced from minutes of the constitutional amendment, some concerns

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<sup>12</sup> Article 11 of the 1945 Constitution of Republic of Indonesia.

<sup>13</sup> International Covenant on Civil and Political Rights (16 December 1966).

<sup>14</sup> 'Status of Ratification Interactive Dashboard' <<https://indicators.ohchr.org/>>.

<sup>15</sup> The origin of the 1945 Constitution was prepared in upholding the independence of Indonesia inherited by the civil law legal tradition brought about the Netherlands post colonialism. The then additional provisions providing human rights were enacted through the second phase of constitutional amendments in 2000.

highlighted several matters about recognising human rights in the constitutional provision in the initial independence and constitutional rights, which secure freedom of association in the amendment of the 1945 Constitution.<sup>16</sup>

A debate behind such a constitutional right occurred where the framers of the Constitution were of two main distinct contentions concerning the narratives of ‘human rights,’<sup>17</sup> i.e., they were in opposition as to whether human rights should be materialised into the Constitution. Soekarno and Supomo disagreed, whereas Mohammad Hatta and Mohammad Yamin agreed with materialising human rights in the constitutional provisions. For Soekarno, the freedom of association, alongside freedom of speech and assembly, was perceived as prejudiced in reflecting individualistic and liberal values, which might contrast with the collective realm of the Indonesian nation-state.<sup>18</sup>

Contrariwise, Mohammad Hatta and Mohammad Yamin raised the counterargument that ignoring human rights in the Constitution might lead to an autocratic government, which risked undermining protection for the country’s people. Yamin argues that the absence of a stipulation recognising people’s right to protect their rights would contradict the notion of the ‘republican’ principle. A compromise was agreed upon to include several rights, including freedom of association; however, those entitlements were to be further regulated in legislation.

It was decided that fundamental ideas about human rights were best accommodated in the then-inaugurated Constitution, ultimately taking the central issue of freedom as its core. Such consensus reflects that the framers of the 1945 Constitution did not neglect the important and historical role of pioneering civil society organisations prior to Indonesian independence in 1945. For instance, *Sarekat Dagang Islam* (Islamic Trade Union, 1868–1956) was among the organisations acting in the collective movement during the National Revival period. In a similar era, *Jong Java* (Young Java, 1918), *Jong Sumatranen Bond* (Young Sumatrans Union, 1917), *the Studerenden Vereeniging Minahasa* (Minahasan Study Union, 1918), *Jong Ambon* (Young Ambon, 1918), *Sarekat Ambon* (Ambonese Union, 1920), and *Pasundan* (Land of the Sundanese, 1914) represented youth movement organisations. Others were also found to be

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<sup>16</sup> Editors, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses, Dan Hasil Pembahasan 1999-2002, Buku VIII Warga Negara Dan Penduduk, Hak Asasi Manusia, Dan Agama* (Revisi, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi 2010).

<sup>17</sup> *ibid* 26–29.

<sup>18</sup> In Indonesia’s culture, this spirit is well-known as “*gotong-royong*” (hand-in-hand teamwork) and “*kekeluargaan*” (“kinship”, or sometimes, it can also imply a sense of familial closeness).

faith-based organisations, such as Muhammadiyah (1912), the first women's organisation – Aisyiyah (1917), Nadhlatul Ulama (NU, 1926), and *Persatuan Islam* (Islamic Union, 1923).<sup>19</sup>

Recently, Nadhlatul Ulama and Muhammadiyah have been progressively developing several sub-autonomous divisions and foundations, serving communities by preparing and implementing programs to address social problems. For instance, Nadhlatul Ulama and Muhammadiyah work to establish numerous educational institutions, from kindergarten to university, and operate numerous hospitals and medical clinics.<sup>20</sup> In 2018, USAID also acknowledged Nahdlatul Ulama and Muhammadiyah as among the active faith-based organisations providing services in education, health, and other developmental sectors, such as health and education.<sup>21</sup> Discussed later, the important strategic position of these organisations creates concern that the government may restrain their criticisms, but not by directly banning mechanisms.

During the discussion of the second phase of amendment of the 1945 Constitution, the Ad Hoc Commission for the 1945 Constitutional Amendment agreed more with the sense of 'regulation,' rather than a provided 'guarantee,' for the freedom of association, in addition to freedom of assembly. To emphasise the sense of 'regulation,' Gregorius Seto Harianto, Khaliq, and Nursyahbani perceive that those freedoms shall be regulated in legislation, so their actualisation avoids enjoyment without an order.<sup>22</sup> Hence, as Dewa Gede Atmadja agreed during the amendment debate, there should be no restriction on fundamental freedoms unless for the reasons of public order and morality, and to protect the broader public interest.<sup>23</sup> The Constitution anticipates the restriction over the enjoyment of human rights when falling under the criteria of i) established by law, ii) to guarantee the recognition and respect of the rights and freedoms of others, iii) due to morality, religious values, security, and public order in a democratic society.<sup>24</sup> Henceforth, the discussion involves a) the interpretation of the extent of the freedom of association provisions and b) the anticipation of employing restrictions over the association.

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<sup>19</sup> Merle Calvin Ricklefs, *A History of Modern Indonesia since c. 1200* (Forth Edit, Macmillan International Higher Education 2008) 204–218.

<sup>20</sup> USAID, 'Civil Society Organizations In Indonesia' (2018).

<sup>21</sup> *ibid.*

<sup>22</sup> Editors (n 15) 204–205.

<sup>23</sup> *ibid* 236, 280.

<sup>24</sup> Article 28J (2) of the 1945 Constitution of Republic of Indonesia.

### III. The Scope of Freedom of Association Provisions

Among studies on freedom of association in the context of Indonesia, there are limited works that elaborate on interpreting the extent of the respected rights.<sup>25</sup> Therefore, this part of the discussion primarily examines the subject matter of the Civil Society Organisations Act 2013, with the 2017 amendment as a reference to outline the scope of rights provided therein. The relevant explanation is also found within other laws, such as the Human Rights Act 1999. The respected Act indicates this matter into several salient features, including 1) the nature and types of associations, 2) the extent of entitlements, 3) registered and incorporated associations: the conditions and procedures, 4) the internal rule of organisations, 5) empowerment of associations, 6) internal disputes within associations and 7) prohibition and penalties. Each of these will be dealt with in turn.

