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Author(s)
Corresponding Author
 Wiranata Nababan
 0009-0002-8953-0173
 wiranatanababan@ipdn.ac.id
 Institut Pemerintahan Dalam Negeri
 Elsa Gustini Vinsensia Situmorang
 -
 Ubut.vinsensia@gmail.com
 Institut Pemerintahan Dalam Negeri

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Reassessing Government Authority to Regulate Membership-Based CSOs

Wiranata Nababan, Elsa Gustini Vinsensia Situmorang

Abstract: Civil society organizations (CSOs) serve as vital pillars of democracy by providing a platform for public participation in monitoring state power. However, the regulation of CSOs is characterized by overlapping authority between the Ministry of Home Affairs (MoHA) and the Ministry of Law and Human Rights (MoLHR). This overlap creates legal uncertainty, weak oversight, and opportunities for abuse, including acts of intimidation and violence. This study aims to reassess the allocation of authority between these two ministries concerning the regulation and disbandment of CSOs and to analyze the balance between freedom of association and the government's interest in maintaining public order in a democratic state. The study employed a qualitative approach based on a literature review, drawing on academic literature, regulations, media reports, and other relevant secondary sources, which were analyzed and validated through content analysis and source triangulation. The findings indicate that the division of authority between MoHA and MoLHR remains ambiguous, particularly regarding the oversight and membership-based CSOs. A redistribution of authority is therefore warranted: MoHA should oversee membership-based organizations, while MoLHR should oversee non-membership organizations, particularly foundations. Furthermore, the 2017 Government Regulation in Lieu of Law on Civil Society Organizations, which eliminated the requirement for prior judicial authorization for disbandment, reflects a shift from a more conciliatory to a more repressive approach that may undermine the rule of law and democratic principles. Therefore, the disbandment of CSOs must comply with due process of law and the principle of proportionality to ensure the protection of citizens' constitutional rights.

About the Author(s)

Wiranata Nababan is a civil servant at the Institute of Home Affairs Governance (IPDN), where he currently serves as a Junior-Level Librarian. He graduated from the IPDN postgraduate program in 2023 and has since been actively involved in various initiatives supporting local governments. His research interests include Government Science, government organization, and regional autonomy.

Elsa Gustini Vinsensia Situmorang is a civil servant at the Institute of Home Affairs Governance (IPDN), where she currently serves as a Cadet Supervisor. Her research interests include regional planning and development.

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Secretariat General
Ministry of Home Affairs
Republic of Indonesia

I. Introduction

Freedom of association, assembly, and organization is a fundamental right guaranteed by Article 28E paragraph (3) of the 1945 Constitution and the International Covenant on Civil and Political Rights (ICCPR). The exercise of these rights is manifested through the existence of civil society organizations, which serve as a vehicle for public participation. In 2024, there were 552,585 registered CSOs in Indonesia, including 1,530 unincorporated organizations (SDPDN, 2024). Historically, CSOs have evolved since the early twentieth century alongside the development of national consciousness and resistance to colonialism, with Budi Utomo emerging as one of Indonesia's first modern organizations. During the Dutch East Indies era, the existence of organizations was regulated by the Regerings Reglement (RR), which prohibited associations that discussed government affairs or were deemed to pose a threat to security. Thus, the development of CSOs in Indonesia is closely linked to the influence of the Dutch colonial education system and governance structure (Al Araf, 2022).

During the Reform era, CSOs have become a crucial pillar of democratic life and governance. Democracy recognizes the people as the holders of sovereignty and upholds equal rights and obligations and equal treatment for all citizens (Putri, Joshua, & Maharjan, 2023).

As an expression of public participation and the freedoms of assembly and association, CSOs play an important role in overseeing government policies, voicing public concerns, and monitoring government processes. From a civil society organization (CSO) perspective, CSOs function as a bridge between the state and society, with direct knowledge of the issues, obstacles, and challenges faced by communities at the local level. Sharma (2023, p. 2) states that CSOs' understanding of local dynamics and needs makes them key actors in responding to various social problems and development challenges. Therefore, CSOs serve not only as a channel for expressing public aspirations but also as a means of fostering civic participation and addressing social issues.

Civil society organizations (CSOs) are part of civil society and serve as vehicles for

public participation in democratic processes, the expression of public aspirations, and the oversight of government administration. Poppe and Wolff (2017) emphasize that civil society support became a central element of democracy promotion after the Cold War. This suggests that strengthening civil society is an important factor in fostering democratic development in the post-Cold War era.

CSOs therefore function not only as a means of citizen participation but also as important instruments for strengthening democracy and government accountability. Toepler et al. (2020, p. 65) state that civil society organizations (CSOs) occupy a strategic position in strengthening democracy and government accountability. However, this role may pose a threat to public order when CSOs are misused to engage in unlawful activities, such as intimidation, extortion, or gang activity, that hinder development and local economic activities.

