

Legalization of Community Organizations in Indonesia from the Perspective of Legal Protection: A Problematic Legal Choice

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Abstract

The research examines the legalization of community organizations in Indonesia, focusing on Law Number 17 of 2013. Using legal dogmatic research, the study finds that while legalizing community organizations provides greater legal certainty and protection, it also leads to issues like leadership dualism and internal conflicts due to differing views on legal status. Additionally, the law's digital registration system offers efficiency but causes conflicts over data validity as it lacks field verification. The findings highlight the need for fair, inclusive mechanisms to ensure equal participation in community development for all legally registered organizations.

Keywords: *Legalization, Community Organizations, Legal Protection, Legal Choice*

INTRODUCTION

Freedom of association, assembly, and expression of opinion are considered fundamental in society and integral to human rights, especially in the civil and political rights domain. The legal basis for these freedoms is universally recognized through various international regulations, such as Article 20 of the General Declaration of Human Rights (UDHR) and Article 21 of the Covenant on Civil and Political Rights (Elfudllatsani et al., 2019). At the national level, Indonesia has the 1945 Constitution and Law Number 39 of 1995 concerning Human Rights, which regulate the protection of these rights. This law provides a basis for citizens to establish political parties, organizations, or non-governmental organizations by complying with applicable legal regulations.

Community Organizations become the actual implementation of these rights. They act as a forum for community participation in the development process and contribute to state administration. Community organizations have various forms and orientations in Indonesia's pluralistic society. Even though they have great potential in community empowerment efforts, Community Organizations face various challenges. Some Community Organizations have not fully reflected their values and obligations and have even engaged in harmful behavior such as thuggery or bullying.

Conflict between community organizations is also a severe problem that can disrupt people's lives. This social conflict requires the Government to take on the role of preventing and resolving it. Conflict between social organizations can trigger violence and social instability. The Government needs to expand its role in empowering Community Organizations, especially in the regions. This includes mediation in conflict and prevention and guidance before conflict occurs. Apart from that, another problem that arises is related to the provisions of Article 10 paragraph (1) of Law Number 17 of 2013 concerning Community Organizations, which regulates that Community Organizations can be in the form of legal entities or non-legal entities.

Will these two options provide legal certainty, or will they actually cause conflict? This certainly requires a more in-depth study. Another problem that is also a concern is registering Community Organizations. Is the digitalization system for online-based registration of Community Organizations able to increase efficiency, or does it actually give rise to injustice? Therefore, a comprehensive discussion is needed to answer some of these problems.

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Thus, an analysis of the legalization of Community Organizations based on Article 10, Paragraph (1) of the Community Organization Law becomes essential in building a conducive society. This research also examines the implications of digitalization of the Social Organization registration system and its problems. The Government's role in managing conflict, encouraging participation, and strengthening regulations is a crucial step in optimizing the contribution of community organizations to sustainable community development. Hopefully, this research can produce guidelines and references for the government or related policymakers, especially in formulating more appropriate solutions or policies for empowering Community Organizations.

RESEARCH METHODS

This research is normative legal research (legal dogmatic research), which focuses on law as a discipline that gives orders and emphasizes its dogmatic aspects. (Muhammad, 2004). The approach used in this research includes analytical methods of applicable laws and regulations as well as conceptual methods that construct legal logic through doctrinal review. A case approach is also used to provide a concrete picture of the problem being described. The statutory regulatory approach method aims to understand the structure and essence of the applicable regulations, while the conceptual approach method aims to build legal arguments through doctrinal analysis. Meanwhile, the case approach supports legal arguments based on facts.

The legal materials used in this research include primary and secondary legal materials. Primary legal materials consist of statutory regulations, starting from the highest norms, namely the 1945 Constitution, Laws, Government Regulations, and other derivative regulations. Secondary legal materials are also used, including legal books, scientific journals, and related writings that can support and complement primary legal materials. These two legal materials are then processed and analyzed descriptively-analytically to present the discussion, which is then expressed in the results and discussion.