First, we consider the nature of civil society organisations. Prior to narrowing down the extent of rights, the Civil Society Organisations Act 2013 defines a civil society organisation as an organisation established by society voluntarily, based on shared aspirations, willingness, needs, interests, activities, and goals, to participate in development for the sole purpose of the nation-state.<sup>26</sup> As Putra Setiawan and Riwanto agreed, an established association represents a vehicle for society to actualise its freedom of peaceful assembly. Additionally, it is a realisation of public participation in enhancing democracy to uphold freedom, equality, brotherhood, and honesty.<sup>27</sup> Setiawan and Riwanto point out that there were 349,203 registered organisations in 2017.<sup>28</sup> The earlier-mentioned 568,884 registered ones are developing in 2024,<sup>29</sup> demonstrating that people exercise and implement this freedom as part of democracy and human rights.<sup>30</sup>

Second, we turn to the extent of entitlements afforded. The Civil Society Organisations Act recognises the right to freedom of association, which includes the right to form associations; thus, the organisation deserves legal protection due to its existence and

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<sup>25</sup> Such as the work from Siregar (n 10); Fauziah Mursid, 'Indeks Demokrasi Indonesia Naik, Perludem: Masih Diklasifikasikan Cacat' *Republika* (Jakarta, 16 March 2022) <<https://www.republika.co.id/berita/r8uflx487/indeks-demokrasi-indonesia-naik-perludem-masih-diklasifikasikan-cacat>>; Elfudlatsani, Isharyanto and Riwanto (n 5); R Herlambang Perdana Wiratraman, 'Hak-Hak Konstitusional Warga Negara Setelah Amandemen UUD 1945: Konsep, Pengaturan Dan Dinamika Implementasi' (2007) 1 *Hukum Panta Rei* 1.

<sup>26</sup> Article 1.1 of the Civil Society Organisations Act No. 17 of 2013.

<sup>27</sup> Aditya Putra Setiawan and Agus Riwanto, 'Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Hak Asasi Manusia' (2020) 4 *Res Publica* 273 <<https://digilib.uin-suka.ac.id/id/eprint/31708/>>.

<sup>28</sup> *ibid.*

<sup>29</sup> INFID (n 6) 1.

<sup>30</sup> Setiawan and Riwanto (n 26).

activities.<sup>31</sup> In parallel, the Human Rights Act entitles everyone to the right to establish political parties and civil society organisations.<sup>32</sup> The author subscribes to Joseph Raz in advocating the importance of freedom of association, among other fundamental rights, as a liberty for everyone, whether they choose to exercise it or not.<sup>33</sup> Their individual right to join an association signifies a decision to surrender certain personal rights in order to preserve others' fundamental rights.<sup>34</sup>

Under the Human Rights Act, the right to establish an organisation is a path to the right to participate in state governance, inalienable from the right to freedom of peaceful assembly.<sup>35</sup> Accordingly, the significance of freedom of association is interdependent with the right to take part in public affairs, as pointed out by Article 28C (2) of the 1945 Constitution, justifying everyone to promote and assert his or her rights collectively in developing society and country. Moreover, under the Human Rights Act, the right to take part in public affairs includes participation a) to propose a law or policymaking, b) to be engaged in the protection, enforcement, and promotion of human rights, and c) to submit a petition in an indication of human rights violation.<sup>36</sup> In proposing a law or policymaking, Article 102 provides civil society organisations with their entitlement to channel aspirations about policymaking on human rights matters by submitting to human rights institutions. Engagement in human rights promotion is permitted for civil society organisations, as well as to other stakeholders, such as groups and political organisations.<sup>37</sup> Moreover, Article 90 of the Human Rights Act allows a group or organisation – and not only an individual – to represent itself in submitting a petition indicating a human rights infringement of its members' rights or based on shared legal interests.

Freedom of association is considered a parallel framework covering individual rights, which is important for reflecting a collective interest in achieving shared goals.<sup>38</sup> Under the Civil Society Organisations Act 2013, Article 20 entitles civil society organisations to:<sup>39</sup>

- i. to regulate and manage the internal organisation independently and openly;

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<sup>31</sup> Article 20 (e) of the Civil Organisations Act No. 17 of 2013.

<sup>32</sup> Article 24 (1) of Human Rights Act No. 39 of 1999.

<sup>33</sup> Joseph Raz, 'Rights and Individual Well-Being' (1992) 5 Ratio Juris 127, 132.

<sup>34</sup> Iutisone Salevao, *Rule of Law, Legitimate Governance & Development in the Pacific* (Bridget Maidment and Matthew May eds, ANU E Press 2005) 26.

<sup>35</sup> Article 24 (1) and (2) of the Human Rights Act No. 39 of 1999.

<sup>36</sup> Article 44 of the Human Rights Act No. 39 of 1999.

<sup>37</sup> Article 100 of the Human Rights Act No. 39 of 1999.

<sup>38</sup> Economics sector allow an establishment of association of trade union and politics sector is indicated in joining political parties. Hafid, Arifin and Fauzia (n 4) 56.

<sup>39</sup> Article 20 of the Civil Organisations Act No. 17 of 2013.

- ii. to obtain the intellectual property rights due to the name and symbol of the organisation under the legal framework;
- iii. to assert the organisation's goals;
- iv. to organise activities to achieve the respective goals;
- v. to collaborate with the government, local government, the private sector, and other parties to develop and sustain the organisations.

These entitlements suit accommodating collective action on behalf of the organisation. It is worth noting that freedom of association is commonly intended to assert collective bargaining.<sup>40</sup> Mutual rights under freedom of association, as enshrined in the Human Rights Act, are considered aimed at protecting, enforcing, and promoting human rights within the national legal framework.<sup>41</sup> However, the collective purpose under the Civil Society Organisations Act tends to be designed as a part of achieving national purposes, which leads to the consequence that a civil society organisation is allowed to be sponsored by the government. The respected terms and conditions are closely interlinked with the following provisions that underpin an organisation.

Thirdly, we consider the types of civil society organisations that are protected. Marking the types of civil society organisations is deemed identical to identifying the status of an organisation. The Civil Society Organisations Act regulates institutional matters such as classifying the status of incorporated and unincorporated associations.<sup>42</sup> Since only incorporated organisations are allowed by the Act to become registered, the classification is also meticulous with regard to the type, i.e., incorporated but unregistered organisations. Considering the survey found that 21 of the 509 institutional respondents are unregistered,<sup>43</sup> the other organisations are both unincorporated and unregistered. The Act attempted to accommodate unincorporated organisations on an equal footing with registered ones. Under the former Articles 16, 17, and 18, the local government was authorised to generate a type of letter of certification acknowledging that an unincorporated organisation was equally registered (*Surat Keterangan Terdaftar*).<sup>44</sup> Those provisions are no longer in force as the Constitutional Court<sup>45</sup> invalidated this authority. In Verdict No. 82/PUU-XI/2013 and No. 3/PUU-XII/2014,

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40 Burns H Weston, 'Human Rights' (1984) 6, No. 3 Human Rights Quarterly 257 <<https://www.jstor.org/stable/762002>>; Michael Haas, *International Human Rights: A Comprehensive Introduction* (Second, Routledge 2014).