In 2017, the government issued Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 on Civil Society Organizations, citing the existence of CSOs that were deemed to promote radical ideologies, oppose Pancasila, and potentially incite violence. The regulation was subsequently enacted as Law Number 16 of 2017 on the Enactment of Government Regulation in Lieu of Law Number 2 of 2017 on Amendments to Law Number 17 of 2013 on Civil Society Organizations into Law, which provided the legal basis for the disbandment of CSOs such as HTI and FPI (Basniwati & Saleh, 2022). The government maintained that these regulations were necessary to safeguard the state ideology, provide legal certainty, and ensure that CSO activities complied with the Constitution and applicable laws (Khasanah & Pratama, 2023; Adam, 2024). However, the enactment of the law sparked public and parliamentary debate and opposition because it was perceived as potentially curtailing freedom of association and expanding the government's authority to disband CSOs (Basniwati & Saleh, 2022).

By late 2020, debates concerning the status of CSOs had intensified, particularly regarding their legal basis, rights, and obligations, following the disbandment and suspension of several

organizations. The debate also focused on the government's authority to disband CSOs, including whether such authority was exercised pursuant to statutory provisions or through a Joint Decree issued by ministers (Basniwati & Saleh, 2022).

The disbandment mechanism under Law Number 16 of 2017 appears to give the government extensive authority because it may be carried out on the basis of an administrative assessment without prior judicial review. The government may suspend an organization's activities and revoke its legal entity status through a decision by an authorized official based on the principle of *contrarius actus*, under which the authority that issues a permit may also revoke it (Basniwati & Saleh, 2022). More recently, various regions have experienced a surge in incidents involving CSOs, ranging from intimidation, extortion, and unlawful land seizures to violent clashes. This phenomenon demonstrates that legal violations and disruptions of public order may involve CSOs regardless of whether they possess legal entity status. Notable cases include the burning of a police car in Depok, clashes between GRIB and Pemuda Pancasila in Bandung and Blora, and the sealing of a company in Central Kalimantan (Ginanjar, 2025).

Conflicts arise not only among civil society organizations (CSOs) but also between CSOs and the government. These conflicts generally stem from differences in interests, ideologies, and perceptions regarding the limits of civil liberties. Poppe and Wolff (2017) state that relations between the state and civil society often involve competing priorities: the need to maintain national stability and the demand for freedom of association and public participation. In this context, the government seeks to maintain public security and order, while CSOs demand greater space for expression and participation. When a CSO is deemed to have violated the law, posed a threat to public order, or acted contrary to the state ideology, the government may impose measures ranging from guidance and restrictions to suspension and disbandment, in accordance with applicable laws and regulations.

Government action to disband CSOs has sparked debate because it is perceived as potentially curtailing freedom of association, public participation, and democratic rights. This

authority derives from Law Number 16 of 2017 as an "attributed authority," meaning an original power granted directly to the government by legislation (Ardyantara et al., 2020). However, disbandment without prior judicial review raises concerns regarding due process of law and warrants closer examination of the regulations governing the government's authority over CSOs.

CSOs exhibit diverse organizational characteristics. Some are membership-based organizations with permanent members whose rights and obligations are defined in their statutes and bylaws. Others are non-membership organizations that focus on social, humanitarian, religious, or public service activities without a formal membership system. These differences have implications for governance structures, accountability mechanisms, and the nature of government oversight and guidance.

Previous studies on CSOs have generally focused on their legal status and disbandment, government authority, and the protection of freedom of association (Winata, 2018; Sari & Makbul, 2021; Basniwati & Saleh, 2022; Khasanah & Pratama, 2023). Although these studies have addressed issues concerning due process of law, the *contrarius actus* principle, and conflicts of authority, they have not specifically examined how governmental authority over CSOs should be distributed according to their organizational characteristics.

The current allocation of authority, which relies on legal entity status, places associations and foundations under the same regulatory regime despite differences in their membership structures and patterns of activity. This discrepancy constitutes the research gap addressed by this study.

This study proposes a novel model for reallocating governmental authority based on organizational characteristics, distinguishing between membership-based and non-membership organizations. Under this model, the Ministry of Home Affairs serves as the lead agency for the guidance, supervision, and enforcement of administrative sanctions concerning membership-based civil society organizations (CSOs), while the Ministry of Law retains responsibility for their administration and legal status. The study's contribution therefore lies

in shifting the basis for allocating governmental authority from legal entity status to organizational characteristics, without transferring responsibility for administrative and legal-status functions. This approach offers a clearer framework for reducing overlapping authority and enhancing the effectiveness of CSO oversight.

II. Methods

This study employed a qualitative method, following Banister et al.'s definition of qualitative research as an approach designed to capture, describe, and explain a specific phenomenon under investigation (Herdiasnyah, 2024). The study used a literature review approach involving the collection of documentary data, reading, note-taking, and processing of research materials (Zed, 2017). A qualitative method based on a literature review was selected because the study examined the normative aspects of governmental authority in regulating and disbanding civil society organizations (CSOs). By analyzing legislation, theories of authority, scholarly literature, and cases involving CSO disbandment, this study analyzed the distribution of authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights and formulated a model for reallocating authority that is more effective and promotes legal certainty. Data were obtained from secondary sources, including legislation, books and journal articles, media reports, as well as data and information from relevant institutions.