LITERATURE REVIEW

Community organizations are associations that form an orderly structure, from the central level to the regional level or even community associations. The term "organization" comes from the Greek "Organon," and the Latin "Organum," which refers to a tool, part, member, or body (Asri, 2024). In Indonesia, the normative definition of Community Organization is stated in Law Number 17 of 2013 concerning Community Organizations. According to Article 1 point 1 of Law Number 17 of 2013 concerning Community Organizations, Community Organizations are organizations that are founded and formed by the community voluntarily based on the same aspirations, desires, needs, interests of activities, and goals to participate in the development in order to achieve the goals of the Unitary State. The Republic of Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Community Organizations are groups of people with a clear vision, mission, ideology, and goals, as well as a structured management structure, which aims to fight for the interests of its members and groups in various social fields such as education, health, religion, youth, and others (Boediningsi et al., 2022). Community organizations and non-governmental organizations, also known as non-governmental organizations, have an essential role as pillars of democracy in creating a robust civil society capable of fighting for people's rights in state life without the motive of financial gain.

Based on the Community Organization Law, all types of organizations that appear in society are called Community Organizations, whether legal entities or not. The Community Organizations Law regulates organizations active in various fields, from religion to the arts. This includes Islamic boarding school management institutions, zakat amil, orphanages, hospitals, schools, youth organizations, arts and film communities, scientific associations or associations, professions, hobbies, social or philanthropic organizations, and family associations.

Leste M. Salomon identified five main characteristics of Community Organizations, namely: 1) organization, 2) private, 3) non-profit, 4) self-governing, and 5) voluntary (Hado Hasina, 2023). Of these five characteristics, Salomon classifies Community Organizations into 12 fields based on the fields they work in, such as culture and tourism, education and research, health, social services, environment, development and housing, law, advocacy, politics, philanthropy, international cooperation, religious teachings, business, professional

associations, unions, and the development of microfinance and cooperatives. Forms of Community Organization vary according to their characteristics. Community Organizations are oriented toward service, economic, or religious aspects.

Within the scope of the Indonesian State, the history of the formation of Community Organizations begins with the struggle for independence at the beginning of the 20th century, such as the Budi Utomo Community Organization in 1908, the Youth Pledge in 1928, and various other nationalist and religious organizations that took part in this struggle. These social organizations played an important role in Indonesia's struggle for independence and continue to develop to this day. Along with changing times, Community Organizations have experienced an evolution from the first generation, which focused on aid and welfare, to the fourth generation, which acted as facilitators of community movements with the aim of community empowerment. However, the development of community organizations is sometimes linear; it depends on the context and dynamics of society simultaneously. Overall, Community Organizations still play a role as representatives of the interests of tiny people in Indonesian society.

RESULTS AND DISCUSSION

Legalization Of Community Organizations in The Perspective of Legal Protection

Etymologically, the word legalization comes from English, namely legalization, or from Dutch, namely legalisatie. Legalization is considered a correct loan word because it has the same form as a noun with the words legalization and legalization. The Big Indonesian Dictionary defines legalization as ratification (according to statute or law) (Richard Pantun, 2020). Based on this definition, what is meant by the legalization of a Community Organization is legalization according to the statute or law of a Community Organization. The validation referred to by the author in this article is more specifically related to the form of the Community Organization itself. Indonesia has Law Number 17 of 2013, which regulates Community Organizations. Recognition of the form of Community Organization can be found in Article 10, Paragraph (1) of the Law.

Law Number 17 of 2013 concerning Community Organizations, in Article 9, states that "3 (three) Indonesian citizens establish Social Organizations or more, except for Community Organizations which are legal entities as foundations". Then Article 10 paragraph (1) states that Community Organizations, as referred to in Article 9, can be: a. legal entity; or b. not a legal entity. The provisions of this article certainly raise the question of why there must be two choices of being a legal entity or not being a legal entity. Therefore, it is necessary to review the meaning of the provisions of this article.

If connected to the perspective of legal protection, then in fact, Article 10 paragraph (1) of Law Number 17 of 2013, indicates the existence of a form of legal protection and certainty for Community Organizations in Indonesia, which is in line with the provisions of Article 28 of the 1945 Constitution. In this context, the Government provides flexibility for organizations to choose whether they want to have legal entity status or not. Theoretically, Anastasia E. Semyonovkh's view supports this by saying that legal protection aims to maintain legal relations in normal circumstances and prevent violations and other unlawful behavior from legal subjects (Semyonovkh, 2022). Therefore, Article 10 paragraph (1) allows organizations, not legal entities, to continue operating legally, legally recognized in legal norms. Thus, forming a social organization without legal entity status is a valid choice and does not violate the law.