41 Article 24 (1) and (2) of Human Rights Act No. 39 of 1999.

42 Article 10(1) of the Civil Society Organisations Act No. 17 of 2013.

43 INFID (n 6) 1.

44 Article 16, 17, and 18 of the Civil Society Organisations Act No. 17 of 2013.

45 Indonesian legal system recognises separated judiciary bodies (the Constitutional Court and the Supreme Court) to review the written law. The Constitutional Court has power to review the constitutionality of primary Act, while

the Court clarifies that even though unregistered, a social organisation has the right to exist, provided it does not compromise public safety and order and/or infringe upon the rights and freedoms of others.<sup>46</sup> Thus, no judgment expressed by the government should be justifiable for marking the unregistered organisation as prohibited and prohibiting their activities, as long as they do not violate the law.<sup>47</sup>

After all, a registered status is beneficial as the law allows an association to receive social funds and government facilitation.<sup>48</sup> Conversely, it is understandable that unregistered organisations may be unlikely to be the beneficiaries of government charity and aid initiatives. Nevertheless, it is risky to disregard the eligibility of those unregistered associations to participate in legislation-making. This is because the Act No. 13 of 2022 concerning the legislation-making process includes the registered civil society organisation among eligible parties to participate in legislation-making.<sup>49</sup> To be considered registered, a civil society organisation shall be verified as an incorporated association.<sup>50</sup> Regrettably, this provision may narrow the extent of freedom of association, as mentioned in the previous section, the opportunity to take part in public affairs.

Fourthly, we turn to the internal rule of organisations. It appears that no force is imposed to join an association as the Civil Society Organisation Act 2013 recognises the principle of a voluntary basis, along with social, independent, non-profit, and democratic elements.<sup>51</sup> Such Article 4 is consistent with the definition of a “civil society organisation” under Article 1.1 as an organisation established and founded by the society voluntarily, which shares aspirations, willingness, needs, interests, activities, and goals in a way to participate in national development for the sole of the State goals. Nevertheless, an anomaly appears in Article 5, where the law frames the purpose of the organisations, among others, as assisting public services and preserving natural resources and the environment.<sup>52</sup> Such an incoherent provision may undermine the autonomy of the internal organisation, as entitled under Article 20(a), specifically in governing and administering internal affairs independently. In Verdict No. 82/PUU-XI/2013 and 3/PUU-XII/2014, the Constitutional Court of the Republic of Indonesia reviewed several provisions in the Civil Society Organisations Act 2013 to determine whether

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the Supreme Court is authorised to review whether the subsidiary legislations contravene the primary Act or the higher legislation. Article 24 of the 1945 Constitution of Republic of Indonesia.

<sup>46</sup> Eryanto Nugroho, ‘Sengkarut Hukum Pembubaran Ormas’ (*PSHK*, 2022).

<sup>47</sup> Siregar (n 10) 14–15.

<sup>48</sup> *ibid.*

<sup>49</sup> Interpretation of Article 96(3) of the Legislation-Making Act No. 13 of 2022.

<sup>50</sup> Article 15 (1) of the Civil Society Organisations Act No. 17 of 2013.

<sup>51</sup> Article 4 of the Civil Society Organisations Act No. 17 of 2013.

<sup>52</sup> Article 20 of the Civil Organisations Act No. 17 of 2013.

they contravened the 1945 Constitution. The petitioner argues that the state should barely be justifiable in controlling anybody's manifestation of a school of thought. Therefore, in respect of the enjoyment of freedom of association and peaceful assembly, Article 5 should not be necessary to determine any goal of the organisation.<sup>53</sup>

Article 29 is a protective provision against laws that impede the organisational autonomy to determine how to structure the organisation by deliberation and consensus. In the Constitutional Court Verdict No. 3/PUU-XII/2014, it is argued that the state should not limit or interfere with the internal association mechanism.<sup>54</sup> In responding so, the Court concluded the above assertions concerning those clauses as unconstitutional. On the one hand, the judges appreciated the importance of the law that directs the association's goals. However, on the other side, such a treatment may undermine the notion of independence and autonomous association. This is because the sustainability of social organisations should be a primary concern of internal affairs.<sup>55</sup> Holding this contention, the Court invalidated Article 34(1), which had imposed equal rights and duties on members of the associations as determined in each organisational Constitution.

Fifthly, in relation to the empowerment of civil society organisations, Chapter XII of the Civil Society Organisations Act 2013 authorises the government program to enhance the capacity of social organisations. It aims to enhance both its performance and sustainability.<sup>56</sup> Under the coordination of the Ministry of Home Affairs, the government provides an information system to improve public services and administrative order.<sup>57</sup> This provision is impressive in implementation, especially in terms of pursuing the obedience of civil society organisations and in fostering bonds with the government.<sup>58</sup> Not to mention that facilitation in the form of financial aid is expected to enable civil society organisations to grow independently, be accountable, and professional.<sup>59</sup> The author disagrees with the opinion that the respected empowerment is intended to steer the dependency of civil society organisations clear of the interference of any parties (including foreign institutions), which potentially

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<sup>53</sup> Minutes of Verdict of Constitutional Court of Republic of Indonesia Number 82/PUU-XI/2013 and 3/PUU-XII/2014. MKRI, 'Risalah Sidang Perkara Nomor 82/PUU-XI/2013 Perkara Nomor 3/PUU-XII/2014 Perihal Pengujian Undang-Undang Nomor 17 Tahun 2013 Tentang Organisasi Kemasyarakatan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Acara Mendengarkan Keterangan ' (2014) 9.

<sup>54</sup> MKRI (n 52); *Verdict 3/PUU-XII/2014* 1.

<sup>55</sup> *Verdict 3/PUU-XII/2014* (n 53) 127.

<sup>56</sup> Article 40 and 41 of the Civil Society Organisations Act No. 17 of 2013.

<sup>57</sup> Article 42 of the Civil Society Organisations Act No. 17 of 2013.