Data validity was assessed through source and theoretical triangulation by comparing information from legislation, government documents, scholarly articles, and media reports, as well as perspectives from different theories of authority. Documents and cases were selected purposively based on their relevance to the research focus, the availability of traceable information, and their capacity to provide insight into the legal basis, mechanisms for addressing CSO-related matters, and the authority of the institutions involved. The cases analyzed were selected based on their significant public profile, relatively large membership bases and social influence, and their status as subjects of controversy or public debate concerning the relationship between CSOs and the government.

Data were analyzed using content analysis, which involved four stages: identification, classification, interpretation, and synthesis of the documents under review. The identification stage involved cataloging information on the legal basis, actors, authority, decision-making mechanisms, and specific measures taken in relation to each CSO. This information was then classified according to legal sources, competent authorities, the nature of the authority, and the mechanisms used to address CSO-related matters. The information was subsequently interpreted to identify patterns in the distribution of authority and potential overlaps, and the findings were synthesized as the basis for formulating a model for reallocating authority that is more effective and promotes legal certainty.

III. Results and Discussions

The findings indicate that the regulation of civil society organizations (CSOs) in Indonesia continues to face two key challenges: the division of authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights concerning the guidance, supervision, and disbandment of CSOs, and the need to balance the government's interest in maintaining public order with the protection of the constitutional rights to freedom of association and assembly. Based on a review of legislation, literature, and relevant cases, the discussion focuses on two main aspects: the reallocation of authority for CSO management and the government's authority to disband CSOs.

A. Reallocating Authority in CSO Regulation

CSOs constitute a vital component of democracy and social governance in Indonesia. However, their regulation is often characterized by overlapping authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights, particularly with respect to registration, supervision, and disbandment. This overlap may result in policy conflicts, abuse of authority, and legal uncertainty. Authority provides the legal basis for government action and the legitimacy required for state institutions to exercise their functions and responsibilities. In governance, a clear allocation of authority is essential to prevent overlapping responsibilities,

interinstitutional conflicts, and legal uncertainty in the implementation of public policy. Accordingly, the allocation of authority must be clearly defined by legislation to ensure that government action rests on a clear and lawful basis.

Theoretically, governmental authority derives from statutory law. McIver posits that government is an organization that exercises authority based on law rather than mere power; consequently, government action must have a clear legal basis to prevent arbitrary exercise of power (Wasistiono, 2017; Sari & Makbul, 2021). Minister of Home Affairs Regulation Number 56 of 2017 affirms that the Ministry of Home Affairs has authority to supervise all CSOs, regardless of whether they possess legal entity status. However, with respect to registration, the Ministry of Home Affairs issues a Certificate of Registration (SKT) only to CSOs without legal entity status, whereas CSOs with legal entity status fall under the jurisdiction of the Ministry of Law and Human Rights.

This arrangement creates a separation between oversight and legal-status functions. At the same time, the definition of CSOs under the current regulatory framework is arguably overly broad because it encompasses various forms of nonprofit organizations, including NGOs, foundations, associations, professional organizations, and other social groups (Al Araf, 2022). Consequently, responsibility for regulating CSOs is distributed among several government institutions: the Ministry of Home Affairs for CSOs holding an SKT certificate, the Ministry of Law and Human Rights for CSOs with legal entity status, and the Ministry of Foreign Affairs for foreign CSOs (Basniwati & Saleh, 2022).

Currently, authority over CSO regulation is divided primarily according to legal entity status. The Ministry of Law and Human Rights is responsible for CSOs with legal entity status, whereas the Ministry of Home Affairs is responsible for those without such status. Under Law Number 17 of 2013, as amended by Law Number 16 of 2017, CSOs with legal entity status may take the form of either an association or a foundation. This division of authority based solely on legal entity status creates uncertainty regarding guidance, supervision, and the enforcement of sanctions because the

organizational characteristics of CSOs do not always correspond to their legal forms. Sharma (2023) emphasizes that organizational structure, governance, coordination, infrastructure, and human resources are among the primary factors shaping organizational behavior.

The issue is further complicated by the inclusion of foundations, which do not have members, within the statutory category of CSOs. Foundations are primarily oriented toward managing assets and pursuing social, religious, or humanitarian objectives, whereas associations are generally membership-based and may engage in activities directed toward broader constituencies. Data from the Directorate General of General Law Administration (AHU) indicate that 603,972 CSOs with legal entity status are registered, comprising 368,463 foundations and 235,509 associations (Alfajri et al., 2025). This distribution suggests that the regulation of CSOs should not rely solely on legal entity status but should also take into account organizational characteristics, activities, and potential impacts on public order.

Historically, there was no single legislative framework governing CSOs as a distinct category during the Old Order era. A dedicated legal framework for CSOs first emerged under the subsequent New Order administration. (Al Araf, 2022, p. 323). During the Reform era, legislation specifically guaranteeing freedom of association and assembly may have been more appropriate than a law specifically regulating CSO, given the Indonesian Constitution's emphasis on protecting these freedoms (Al Araf, 2022, .p. 314).

According to Eryanto Nugroho, Executive Director of PSHK, the concept of a CSO in Indonesia, viewed in light of its origins in 1985, clearly targets membership-based organizations. Articles 10 and 11 of the CSO Law further contribute to this conceptual ambiguity by defining CSOs broadly as organizations that may or may not possess legal entity status and may take the form of either an association or a foundation. This definition effectively places different forms of socially oriented organizations within the same statutory category (ASH, 2013). Regulating CSOs under a single legal framework can be challenging because of their diverse organizational forms and characteristics, which

complicate the scope of the applicable regulatory framework (Al Araf, 2022, .p. 325).