Forming a Community Organization that obtains legal entity status has several significant interests and benefits. First, by obtaining legal entity status, Community Organizations are given administrative legal authority, allowing them to carry out various activities with a status recognized as legally more robust. This optimizes the effectiveness of Community Organizations in achieving their goals and carrying out their functions (Ministry of Law and Human Rights, 2017). Second, legal entity status allows Community Organizations to be supervised and controlled by the Government through clear and transparent procedures. This supervision helps prevent actions that conflict with the law and the values of Pancasila. Furthermore, community organizations must be open and accountable in every activity as legal entities. This facilitates the community in monitoring and evaluating the activities of Community Organizations, thereby ensuring that Community Organizations operate transparently and in accordance with applicable legal provisions.

Community organizations with legal entity status can also be more effective in developing and encouraging community empowerment. They can hold various activities that contribute to improving the community's quality of life and strengthening national unity. Apart from that, Community Organizations that are legal entities can play a more active role in monitoring development. Community representatives help ensure that development is carried out transparently and sustainably (Kesbangpol, 2023). Better legal protection is also one of the benefits of legal entity status for Community Organizations. Lastly, legal entity status increases public trust in Community Organizations. People tend to trust and support community organizations with clear legal status and are officially recognized. Overall, the formation of Community Organizations that obtain legal entity status gives them flexibility in carrying out their functions and goals, while increasing the trust and legal protection they receive.

However, with the various advantages and advantages of Community Organizations in the form of legal entities as described above, Community Organizations in Indonesia still need to prioritize local solid characteristics, leading to minimal emphasis on the formality of legal entities. When members of a Community Organization have different views regarding the importance of being a legal entity, this creates what is called leadership dualism, which becomes a challenge in itself in efforts to empower Community Organizations. Discrepancies between local values and the need for legal formalities can hinder the development of Community Organizations in carrying out their missions and goals. To support this statement, it suffices to look at examples of internal conflicts that occurred in the Terate Faithful Brotherhood Community Organization or Persaudaraan Setia Hati Terate (PSHT).

The Faithful Heart Terate Brotherhood (PSHT) is a community organization that focuses on sports and martial arts activities and occupies a position as one of the largest in Indonesia. The number of followers, domestically and abroad, reaches around 10 million. With a large number of members, PSHT faces internal conflicts regarding leadership. The dispute reached its peak when a lawsuit was filed by R. Moerdjoko and Tono Suharyanto, who felt they were the Chair and Secretary of PSHT. The lawsuit was submitted to the Ministry of Law and Human Rights and Muhammad Taufiq, who at that time served as chairman of PSHT, to the Jakarta State Administrative Court with case number 217/G/2019/PTUN.JKT. In the substance of their lawsuit, Moerdjoko and Tono Suharyanto asked the State Administrative Court to annul and revoke the Minister of Law and Human Rights Decree regarding the ratification of the PSHT Legal Entity chaired by Muhammad Taufiq.

The State Administrative Court decided to grant all claims submitted by the Plaintiff. However, based on this decision, the Ministry of Law and Human Rights and Muhammad Taufiq filed legal action, which then reached the stage of requesting a judicial review at the Supreme Court. The Supreme Court of Justice successfully granted their request for judicial review at the judicial review level through Decision Number 68 PK/TUN/2022. With this decision, this case was then tried again, and all claims submitted by the Plaintiff were declared rejected. Through the approach to the PSHT case, as has been stated, it appears that the choice of being a legal entity or not being a legal entity in Article 10 paragraph (1) of Law Number 17 of 2013 turns out to have the consequence of generating internal conflict within Community Organizations. Apart from that, the provisions of Article 10, Paragraph (1) lead to individual interests in community organizations. This is certainly a problem that needs to be resolved.