<sup>58</sup> Andi Ilham Nurhadi, Eva Eviany and Udaya Madjid, 'Implementasi Kebijakan Program Pemberdayaan Organisasi Kemasyarakatan Di Provinsi DKI Jakarta' (2024) 10 *Jurnal Kajian Pemerintah (JKP) Journal of Government, Social and Politics* 127, 128 <<https://journal.uir.ac.id/index.php/JKP/article/view/17011/6410>>.

<sup>59</sup> *ibid*.

jeopardises its existence and breaks the law.<sup>60</sup> Such prejudice is inappropriate due to its tendency to undermine the autonomy of organisations and label them arbitrarily in general. In practice, it is noticeable that the empowerment initiative is uneven across civil society organisations.<sup>61</sup> The factors include uneven socialisation, the selection process, and the lack of a government budget.<sup>62</sup> All in all, the independence of civil society organisations should be the priority, and above all, for them to maintain their criticisms and freedoms, and keep them aware of meaningful participation in the decision-making process of government policies.

Sixthly, we consider internal disputes within civil society organisations. To some extent, civil society organisations suffer from internal disputes due to several factors, such as a lack of empowerment and capacity building, as well as being labelled as illegal organisations because they are unregistered.<sup>63</sup> In situations where the internal mechanisms of an organisation fail to resolve internal conflicts, Article 57 provides a mediation instrument offered by the Government. Even if mediation fails, a dispute before the Court is allowed.<sup>64</sup>

Seventhly and finally, we turn to prohibition and penalties. Through the amendment under the Act 2017, Article 59 is revised to warn the civil society organisations of any prohibitions. Considering that the penalty is classified as administrative and criminal punishment, the current clauses (1) and (2) of Article 59 characterise administrative issues,<sup>65</sup> while clauses (3) and (4) indicate specific criminal conduct.<sup>66</sup> It leads to a discussion on the reasons for banning an organisation as an expression of restrictions.

#### **IV. Restrictions on Freedom of Association**

Prohibition or breaking the law may cause a restriction on the associations. As mentioned

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<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> Regina Aprilia Medellu, Sarah Sambiran and Donald K Monintja, 'Kinerja Badan Kesatuan Bangsa Dan Politik Dalam Pembinaan Dan Pemberdayaan Organisasi Kemasyarakatan Di Kabupaten Minahasa Selatan' (2023) 3 Eksekutif 1; Nurhadi, Eviany and Madjid (n 57).

<sup>63</sup> Medellu, Sambiran and Monintja (n 61) 2.

<sup>64</sup> Article 58 of the Civil Society Organisations Act No. 17 of 2013.

<sup>65</sup> Such as the misuse of the name or symbol of organisations and managing donation and some fund againsts the law.

<sup>66</sup> Such as arbitrarily overriding the responsibilities of law enforcement institutions and violating the principles of *Pancasila*. Articulated in the Preamble of the 1945 Constitution, *Pancasila* contains five principles as follows:

1. a belief in the One and Only God;
2. just and civilised humanity;
3. the unity of Indonesia,
4. democratic life led by wisdom of thoughts in deliberation amongst representatives of the people,
5. social justice for all the people of Indonesia.

earlier, the 1945 Constitution favours the restriction over the enjoyment of human rights under the criteria of i) established by law, ii) to guarantee the recognition and respect of the rights and freedoms of others, iii) due to morality, religious values, security and public order in a democratic society.<sup>67</sup>

To some extent, civil society organisations may express their views on the law and policymaking, which can enrich and challenge draft legislation and government policies. This freedom should be guaranteed, as civil society organisations play a crucial role in a democratic society. As illustrated by International Amnesty for Indonesia, the existence of civil society organisations is valuable in opposing the majority tyrant, who is often described as the enemy of democracy.<sup>68</sup>

Hans Thoolen marks the 1970s and 1980s as the age of government policies being made to reduce the number of political parties, a prohibition of civil servants from joining independent political parties, a conversion of peasant associations and trade unions into government-sponsored organisations, and an effort by the Government to restrain the influence of student associations.<sup>69</sup> Also, legislation regarding the dissolution of civil society organisation has evolved since 1985 (replaced in 2013 with the latest amendment in 2017).<sup>70</sup>

There is an indication of concern about the unfair treatment of freedom of association linked to reports submitted to the National Human Rights Commission (*Komnas HAM*). They were supposed to be in effect from 2013 (the year of the original enactment) until 2017, the year the latest amendment to the Civil Society Organisations Act was enacted. Due to the data not being available during the initial period, the petition was only submitted in 2015. The records in 2015, 2016, and 2017 emphasised petitions concerning the issue of infringement of freedom of association. The total number of reports in 2015 hit 18 records, decreased in 2016 (16 records), and re-increased in 2017 (19 records).<sup>71</sup>

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<sup>67</sup> Article 28J (2) of the 1945 Constitution of Republic of Indonesia.

<sup>68</sup> Thea DA, 'Amnesty International Indonesia Beberkan 4 Syarat Pembubaran Ormas' *Hukumonline.com* (31 March 2022) <<https://www.hukumonline.com/berita/a/amnesty-international-indonesia-beberkan-4-syarat-pembubaran-ormas-lt6245ccd6c78d7/>>.

<sup>69</sup> Hans Thoolen, 'Indonesia and the Rule of Law: Twenty Years of "New Order" Government: A Study' (1987) 116.

<sup>70</sup> The Civil Society Organisations Act 2013 is amended by the Government Regulation in Lieu of Law No. UU No. 2 of 2017. In Indonesia legal system, the Act of Parliament namely *Undang-Undang* is under a hierarchy of law below the 1945 Constitution. Government Regulation in Lieu of Law (so-called *Perppu*) is equal to the main legislation and justifiable to be issued by President in a case of administrative emergency. A *Perppu* shall be passed by the parliament (the People Representative Body) to be validated as a main legislation. This chapter emphasises that the *Perppu* No. 2 of 2017 is validated by the enactment of the Act No. 16 of 2017; (*Undang-Undang Nomor 16 Tahun 2017 tentang Penetapan Perppu No. 2 Tahun 2017 tentang Perubahan Atas UU No.17 Tahun 2013 tentang Organisasi Kemasyarakatan*).

<sup>71</sup> 'Periodic Data Report' <<https://dataaduan.komnasham.go.id/#/periodic-data/actual-data>>.