The unresolved conceptual issues surrounding CSO regulation not only generate debate over its normative foundations but also affect how CSOs are regulated and supervised in practice. Ambiguity regarding the scope and governance of CSOs may hinder the government's efforts to provide guidance, exercise oversight, and enforce the law against organizations that engage in unlawful conduct. This issue is particularly relevant given the recent increase in complaints concerning the activities of certain CSO members, which are perceived as disrupting economic activity and investment.

Esther Sri Astuti (INDEF) has stated that the government's lack of firmness in addressing CSO activities could jeopardize investment by undermining the sense of security and creating an unfavorable business environment (Binekasri, 2025). Survey results also indicate that CSO activities constitute a significant challenge for businesses in West Java.

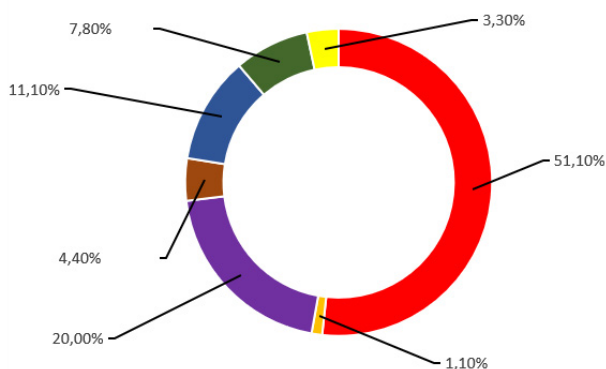


Figure 1. Sources of Challenges Faced in Industrial Estates
Source: Kompas.com

The data indicate that issues related to the activities of NGOs and CSOs constitute the most significant factor affecting business operations, surpassing various other reported obstacles. This finding reinforces the argument that the existence and activities of CSOs are not merely administrative matters but also have implications for the certainty, security, and continuity of economic activities and investment.

In light of these circumstances, government authority over the registration, guidance, supervision, and disbandment of CSOs should be restructured, with membership structure serving

as the primary basis for allocating authority. The Ministry of Home Affairs is better positioned to oversee membership-based organizations, given its functions relating to sociopolitical guidance, supervision, and the maintenance of public order. By contrast, the Ministry of Law and Human Rights is better positioned to oversee non-membership organizations, in the form of foundations, whose activities focus primarily on legal status, governance, and social services. This distinction is important because membership-based organizations have greater capacity to mobilize the public and influence sociopolitical dynamics (Dupuy, Ron, & Prakash, 2016), whereas foundations are primarily oriented toward education, health, social welfare, and philanthropy. Accordingly, the guidance and supervision of membership-based organizations should be assigned to the Ministry of Home Affairs and regional governments, while foundations should remain under the authority of the Ministry of Law and Human Rights.

Consistent with this approach, Al Araf (2022) proposes the enactment of a Law on Associations (UU Perkumpulan) as a specific legal framework for membership-based organizations. This proposal is grounded in the distinct characteristics of membership-based organizations (associations) and non membership organizations (foundations), thereby enabling a clearer and more effective allocation of authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights in accordance with the specific characteristics of each organizational form. Authority over membership-based CSOs, whether or not they possess legal entity status, should be vested in the Ministry of Home Affairs because these organizations are directly related to functions involving guidance, supervision, public order, and social stability, as stipulated in Government Regulation (PP) Number 58 of 2016 on the Implementation of Law Number 17 of 2013.

Meanwhile, the Ministry of Law and Human Rights should focus on administrative matters and the legal status of legal entities, particularly non-membership foundations. Empirical evidence indicates that legal violations involving CSO occur more frequently among membership-based organizations, as illustrated by cases involving Pemuda Pancasila and GRIB Jaya, as well as

organizations previously sanctioned or disbanded by the government, such as HTI and FPI. This pattern suggests that membership structure and the capacity for mass mobilization provide more relevant bases for allocating regulatory authority than legal entity status alone.

The regulation of CSOs continues to involve overlapping authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights. The Ministry of Home Affairs is responsible for the guidance and supervision of CSOs, whereas the Ministry of Law and Human Rights is responsible for legal entity status and the disbandment of incorporated CSOs. According to the Minister of Law and Human Rights, Supratman Andi Agtas, the supervision of CSOs falls under the authority of the Ministry of Home Affairs, whereas legal entity status falls within the authority of the Ministry of Law and Human Rights. Echoing this view, the Minister of Home Affairs, Tito Karnavian, stated that enforcement actions against incorporated CSOs are carried out by the Ministry of Law and Human Rights, whereas non-incorporated CSOs fall under the authority of the Ministry of Home Affairs (Yadjib, 2025). This fragmented allocation of authority creates ambiguity in the regulation and oversight of CSOs, highlighting the need to reorganize institutional responsibilities to ensure more effective and coordinated supervision and enforcement against CSOs that violate the law.