Ultimately, a Community Organization's decision to become a legal entity or not will affect its legality, sustainability, funding sources, and level of legal responsibility. This decision must be based on considerations of the needs, scale, type of activity, and long-term goals of the Community Organization. The choice between having a legal entity or not having a legal entity in the formation of a Community Organization in Law Number 17 of 2013 provides flexibility to the community in organizing and managing the organization according to its needs and characteristics. By providing this option, the law provides space for organizations of different scales and goals to operate legally without forming a formal legal entity. Although a legal entity provides a stronger guarantee of legal certainty, the option not to be a legal entity provides freedom for smaller or informal organizations to continue operating and contributing to society without excessive bureaucratic burdens. This is a form of legal guarantee protection for the empowerment of Community Organizations.

Problems Of Legal Choices for Regulating Community Organizations in Indonesia

In the current era of globalization, digitalization is occurring in almost all fields, starting from trade, education, finance, etc. The 5.0 era is about digitizing various sectors and maximizing work productivity through Artificial Intelligence (AI) (Hildawati, 2024). Not without digitalization efforts, the Government's bureaucratic administrative processes in Indonesia have also maximized efforts to utilize digital technology systems, including the licensing and registration process for Community Organizations. In general, the digitization of the Social Organization registration system has resulted in several important implications. First, process efficiency increases because digital technology speeds up and simplifies registration, reducing costs and administration time. Second, transparency is realized through online access to information, enabling the public to understand the procedures and registration status of their application, thereby increasing public satisfaction. Third, digitalization increases affordability by enabling access to services anywhere and anytime (Mathilda et al., 2022). With the various advantages of the digitalization system, problems are still related to registering Community Organizations in Indonesia. This can be seen in the following explanation.

Provisions regarding the registration of Community Organizations in Law Number 17 of 2013 are contained in Chapter V, Article 15 to Article 19. Article 16 states that the registration of a Community Organization that is not a legal entity must fulfill the requirements, one of which is that the Community Organization is not currently in management disputes. When related to the example of the PSHT Organization case in the previous discussion, it appears that through digitizing the registration of Community Organizations, it turns out that the Ministry of Law and Human Rights, as the agency responsible for managing the administration of registration of Community Organizations, cannot ensure the validity and authentication of the information submitted, in the registration process. Facts on the ground show that internal management conflicts within PSHT have occurred since 2016, as quoted in Decision Number 217/G/2019/PTUN-JKT.

In essence, the decision explains that due to the 2016 general deliberation, there was chaos everywhere caused by the management's policies, which were considered unusual and out of step with the values of the PSHT organization's customary teachings so far. In the end, the conditions at that time were not conducive, and so at the first Suro night event in 2017, the majority of the Supreme Council took a stand with Decree Number 001/SK/ML-PSHT.000/IX/2017 with the contents of the decision essentially deactivating Rb. Wiyono from the Chairman of the PSHT Supreme Council; Tjahyo Wilis Gerilyanto from the Secretary of the PSHT Supreme Council; and Ir. Muhammad Taufik from the General Chair of PSHT. Then, R Mordjoko was reappointed as acting General Chair of PSHT until ample deliberation was held to elect PSHT leadership. However, between 2017 and 2018, the PSHT Organization was registered with the Ministry of Law and Human Rights, which legalized PSHT as a Legal Entity Community Organization and reappointed Muhammad Taufiq as General Chair. Apart from this internal conflict, administratively, the registration of the PSHT Organization, which was carried out at that time until the issuance of the Decree of the Minister of Law and Human Rights Number AHU-0010185.AH.01.07 of 2019, has become questionable as to the veracity of one of the requirements submitted, namely a statement letter of not being in a management dispute.

The next problem is that even though the Constitutional Court has annulled several articles in Law No. 17 of 2013 concerning Community Organizations, threats to freedom of association persist in several regions. The Freedom of Association Coalition has identified 11 (eleven) policies related to the Community Organization Law issued by the Central and Regional Governments. It should be noted that these policies were issued after the Constitutional Court held a Judicial Review of the Community Organization Law and determined that registration of Community Organizations was no longer mandatory, but instead became voluntary (RMOL, 2015).

Even though there has been a decision from the Constitutional Court, practice in the field shows that the Social Organizations Law is still being applied repressively. For example, the issuance of local policies such as the North Aceh Regency Qanun regulates the welfare and order of the people, which requires Community Organizations to register and obtain permits to carry out activities. Apart from that, the activities of a community organization were terminated by the National Unity and Politics officials of Tanah Datar Regency, West Sumatra, because the organization did not extend its registered certificate (Gatranews, 2015). It must be

remembered that the decision of the Constitutional Court on 23 December 2014 should influence the implementation of the Community Organizations Law, especially in several aspects mentioned below.