This situation seems to have persisted until recently, as indicated by the Universal Periodic Review submitted by the Indonesian Government. Indonesia received a recommendation to repeal the undue restrictions on freedom of association and peaceful assembly, including Law No. 17 of 2013 on Civil Society Organisations (United States of America) and Law No. 19 of 2016 on electronic information and transactions (Switzerland). Costa Rica also recommends that Indonesia harmonise the regulations that govern freedom of expression and association in accordance with its respective international obligations (Costa Rica).<sup>72</sup>

Those reviews sound fair in criticising the experience of banning organisations in Indonesia. The author subscribes to the standard proposed by Usman Hamid, Executive Director of International Amnesty for Indonesia, who advocates that there should be four conditions to justify banning an association. It includes legal aspects, necessities, proportionality, and accountability. First, legal aspects of dismissing an association necessitate the existence of prohibited characteristics.<sup>73</sup> Second, there should be adequate arguments and measurements to establish the urgency of the need for an organisation to be banned. Third, when it is justifiable, proportionality shall be reflected to limit the right to freedom of association without excessive treatment. Thus, Hamid urges the provision of a procedure to dismiss an organisation, in addition to the crucial due process of law in a fair trial. To avoid arbitrary dismissal, a judicial proceeding allows the parties to present proof to persuade the judges whether the disputed organisation shall be concluded or dismissed. Fourth, the dismissal of an organisation must be justified through accountable means, by which the reason behind its decision is explainable without absolutist reasoning.<sup>74</sup>

The legal position in Indonesia suggests that an administrative penalty is treated as a temporary ban for an association. In the event of disobedience following this sanction, it is justifiable for the Government to permanently revoke the official status of the organisation as a registered entity after a final judicial decision.<sup>75</sup>

Acknowledging that historical context shows the experience of many civil society organisations being banned, the current law no longer requires a court decision. Instead, it requires an executive decree to justify the banning of a civil society organisation. This recent mechanism was applied within the last decade to ban Hizbut Tahrir Indonesia and the Front

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<sup>72</sup> UN HRC, 'Thematic List of Recommendations-UPR of Indonesia' (2022) <<https://www.ohchr.org/en/hr-bodies/upr/id-index>>.

<sup>73</sup> DA (n 67).

<sup>74</sup> *ibid.*

<sup>75</sup> Article 68(1) and (2) of the Civil Organisations Act No. 17 of 2013.

Pembela Islam (the Islam Defenders Front). As introduced earlier, the Civil Society Organisations Act has been designed to safeguard the uniformity of a single, interpreted state philosophy, known as the 'Pancasila'.<sup>76</sup> This matter was used as the ultimate reason for the dissolution of Hizbut Tahrir Indonesia. Hizbut Tahrir Indonesia was banned by revocation of its incorporation status through the Decree of the Ministry of Law and Human Rights No. AHU-30.AH.01.08 of 2017.<sup>77</sup> By applying the principle of *contrarius actus*, the reason for dismissing Hizbut Tahrir Indonesia was that the internal constitution of this association was allegedly set to an ideology that contravened Pancasila.<sup>78</sup> The other banned organisation is Front Pembela Islam, which has been banned since 2020 by a joint government decree involving the Minister of Home Affairs, the Minister of Law and Human Rights, the Minister of Informatics, the Attorney General, the Chief of the Indonesian National Police, and the Head of the National Agency for Counter-Terrorism.<sup>79</sup> The two main reasons for banning this organisation were that the Front Pembela Islam, as a matter of law, had not renewed its registration status since June 21, 2019, due to failure to fulfil the updated requirements.<sup>80</sup> The Government considers such disobedience sufficient grounds for dissolution.

Moreover, as a civil society organisation, the Front Pembela Islam has been recorded committing activities that frequently disrupt public order and security, breaking the laws, and exhibiting violence, such as anarchism and provocation.<sup>81</sup> The acts were found to contravene Article 59 of the Civil Society Organisations Act 2023.<sup>82</sup> Other societies admit that the Front Pembela Islam committed acts of violence and damaged property during several actions.

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<sup>76</sup> Articulated in the Preamble of the 1945 Constitution, Pancasila contains five principles as follows:

1. a belief in the One and Only God;
2. just and civilised humanity;
3. the unity of Indonesia,
4. democratic life led by wisdom of thoughts in deliberation amongst representatives of the people,
5. social justice for all the people of Indonesia.

<sup>77</sup> *Surat Keputusan Menteri Hukum dan HAM Nomor AHU-30.AH.01.08 tahun 2017 tentang Pencabutan Keputusan Menteri Hukum dan HAM Nomor AHU-0028.60.10.2014 tentang Pengesahan Pendirian Badan Hukum Perkumpulan HTI*

<sup>78</sup> 'Ahli Hukum Administrasi: Badan Hukum HTI Dicabut Sesuai Asas Contrarius Actus' (*Direktorat Jenderal Administrasi Hukum Umum 2014, Kementerian Hukum Republik Indonesia, 2018*) <<https://portal.ahu.go.id/id/detail/75-berita-lainnya/1840-ahli-hukum-administrasi-badan-hukum-hti-dicabut-sesuai-asas-contrarius-actus>> accessed 26 December 2024.

<sup>79</sup> *Surat Keputusan Bersama Nomor 220/4780 Tahun 2020, Nomor M.HH/14.HH05.05 Tahun 2020, Nomor 690 Tahun 2020, Nomor 264 Tahun 2020, Nomor KB/3/XII Tahun 2020, dan Nomor 320 Tahun 2020 tentang Larangan Kegiatan Penggunaan Simbol dan Atribut Serta Penghentian Kegiatan FPI.*

<sup>80</sup> Syahrul Mubarak and Azman Arsyad, 'Pembubaran Ormas Islam Oleh Pemerintah ; Studi Komparatif Undang-Undang Ormas Dan Hukum Islam' (2021) 2 Shautuna 780.

<sup>81</sup> 'Gov't Officially Bans Activities of Islam Defenders Front' (*Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2020*).

<sup>82</sup> Hisan Hafansyah and Taufiqurrohman Syahuri, 'Pembubaran Organisasi Kemasyarakatan Front Pembela Islam (FPI) Dalam Perspektif Hukum Tata Negara' (2023) 10 Jurnal Yuridis 74.