Given the overlapping authority of the Ministry of Home Affairs and the Ministry of Law and Human Rights, institutional responsibilities should be clarified based on organizational characteristics, particularly whether CSOs are membership-based. Membership-based CSOs that are sociopolitical in nature, community-based, and require direct guidance at the local level should fall under the authority of the Ministry of Home Affairs. Roggeband and Krizsán (2021, p. 23) explain that governments seek to reorganize civic space through a dual process of selective inclusion and exclusion of civil society organizations. This suggests that governments may restructure civic space through mechanisms that combine selective engagement with restrictions on civil society organizations. These findings indicate that CSO regulation is not merely an administrative matter but also concerns how the state manages civic

space for public participation in an effective and accountable manner. By contrast, CSOs focused on philanthropy, charitable activities, and social services that are not membership-based should fall under the authority of the Ministry of Law and Human Rights. Furthermore, the Ministry of Home Affairs is well positioned to oversee membership-based associations because their organizational structures often extend to the regional level, enabling their activities to be monitored directly by regional governments. Membership-based CSOs—including NGOs, professional associations, and community groups—often operate within local social dynamics and have the capacity to mobilize their members, potentially creating broader social implications. Accordingly, the Ministry of Home Affairs can oversee their guidance through regional government agencies, particularly the National and Political Unity Agencies at the provincial and regency/city levels.

The analysis suggests that repositioning authority according to membership characteristics could provide an alternative model for improving the governance of CSOs in Indonesia. Under this model, the Ministry of Home Affairs would serve as the lead agency for the guidance, supervision, and enforcement of administrative sanctions against membership-based CSOs, given its role in maintaining sociopolitical stability and the support provided by regional government agencies, particularly the National and Political Unity Agencies. Meanwhile, the Ministry of Law retains authority over the administrative and legal aspects of legal entities, including incorporated associations serving as vehicles for civil society organizations (CSOs) and non-membership organizations such as foundations.

This division of authority does not eliminate the respective functions of either ministry but instead clarifies the focus of their responsibilities based on the characteristics of the organizations involved. The Ministry of Home Affairs would focus on the guidance and supervision of membership-based CSOs that interact directly with local social and political dynamics, whereas the Ministry of Law would retain authority over the administration and legal status of incorporated organizations. This model is expected to reduce overlapping authority, strengthen interagency coordination, improve the effectiveness of supervision and the enforcement of administrative sanctions, and

ensure legal certainty regarding organizations' legal status. At the same time, this division of authority must be situated within a framework that protects freedom of association, as guaranteed by the 1945 Constitution and the principles of a democratic state governed by the rule of law.

B. Authority Regarding the Disbandment of CSOs: Balancing Freedom of Association and Public Order

In the international literature, restrictions on civil society organizations are commonly referred to as "closing civic space." Poppe and Wolff (2017) explain that governments around the world have increasingly restricted the space in which civil society organizations operate. This phenomenon demonstrates that restrictions on CSOs are not unique to Indonesia but form part of a global trend driven by state concerns about political stability, security, and national sovereignty (Buyse, 2018). Freedom of association and assembly is a constitutional right guaranteed by the 1945 Constitution, enabling community groups to establish various forms of organization, including foundations, associations, and cooperatives. CSOs represent one means through which citizens exercise their constitutional rights to associate, assemble, and express their opinions in a democratic state (Amer, 2020, p. 4).

Freedom of association is a fundamental right in a democratic state (Amer, 2020, p. 4). However, this right is not absolute and may be restricted by law through mechanisms that ensure due process (Amer, 2020, p. 11). Paradoxically, some CSOs that are critical of, or even reject, the legitimacy of the government continue to exercise freedoms afforded by the democratic system, including the rights to associate and express opinions, as well as access to the justice system and state legal protection (Labolo, 2022, p. 22). Fundamentally, these freedoms provide space for public participation, the expression of aspirations, and social oversight through CSOs.

In practice, however, some CSOs have been accused of abusing these freedoms to engage in extortion, intimidation, land grabbing, and violence under the guise of serving social or public interests. This phenomenon has also attracted international attention. The South China Morning Post reported allegations that a

group of thugs interfered with the construction of the BYD electric vehicle plant in Subang, West Java, potentially hindering Indonesia's ambition to become a regional hub for electric vehicle manufacturing in Southeast Asia (Satria & Ferdian, 2025). Various other incidents involving CSOs have also been reported, including clashes between CSOs in Blora and Bandung as well as unauthorized actions such as the takeover of BMKG land in South Tangerang, the restriction of access to PT Bumi Asri Pasaman (BAP)'s premises in South Barito, and the takeover of the parking lot at South Tangerang Regional General Hospital (RSUD).

These incidents demonstrate that some CSO activities have extended beyond the scope of civic participation and have the potential to disrupt public order, the investment climate, and social stability. Therefore, the state needs to strengthen mechanisms for the guidance and supervision of CSOs, as well as law enforcement against CSOs that violate statutory provisions, including the imposition of sanctions up to and including disbandment, in accordance with the rule of law and the values of Pancasila. This phenomenon is not unique to Indonesia. Glasius, Schalk, and De Lange (2020, p. 453) state that legislative restrictions on NGOs have increased globally since 1999, at an eversteeper pace.