First, regarding registration of Community Organizations, which is now voluntary, Community Organizations that do not register should still have their existence protected. Second, the identity of a Community Organization has yet to be discovered based on its territorial scope. However, in reality, the central and regional governments still need help recognizing the identity of community organizations. Apart from that, there were seven articles that the Constitutional Court annulled in the Judicial Review submitted by the Freedom of Association Coalition. As a result, the Government cannot force community organizations that are not legal entities to have a Certificate of Registration, even though it turns out that discrimination against community organizations that are not registered is still present in the field. The Freedom of Association Coalition reported violations of the Constitutional Court's decision, including cases related to the obligation to register, restrictions on access, and stigmatization of illegal Community Organizations.

Then, in the context of registration and recognition of legality, there is the potential for injustice for social organizations that are not registered. Community Organizations that do not receive legal entity approval or a Registered Certificate tend not to get full access to empowerment and services from the Government, according to Constitutional Court Decision Number 82/PUU-XI/2013. First, it is important to note that unregistered Community Organizations include organizations that do not have legal entity approval or a Registered Certificate. This means that even though their existence is not directly prohibited, they are not entitled to empowerment and services from the Government, as regulated in Article 25 of Government Regulation 58 of 2018. Injustice in this case arises because unregistered Community Organizations cannot take advantage of the program -empowerment programs organized by the Government, both at the central and regional levels. This can hinder the potential of these Community Organizations to participate in the development of society and the country.

Apart from that, injustice can also arise from non-empowerment aspects. Although unregistered Community Organizations are not legally prohibited, they do not receive the same protection from the Government as registered Community Organizations. This can increase the risk of unregistered CSOs becoming more vulnerable to external pressure or even persecution without having formal mechanisms to protect the interests and rights of their members. Furthermore, there is also an aspect of injustice regarding access to resources and financing. Registered Community Organizations have better access to funds from the State Revenue and Expenditure Budget and Regional Revenue and Expenditure Budget to support their various activities and programs. Meanwhile, unregistered Community Organizations must rely on limited resources from donations from members or donors.

Unmustred addressed Organizations can also experience discrimination in interactions with public institutions and agencies. They may need to be noticed in decision-making processes or be invited to important forums, which may limit their ability to advocate for the interests of their members. The Freedom of Association Coalition's findings in Gorontalo Regency prove this. Mass organizations that do not register will not even receive interview requests until they attend their activities. More or less, the same arrangement was also found in Kapuas Regency and Bandar Lampung City (Gatranews, 2015). Given this potential injustice, it is important to consider efforts to create mechanisms that ensure that all Community Organizations, registered or not, have the same opportunity to participate in community life and receive fair treatment from the Government, as well as ensure that government policies support the participation of unregistered Community Organizations in community development.

CONCLUSION

A study of the legalization of Community Organizations in Indonesia shows that Law Number 17 of 2013 provides an option for Community Organizations to choose legal entity status or not. This is from the perspective of legal protection and justice. However, these two options can cause conflict in practice, as happened with the PSHT Community Organization. This flexibility in legalizing Community Organizations requires stricter supervision from the Government to minimize potential conflicts and ensure fair legal protection for all Community Organizations.

Meanwhile, although technology has impacted efficiency in digitizing the Community Organization registration system, there are still problems and areas for improvement in ensuring the validity of information related to registration requirements. An example is in the case of PSHT, where digitalization cannot fully ensure the correctness of information in the registration process. Therefore, there needs to be a solution to overcome this problem. In addition, the registration of Community Organizations also creates injustice for Community Organizations that do not have legal entity approval or a Registered Certificate, even though registration of Community Organizations, according to Constitutional Court Decision Number 82/PUU-XI/2013, is voluntary. This form of injustice starts from discrimination against unregistered Community Organizations, inadequate access to empowerment and services from the Government, and the failure to consistently implement Constitutional Court Decision Number 82/PUU-XI/2013.

REFERENCES

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