Although this is the case, they disagree with responding to these actions by simply banning the organisation's status instead of prosecuting under criminal law.<sup>83</sup>

Those examples of the dissolution of society organisations entail a change in provisions from proceeding through judicial mechanisms under the Civil Society Organisations Act 2013 to one-sided decisions by the executive government (through its amendment in 2017).<sup>84</sup> Asfinawati opines that ignoring a fair trial in a judicial process to determine the dismissal of an organisation may create a precedent and reveal an arbitrary process afterwards.<sup>85</sup> Therefore, the author coincides with the contention that reviewing the mechanism regarding the absence of the court's power in the process of banning an organisation is critical.<sup>86</sup>

In advocating for the doctrine to encompass the role of the court in a proceeding for the dissolution of an organisation, an expert (Atip Latifulhayat), who presented in the judicial review of the Civil Society Organisations Act amendment 2017, outlined his two primary standing positions.<sup>87</sup> Firstly, the position of Pancasila<sup>88</sup> as the source of principle for any civil society organisations movement is, indeed, a settled preposition in the ideological realm in Indonesia. Regardless of that, as he asserted, whether an organisation has proven guilty of violating Pancasila should be clear.

Secondly, it is undeniable that one of the limitations of human rights is the prohibition to violate the human rights of others. The matter is how to characterise the respected limitation. The expert argues that a defined limitation should be based on the due process of law framework, as a universally well-received legal concept. Additionally, Latifulhayat agrees with the three requirements to uphold the due process of law, i.e., reasonable, just, and proper. In a banning mechanism, Latifulhayat asserts that a prosecuted organisation shall be entitled to defend its rights during a fair trial. Otherwise, it is risky to be arbitrarily labelled as guilty.<sup>89</sup>

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<sup>83</sup> Dewi Nurita, 'FPI Dibubarkan, Pakar: Idealnya Melalui Pengadilan, Bukan Oleh Pemerintah' *Tempo.co* (Jakarta, 30 December 2020).

<sup>84</sup> Under the amendment in 2017, Article 68 authorising the court to perform due process of law in banning process of an organisation is revoked.

<sup>85</sup> Asfinawati represents a CSO, namely Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), in an interview by a TV channel (Kompas TV). Raiza Andidi, 'Pembubaran FPI Tanpa Peradilan Membahayakan Demokrasi, Pemerintah Bisa Seenaknya' (2021) <<https://rmol.id/politik/read/2021/01/08/469545/pembubaran-fpi-tanpa-peradilan-membahayakan-demokrasi-pemerintah-bisa-seenaknya>> accessed 24 December 2024.

<sup>86</sup> Fiiki Ridho Rabbina and Ali Irfani, 'Membincang Pembubaran Front Pembela Islam Dalam Framing Pemberitaan Republika.Co.Id' (2022) 4 Jurnal Studi Jurnalistik 53.

<sup>87</sup> *Verdict of Constitutional Court of Republic of Indonesia No 38/PUU-XV/2017, 38/PUU-XV/2017, 39/PUU-XV/2017, 41/PUU-XV/2017, 48/PUU-XV/2017, 49/PUU-XV/2017, 52/PUU-XV/2017, and 58/PUU-XV/2017.*

<sup>88</sup> (n 47).

<sup>89</sup> *Verdict of Constitutional Court of Republic of Indonesia No. 38/PUU-XV/2017, 38/PUU-XV/2017, 39/PUU-XV/2017, 41/PUU-XV/2017, 48/PUU-XV/2017, 49/PUU-XV/2017, 52/PUU-XV/2017, and 58/PUU-XV/2017* (n 86).

Aligning with this argument, the Court notes the government's explanation that the executive branch's subjective power should not be applied arbitrarily, as the judiciary should confirm its decision.<sup>90</sup> Unfortunately, the Constitutional Court is uncertain about whether to reinstate the role of the judiciary in deciding the dissolution of a civil society organisation. It suggests that denying a guarantee of a fair trial in decreeing the dismissal of an organisation due to allegations of violating the law and Pancasila principles prompts an infringement of comprehensive freedom of association.

The author believes that promoting further legal improvement would be achieved by reinstating the judiciary's role in determining whether an association is justified in being banned. This is due to an indication that the national government's guarantees of freedom of association depend on access to a fair trial if an organisation is alleged to have committed a violation. In support of this argument, the author agrees that ignoring due process of law in this matter could potentially contravene the right under the Human Rights Act 1999, which recognises the protection of a fair and impartial trial for the sake of human dignity.<sup>91</sup> Additional entitlement is strengthened by Article 17, which states that the protection of a fair trial plays a crucial role in safeguarding procedural law. This entails an objective examination before the Court by an honest and impartial judge to obtain a fair and truthful verdict.

Accordingly, the virtue of a fair trial to determine whether banning an organisation is necessary should be promoted, as it enables an opportunity for a hearing. In this context, Agus Riwanto cited Suparman Marzuki, advocating that a fair trial hearing is crucial. The reason is that it allows a defendant to defend and present the evidence. Moreover, a fair trial signifies that the state respects human rights and freedom and performs equality before the law.<sup>92</sup> Unfortunately, the law continues to undermine, or in other words, delete the power of the judiciary in the process of banning an organisation.

It can be argued that the above-mentioned model of state restriction over freedom of association reveals a repressive style. Such a manner might reflect the government's explicit and direct control over certain groups in society, given its pivotal role in overseeing government policies and decisions. The Indonesian Government may use the Civil Society Organisations Act as amended in 2017 to justify its administrative conduct and restrict

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<sup>90</sup> *ibid* 108.

<sup>91</sup> Article 5(1) dan (2) of the Human Rights Act (HRA) No. 39 of 1999.

<sup>92</sup> Setiawan and Riwanto (n 26).

organisations with countervails to the ruling government by directly labelling them as anti-Pancasila and paralysing their official existence.<sup>93</sup>

In practice, banning an organisation is not the only restriction used in anticipation of the potential criticisms from societal organisations. The law exhibits excessive regulation of the behaviour of civil society organisations. Although it is unclear and not articulated in any provisions, another manner used with a similar intention of restricting civil society organisations activities can be seen as a soft, persuasive, or hidden means of controlling an organisation's autonomy. Suspicious of soft intentions to undermine the association, recent law is seen as attempting to facilitate, particularly under a mining concession offered to faith-based organisations.