These findings indicate that many countries face the same dilemma: balancing the maintenance of public order with the protection of freedom of association. From the early years of independence through the Reformasi (Reform) era, regulations governing CSOs and mechanisms for their disbandment have undergone various changes. During the periods of Liberal Democracy and Guided Democracy, the regulation of CSOs was based on Staatsblad 1870 Number 64 on Incorporated Associations, whereas organizations with social objectives, or commonly known as foundations (*yayasan*), were governed by the Burgerlijk Wetboek (Civil Code) (Al Araf, 2022, p. 5).

During these periods, the government, specifically the Governor-General, had the authority to disband incorporated CSOs on the grounds that they disrupted public order. One organization disbanded during this period was the Indonesian Islamic Youth Movement (GPPI).

The GPII was disbanded pursuant to Presidential Decree Number 139 of 1963 on the Dissolution of the Indonesian Islamic Youth Movement Organization, which cited its involvement in an assassination attempt against President Sukarno and the government's view that it had hindered the revolution (Satria & Ferdian, 2025).

During the New Order era, CSO regulation was based on Law Number 8 of 1985 on Civil Society Organizations, which granted the government broad authority to restrict and disband such organizations. Exercising this authority, the government disbanded a number of CSOs through various decrees issued by the Minister of Home Affairs, including the Indonesian Islamic Students (PII), the Marhaenist Youth Movement (GPM), the Indonesian Student Solidarity for Democracy (SMID), the Indonesian Workers' Struggle Center (PPBI), the National Farmers' Union (STN), the Indonesian People's Union (SRI), the Jakarta People's Union (SRD), and the Solo People's Union (SRS) (Al Araf, 2022).

With the advent of the Reformasi (Reform) era, demands emerged for the repeal of these regulations, which were considered repressive, and their replacement with a framework that would better guarantee freedom of association. However, the government and the House of Representatives opted to retain the CSO regulatory framework while revising its substance through Law Number 17 of 2013. Under this law, the disbandment of a CSO was subject to specific administrative stages, ranging from written warnings, suspension of government assistance, and temporary suspension of activities to revocation of the registration certificate and legal entity status. In principle, revocation of legal entity status required judicial proceedings.

Significant changes occurred following the enactment of Law Number 16 of 2017, which empowered the government to revoke the legal entity status of CSOs through an administrative decision without first obtaining a court ruling. This policy sparked debate because it was perceived as potentially undermining due process and raising concerns about the protection of freedom of association and civil liberties. Therefore, any restriction or disbandment of CSOs must be carried out in a manner that is proportionate,

accountable, and consistent with the principles of the rule of law and democracy.

Table 1. Comparison of Mechanisms for Disbanding Civil Society Organizations (CSOs)

Government Era	Legal Instrument	Disbandment Mechanism
Post-Independence	<i>Staatsblad</i> 1870 Number 64	Through government action or a court ruling following a prosecutor's petition
New Order	Law Number 8 of 1985	Through a government decision without judicial proceedings
Reform Era	Law Number 17 of 2013	For incorporated CSOs, through a court ruling; for unincorporated CSOs, through government revocation of the Registration Certificate (SKT)
	Government Regulation in Lieu of Law Number 2 of 2017, subsequently enacted as Law Number 16 of 2017	Through a government decision without judicial proceedings

Source: Author's analysis on relevant legal instruments, 2026.

The authority to disband CSOs has undergone significant shifts over time. Law Number 8 of 1985 granted the government authority to disband CSOs, whereas Law Number 17 of 2013 shifted authority over the disbandment of incorporated CSOs to the courts, thereby strengthening due process of law. However, under Law Number 16 of 2017, the authority to revoke the legal entity status of CSOs was returned to the government. This change indicates a significant regulatory shift, and arguably a regulatory anomaly, because the latest mechanism reverts to a model similar to that applied during the New Order era (Winata, 2018).

The policy sparked debate because disbanding CSOs without a court ruling was seen as potentially undermining guarantees of freedom of association and civil liberties (Al Araf, 2022). Conversely, the government bases this authority on the principle of *contrarius actus*, which holds that the official or institution authorized to issue an administrative decision also has the authority to revoke that decision. This principle served as one of the legal bases for the issuance of Government

Regulation in Lieu of Law Number 2 of 2017, which was subsequently enacted as Law Number 16 of 2017. The considerations underlying the Government Regulations state that Law Number 17 of 2013 had not adopted the *contrarius actus* principle and was therefore considered ineffective in taking action against CSOs deemed to be in conflict with Pancasila and the 1945 Constitution. Thus, the government maintains that revoking the Registration Certificate (SKT) or the legal entity status of a civil society organization (CSO) constitutes an administrative action that the competent authority may take without prior judicial proceedings (Firosa, 2019).

Based on the principle of *contrarius actus*, the government has the authority to revoke the legal entity status of a CSO that it previously granted. However, because disbanding a CSO with legal entity status affects the rights and freedoms of legal persons, the process should be subject to judicial review to ensure an objective and balanced assessment of the interests of the government and the CSO (Winata, 2018). This differs from CSOs without legal entity status, whose registration may be revoked directly through cancellation of the Registration Certificate (SKT). The issuance of Government Regulation in Lieu of Law Number 2 of 2017, which was subsequently enacted as Law Number 16 of 2017, expanded the government's authority to revoke the legal entity status of CSOs without prior judicial proceedings, marking a shift from a persuasive approach toward a more repressive approach to maintaining state stability. Nevertheless, this expanded authority must still be subject to checks and balances, as the disbandment of CSOs should not be left solely to the government without judicial involvement (Kurniawan, 2018).

CSOs whose legal entity status is revoked are deemed immediately disbanded and may no longer engage in activities related to freedom of association and assembly. Thus, Law Number 16 of 2017 removes prior judicial review from the disbandment mechanism (Latifah, 2020). Law Number 16 of 2017 implies that the government's authority to disband CSOs constitutes attributed authority, that is, authority granted directly to a government body by legislation. This attributed authority concerning the disbandment of CSOs is evident in the provisions of Article 80A of the CSO Law and Regulation Number 33 of 2012 issued by

the Minister of Home Affairs, which provide that a CSO may be disbanded if its legal entity status, as stipulated in Article 61(1)(c) and Article 61(3)(b), is revoked (Krisnadana, dkk, 2022).

The issuance of Government Regulation in Lieu of Law Number 2 of 2017 resulted in the disbandment of Hizbut Tahrir Indonesia (HTI) through Decree of the Minister of Law and Human Rights Number AHU-30.AH.01.08 of 2017. This marked the beginning of the government's assertion of authority, specifically through the Ministry of Law and Human Rights, to disband CSOs deemed to conflict with Pancasila and threaten the integrity of the Unitary State of the Republic of Indonesia (NKRI). The government's authority to revoke the legal entity status of a CSO, thereby effectively disbanding it, violates the principle of due process of law inherent in a state governed by the rule of law and thus contravenes Article 1(3) of the 1945 Constitution (Winata, 2018). According to Atip, due process of law serves as a constitutional guarantee of a fair legal process that affords individuals the opportunity to be informed of the proceedings and to have their statements heard (Latipulhayat, 2017). Furthermore, Winata argues that the government's authority to revoke an organization's legal entity status and thereby effect its disbandment infringes upon freedom of association and assembly, thereby conflicting with Article 28 and Article 28E(3) of the 1945 Constitution.

The disbandment of a CSO must be based on clear legal grounds because such organizations serve as vehicles for exercising the freedoms of association, assembly, and expression, which are guaranteed as fundamental human rights. Consequently, the disbandment of such an organization, as a restriction on human rights, must be regulated by law (Basniwati & Saleh, 2022) hierarchically structured management, authorities and responsibilities, in respective sectors such as education, health, religion and youth empowerment, which means as broad community matters. The presence of mass organization in current era is debatable, especially with the government response through Common Ministerial Decree on mass organization dissolution. to answer this legal problem, this research applies normative method by using conceptual approach and grammatical and authentic interpretations method. Legal aspect which will be analyze in

this study is the common ministerial decree from the perspective of administrative law. Since, the government frequently issued a decree which has regulation (regeling). Under Law Number 17 of 2013, the legislature established a more cautious disbandment process involving a longer, multi-stage procedure and the participation of non-governmental actors in the decision-making process. However, Law Number 16 of 2017 eliminated some of these stages and excluded non-governmental actors. This shift signals a change in the direction of legal policy, from an approach that was initially responsive to public aspirations toward one that tends to be more repressive. Excluding the judiciary from making the final determination on disbandment amounts to a disregard for the principle of checks and balances among state institutions. Executive authority must be subject to judicial oversight to ensure that administrative decisions made by government officials can be reviewed by the courts for compliance with applicable legal principles (Al Araf, 2022, .p. 212).

According to Rohmatun and Agung, concentrating the authority to disband CSOs entirely in the executive branch could shift the state from a rule-of-law system toward a system characterized by rule by law (Khasanah & Pratama, 2023). Law Number 16 of 2017 empowers the government to disband CSOs without a prior court ruling, thereby sparking debate over the balance between effective law enforcement and the protection of democratic rights. Wasistiono and Rohmadin (2023) state that, according to Stoner and Freeman, authority can be understood from two perspectives: authority derived from a higher source and authority accepted by the public, namely, the party affected by its exercise. From the second perspective, the effectiveness of the exercise of authority is determined not only by its legal basis but also by the level of public acceptance of the policy in question.

At the same time, government authority serves as an instrument for enforcing the law and maintaining public order. Therefore, the government has legitimate authority to take action against CSOs that violate the law or disrupt public order, provided that such actions comply with the rule of law and respect citizens' constitutional rights (Pramono & Munandar, 2020). Authority does not derive its legitimacy solely from a higher

source or formal regulations; it also depends on its acceptance by the public affected by its exercise. Consequently, the disbandment of CSOs without judicial proceedings, even when based on a legally valid framework, can still generate conflict if the policy is rejected by a significant portion of the public or perceived as inconsistent with principles of justice and public participation.

This demonstrates that the legitimacy of authority is determined not only by written law but also by public acceptance of the policies implemented. If the public perceives that a decision, such as the disbandment of a CSO, does not reflect the collective will, it may lose social legitimacy even if it remains legally valid. Thus, the government or relevant authorities should consider not only legal considerations but also public perceptions, aspirations, and values when making decisions with broad implications for public life.