Indonesia is home to the world's largest Muslim population. Muslim faith-based organisations are one category of well-known social organisations that play important roles in society and politics.<sup>94</sup> It demonstrates specific sociological realms in Indonesia, where several faith-based organisations, such as Nahdlatul Ulama and Muhammadiyah, play important roles in disseminating religious teachings. NU is estimated to have around 95 million members, while Muhammadiyah is estimated to have 60 million members.<sup>95</sup>

On May 30, 2024, former President Joko Widodo (known as Jokowi) signed a policy through Government Regulation No. 25 of 2024,<sup>96</sup> which regulated the employment of mineral and coal mining business activities.<sup>97</sup> With less than one year until the end of his second term as President, Jokowi had planned to grant mining permits for faith-based organisations in Indonesia, i.e., Nahdlatul Ulama, Muhammadiyah, the Indonesian Catholic Bishop's Conference, Protestant Indonesian Communion of Churches, Buddhism, and Hinduism organisations.<sup>98</sup> The concession granted to Special Mining Business Permit Areas underwent

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<sup>93</sup> Asfinawati represents a CSO, namely Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), in an interview by a TV channel (Kompas TV). Andidi (n 84).

<sup>94</sup> Gusty da Costa, 'Government Offers Coal Mining Concessions to Six Religious Organizations' *Indonesia Business Post* (10 June 2024) <<https://indonesiabusinesspost.com/insider/government-offers-coal-mining-concessions-to-six-religious-organizations/>>; Elfudlatsani, Isharyanto and Riwanto (n 5).

<sup>95</sup> Van Der Schaar Investments B.V., 'Indonesia Investments Report: "Coal Mining Update Indonesia: Religious Organizations to Become Coal Miners?"' (2024) <<https://www.indonesia-investments.com/id/budaya/penduduk/item67?>>.

<sup>96</sup> In Indonesian legal system, a Government Regulation is considered as a type of subsidiary legislation supposed to implement the primary Act of parliament (legislation, or interchangeably Act, namely *Undang-Undang*). The supreme law in the hierarchy is the 1945 Constitution, followed by the Act. It implies that merely President authorised to enact a Government Regulation without compelled to involve meaningful public participation in its making procedure. Unlike, the making of Constitution and the primary Act shall involve representative bodies.

<sup>97</sup> *Peraturan Pemerintah (PP) Nomor 25 tahun 2024 tentang Perubahan atas Peraturan Pemerintah (PP) Nomor 96 Tahun 2021 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral dan Batu Bara*.

<sup>98</sup> Costa (n 93).

an amendment with Government Regulation No. 96 of 2021, which added a provision under Article 83A (1) with the expressed purpose of enhancing public welfare. This provision authorises the Government to offer the designated concession to a corporation under the management structure of a faith-based organisation.

Likewise, the offer is tempting for the targeted groups, most prominently Nahdlatul Ulama and Muhammadiyah, who have openly expressed their support for the mining permit. In June, Nahdlatul Ulama was the first to declare that it had accepted the offer, claiming that the concessions would be used to finance religious and charitable initiatives.<sup>99</sup> Muhammadiyah later accepted the offer in July at a ‘national consolidation’ gathering, under the guise that it would provide improved mining methods for the purposes of social welfare and environmental protection.<sup>100</sup> Predictably, the acceptance of mining permits by the two most prominent Muslim organisations in Indonesia drew criticisms from both internal and external members and groups. For instance, Busyro Muqoddas, a prominent legal expert within Muhammadiyah, disagreed with such a decision, as did Aisyiyah, an internal women’s organisation. Both expressed dissent from such a leader’s decision, considering the risk of exacerbating agrarian conflicts, environmental damage, and human rights violations.<sup>101</sup> Among external voices are also those who disapprove of the Muslim leaders’ decisions. It reveals concerns, such as Ahmad Rizky M. Umar’s label of ‘religious clientelism’<sup>102</sup> and Nina A. Loasana and Radhiyya Indra’s indication of ‘pork barrel politics’ for Nahdlatul Ulama.<sup>103</sup> They interpreted this as a signal of legislation favouring religion, and a tendency to jeopardise the essential role of political institutions and pressure groups in monitoring the ruling government.<sup>104</sup>

By promising a concession for mining projects to civil society organisations based on religion, the author argues that Government Regulation No. 25 of 2024 offers bribes to “lure the kindness” of society in return for withholding potential criticisms of the government. This type of manipulation between the government and the critical civil society organisation may

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<sup>99</sup> Ahmad Rizky M Umar, ‘Religious Coal Rush: Why Do Indonesian Muslim Leaders Accept Coal Mining Concessions?’ (*Indonesia at Melbourne*, 2024) <<https://indonesiaatmelbourne.unimelb.edu.au/religious-coal-rush-why-do-indonesian-muslim-leaders-accept-coal-mining-concessions/>> accessed 7 January 2025.

<sup>100</sup> AntaraNews, ‘Mining Concession -Muhammadiyah to Meet President Jokowi’ *AntaraNews* (Yogyakarta, 29 July 2024) <<https://en.antaranews.com/news/320275/mining-concession-muhammadiyah-to-meet-president-jokowi>>.

<sup>101</sup> Umar (n 98).

<sup>102</sup> *ibid*.

<sup>103</sup> ‘NU Mining Permits Slammed as Pork Barrel Politics’ *Jakarta Post* (Jakarta, 4 June 2024) <<http://www.thejakartapost.com/indonesia/2024/06/04/nu-mining-permits-slammed-as-pork-barrel-politics.html>>.

<sup>104</sup> Inna Junaenah, ‘Izin Tambang : Modus Melawan Oposisi’ *Pikiran Rakyat* (Bandung, 7 August 2024).

reduce the potential head-to-head opposition. However, it may paralyse society's control over the executive government. The editor of *Tempo Magazine* also warns of the risk that a gift from the Government to the most prominent Muslim organisations could trigger horizontal conflict.<sup>105</sup> Inevitably, such a prediction proves to be accurate. The provision in Government Regulation No. 25 of 2024 underpinning the mining concession was challenged by several religious, legal, and environmental organisations on Tuesday, October 1, 2024, through judicial review in the Supreme Court.<sup>106</sup> Wahyu Agung Perdana, one of the petitioners, explained that he filed for judicial review because mining concessions for religious organisations violated state ethics. Similar to the author's earlier remark, Wahyu argues that the concession may serve more as a template for political bribery than simply being a legal flaw.<sup>107</sup>

To emphasise, the role of a civil society organisation is ideally to function as a means of public oversight and a tool to contribute to public policy that may impact public interests through some of their alternative, dialectical ideas. Ferdian Andi, also a member of Muhammadiyah, wondered whether this organisation would change its relationship with the government, that is, from maintaining its criticism to becoming a rubber stamp.<sup>108</sup> This question was highlighted recently, as Nahdlatul Ulama took a stand alongside Jokowi, after the release of an international organisation's report ranking corrupt leaders worldwide.