This view aligns with Jatim and Yustiningtyas (2021), who argue that legal processes should ideally be conducted through judicial institutions, particularly the courts, to uphold Indonesia's status as a state governed by the rule of law. A key indicator of this principle is the clear separation of powers among state institutions, namely, the executive, judiciary, and legislature. Such separation helps ensure that the law can serve the interests of justice through the role of judges as a check on executive action, including the imposition of sanctions on CSOs suspected of violating legal provisions.

The Government Regulation in Lieu of Law reaffirms the grounds for disbandment and the prohibitions applicable to such organizations, as stipulated in Article 59. These prohibitions include the use of names, symbols, or attributes resembling those of state institutions, foreign countries, international organizations, other CSOs, or political parties; the receipt or provision of unlawful donations; fundraising for political parties; hostile acts based on Ethnicity, Religion, Race, and Social Groups (SARA); blasphemy; acts of violence, public disorder, and destruction of public facilities; interference with law enforcement functions; the use of symbols associated with banned or separatist organizations; separatist activities; and the dissemination of ideologies contrary to Pancasila.

Violations of these administrative prohibitions are subject to sanctions, including a written warning and the cessation of activities. Violations that threaten public order, national security, or the Pancasila ideology may result in administrative and criminal sanctions. These sanctions include the revocation of the Certificate of Registration by the Minister of Home Affairs for civil society organizations (CSOs) without legal entity status and the revocation of legal entity status by the Ministry of Law and Human Rights for CSOs with such status. Through the Government Regulation in Lieu of Law on CSOs, the government also streamlined the disbandment mechanism by eliminating the judicial process previously required under Law Number 17 of 2013 (Al Araf, 2022).

Freedom of association, assembly, and expression constitutes a fundamental human right that the government must respect. However, these freedoms are not absolute. The government, through the Ministry of Law and Human Rights and regional National Unity and Politics agencies, has the authority to restrict these freedoms, provided that the principles governing their exercise are respected (Elfudlatsani, 2019, p. 60). Such restrictions must be strictly construed and meet the following criteria: they must be prescribed by law; they must be imposed solely to achieve legitimate objectives in a democratic society; and they must be genuinely necessary and proportionate to the social needs they are intended to address (Firosa, 2019, p. 156). Regarding restrictions on freedom of association, the grounds for disbandment must involve conduct that demonstrably disrupts security and public order. The justification for restricting these freedoms is based on threats to public security and public order, as outlined in the Siracusa Principles in The Limitation and Derogation Provisions in the International Covenant on Civil and Political Right (Al Araf, 2022, p. 197).

According to Al Araf (2022), the disbandment of a CSO is justifiable if the organization engages in acts that threaten public security and public order, such as violence and the destruction of public facilities, armed rebellion against the Unitary State of the Republic of Indonesia (NKRI), assuming law enforcement functions, inciting hostility based on race, religion, race and inter-group relations (SARA) that could trigger

social conflict, or establishing a military-style organization.

Consistent with this view, Issacharoff (2006) states that democratic states have both the right and the obligation to restrict or disband organizations that threaten democracy, freedom, and the constitutional order. However, such restrictions must be grounded in clear legal provisions, serve a legitimate purpose in a democratic society, and comply with the principles of necessity and proportionality. Labolo (2022) emphasizes that although the state may impose restrictions in the public sphere through legal instruments, such restrictions must not be arbitrary and must continue to respect human rights principles. Thus, the disbandment of a CSO involves not only the maintenance of public order but also the need to balance the protection of democracy with the guarantee of freedom of association within a state governed by the rule of law.

IV. Conclusion

This study demonstrates that the allocation of authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights regarding the regulation of civil society organizations (CSOs) continues to result in overlapping mandates, unclear lines of authority, and legal uncertainty. The current division of authority, which is based on legal entity status, has proven inadequate for effectively addressing the need for the guidance and supervision of CSOs. Therefore, the allocation of authority should be restructured based on organizational characteristics, specifically by distinguishing between membership-based and non-membership organizations. Under this model, the Ministry of Home Affairs would be better positioned to oversee membership-based organizations, given their direct connection to sociopolitical guidance, public order, and local community dynamics. Conversely, the Ministry of Law and Human Rights would be better positioned to oversee non-membership organizations, such as foundations, whose activities focus primarily on legal and administrative matters.

Furthermore, this study identifies a constitutional dilemma between protecting freedom of association, a constitutionally guaranteed fundamental right, and the state's

obligation to maintain security and public order. The disbandment of CSOs without prior judicial review, as provided for under Law Number 16 of 2017, reinforces government authority through the *contrarius actus* principle; however, it simultaneously raises concerns regarding due process of law, checks and balances, and the protection of citizens' democratic rights.

While the state has the authority to restrict or disband CSOs that threaten the democratic order, security, or state ideology, such measures must be grounded in a clear legal basis and remain subject to judicial oversight to prevent repressive practices. Consequently, the restructuring of authority over CSO regulation and disbandment should focus not only on improving the effectiveness of guidance, supervision, and law enforcement but also on strengthening checks and balances to maintain an appropriate balance between state stability and the protection of freedom of association within a democratic rule-of-law framework.

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