Towards the end of 2024, the Organised Crime and Corruption Reporting Project, an international journalism organisation based in Amsterdam, Netherlands, released the 'Person of the Year' in Organised Crime and Corruption.<sup>109</sup> Surprisingly, the report nominated Indonesia's former President Joko Widodo among the finalists for the most corrupt leaders in the world. Although the final decision concluded that Bashar al-Assad was the top finalist, the Organised Crime and Corruption Reporting Project received many votes in favour of the former

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<sup>105</sup> Editor, 'From Religious Mass Organizations to Mining Mass Organizations' *Tempo Magazine* (5 August 2024) <2024>.

<sup>106</sup> The respected group referred itself as Tim Advokasi Tolak Tambang (Anti-Mining Advocacy Team). Najla Nur Fauziyah, 'Anti-Mining Group to Challenge Mining Concessions for Religious Groups at Indonesia's Supreme Court' *Tempo.co English version* (Jakarta, 1 October 2024) <<https://en.tempo.co/read/1923158/anti-mining-group-to-challenge-mining-concessions-for-religious-groups-at-indonesias-supreme-court>>.

<sup>107</sup> *ibid.*

<sup>108</sup> Ferdian Andi, 'Izin Tambang Dan Mandat Ormas Keagamaan' (*reposted from* <https://koran.tempo.co/read/opini/490130/risiko-izin-tambang-ormas-keagamaan>, *Jumat, 4 Oktober 2024*, 2024) <<https://graduate.uinjkt.ac.id/id/izin-tambang-dan-mandat-ormas-keagamaan>> accessed 8 January 2025.

<sup>109</sup> Amy Sood, 'Indonesia's Widodo Slams "Baseless" Report Listing Him as Leading Corruption Enabler' *South China Morning Post* (4 January 2025) <[https://www.scmp.com/week-asia/politics/article/3293374/indonesias-widodo-slams-baseless-report-listing-him-leading-corruption-enabler?module=perpetual\\_scroll\\_0&pgtype=article](https://www.scmp.com/week-asia/politics/article/3293374/indonesias-widodo-slams-baseless-report-listing-him-leading-corruption-enabler?module=perpetual_scroll_0&pgtype=article)>.

President, among five others.<sup>110</sup> The respective annual list characterises the finalists as having “done the most to advance crime and corruption globally, thus damaging democracy and human rights.”<sup>111</sup> The author considers Ferdian’s speculation as validated by how the leader of Nahdlatul Ulama, Yahya Cholil Staquf, who reacted to the release, argued that the Organised Crime and Corruption Reporting Project announcement nominating Jokowi had no strong basis and may distract from national stability.<sup>112</sup>

Back to the model of state restriction over the freedom of association, instead of evaluating Article 8A(1) and (2) of the GR of 25/2024, the current President Prabowo Subianto even proposes that the mining concession be strengthened in the proposed Act. The *Dewan Perwakilan Rakyat-DPR* (House of Representatives) passed the proposed provision, which allows businesses owned by social and religious organisations to manage mining concessions by granting Mining Business Permit Areas.<sup>113</sup> The author notes that the provisions position the civil society organisations as prospective permit beneficiaries, compromising their objectivity due to vested interests and weakening their role in overseeing the ruling government. The big civil society organisations, both as allies and opponents to the government in Indonesia, face more challenges and temptations as President Prabowo Subianto incorporates nearly all of the political actors (political parties and faith-based organisations) to be engaged in the current overextended ministries.<sup>114</sup> Thus, it is recommended that faith-based organisations restrain themselves from being influenced by the ruling government’s incentives in return for softening their criticisms.

## V. Conclusion

To summarise, this chapter presents the legal framework for freedom of association in Indonesia and discusses the legal position. It outlines that freedom of association in Indonesia resulted from constitutional debate among the country’s founding leaders. It is marked by a debate on whether the subject matter of human rights deserves to be materialised as

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<sup>110</sup> M Rizal Fadillah, ‘Jokowi: The Most Corrupt Leader in the World’ *6:30 am in English Edition* (8 January 2025) <<https://kbanews.com/english-edition/jokowi-the-most-corrupt-leader-in-the-world/>>.

<sup>111</sup> Sood (n 108).

<sup>112</sup> Editor, ‘Bela Jokowi Atas Tuduhan OCCRP, PBNU-PSI-Noel Diolok-Olok Netizen’ *orines.id* (5 January 2025) <<https://orinews.id/2025/01/05/bela-jokowi-atas-tuduhan-occrp-pbnu-psi-noel-diolok-olok-netizen/>>.

<sup>113</sup> Yustinus Paat, ‘DPR Passes Revised Mineral and Coal Mining Law’ (February, 18 February 2025) <[https://jakartaglobe.id/news/dpr-passes-revised-mineral-and-coal-mining-law](https://jakartaglobe.id/news/dpr-passes-revised-mineral-and-coal-mining-law/)>.

<sup>114</sup> Yericai Lai, ‘Indonesian President Prabowo Presents Largest Cabinet in Decades’ *Jakarta Post* (22 October 2024) <<https://asianews.network/indonesian-president-prabowo-presents-largest-cabinet-in-decades/>>.

constitutional rights. Eventually, the 1945 Constitution established fundamental recognition, which was strengthened by the Human Rights Act 1999 and a commitment to international human rights law, specifically the International Covenant on Civil and Political Rights.

However, the interpretation of the right is actualised by the Civil Society Organisations Act 2013, with its amendment in 2017. It is observed that freedom of association remains limited, but it can be enjoyed under certain conditions. This Act aims to instil obedience within organisations through their registered status, which qualifies them to receive certain funds. Moreover, this status ensures their eligibility to participate in law-making.

A legal mechanism to ban an association is also justifiable as a form of restriction. Nevertheless, the procedure now excludes the power of the judiciary to ensure a fair trial in proving allegations that an organisation is violating the law. Moreover, the recent situation has shown a decline in discourse on this issue. The reality also demonstrates the attempt to restrain the criticism of organisations, especially faith-based ones, by facilitating them with special licenses for a mining project. Suspiciously, this policy serves as a lure to undermine their potential criticisms of government policy. It is acknowledged that for the purpose of ongoing academic questions concerning the role of society in its relation to public affairs, this chapter takes note of the trends in the persistently flawed democracy status in Indonesia, marked by the change in the current President from Joko Widodo to Prabowo Subianto. Hence, this work remains open to further study on how particular civil society organisations may decide to assert or restrain genuine participation in policymaking through the freedom of association.





