

ANNEX 3

Monitoring Report 2nd Year of the Implementation of Act on Societal Base Organization (Act Number 17/2013)

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Background

Similar to the first year since the ratification of Act on July 2nd, 2013, the Coalition of the Freedom of Association (KKB) carried out again the monitoring of the Act Number 17/2013 on Societal Base Organization. The object of monitoring is the whole practices of Societal Base Organization Act and its dynamics in the period of July 2, 2014 until July 2, 2015 in all through Indonesia.

The monitoring carried out by KKB seeks to answer the key question “What is the impact of the Act on Societal Base Organization especially in the second year of enactment and in what form?” From the monitoring there are fact-findings and the correlations of two major background of the formulation of [the bill of] the Act on Societal Base Organizations as usually presented by the House of Representative and the government. In other words, the questions is whether the fact-findings confirmed the effectiveness of the Act on Societal Base Organizations in terms of (i) the prevention against the organization that has mass and uses violence (such as demonstration with violence, sweeping, etc.); and (ii) the improvement of the governance of the organizations, especially related to transparency and accountability.

The second year of the implementation of the Act on Societal Base Organizations presented its own dynamics. At the beginning, all organizations were obligated to register themselves to the National Unity and Politics Board. The KKB found the registration obligation, one of them is the Circular Letter of the Head of the National Unity and Politics Board of Banyuwangi Regency (November 2014).

Usually, the liability is preceded by data collection activities to check whether the organization is registered or not and whether the Notification of Registration (later called SKT) is still valid or has expired. If an organization is unable to enroll the obligation, then the organization will experience the impact, starting from being labeled as illegal organization, the activities being banned, the access to empowerment funds is closed, being not recognized or simply not served.

One of the differences from the first monitoring activity (July 2, 2013 until July 2, 2014) was in the second year there was the verdict of the Constitutional Court on Judicial Review petition of the Act on Societal Base Organization. This gave a particular context where the verdict of the Constitutional Court on December 23, 2014 delivered impacts on the implementation of the Act on Societal Base Organization, especially for the two reasons. First, the registration of the organizations is voluntarily and the unregistered organizations still be recognized and their existence should be secured. Second, mass organization based

on territory is not known. Thus, there are no national, province or regency/municipality of mass organizations.

The Act on Societal Base Organization in the Perspective of KKB

Mass Organization actually has no position in Indonesia law framework. However, the New Order Regime imposed it to control the dynamics of mass organization through the implementation of the “single media” concept. In other words, mass organization is not a legal entity. They only have registered status based on the Notification of Registration (SKT) issued by the Directorate General for Unity Nation of and Politics, Ministry of Home Affairs).

The reason to establish appropriate legal framework to prosecute the violence behavior of some mass organizations by the formulation of the Act on Societal Base Organization revision is not relevant. The penal code regulates criminal acts committed by inclusion, where the violence committed by a group of people provides criminal consequences to the actor or the intellectual actor. It means the penal code is quite adequate to prosecute the actor, the inclusions, and the intellectual actor of criminal acts, or those who express the hostility or hatred to a group of people openly in the public. If there is a group of people who commits violence in an organization, the actors as well as the head of the organization could be convicted.

The transparency and accountability of civil society organization cannot be separated from various settings. Article 16 of Act No. 14/2008 on Public Open Information has delivered liability to the non-governmental organization to provide public information such as the principles and objectives, programmes, source of funds, financial management and others.

The financial of most of the legal entities of the organizations are audited by public accountants because it is the statutory of the institutions as the taxpayer. Thus, without the Act on Societal Base Organization there is already the law that regulates the organization administrative, such as the Act on Public Open Information, act on Foundation, and the Statute of the Society.

The Act on Societal Base Organization should be repealed, not revised as proposed by the House of the Representatives and the government, because of it misdirection. The issue of the Act on Societal Base Organization is not only about the articles in question, but also the core concepts of the regulation. In other words, although there is revision on the problematic articles, it is useless because based on the wrong framework.

The position of the Act on Societal Base Organization as the “law umbrella” will just expand the bureaucracy, licensing, complicated mechanism that will cause the lack of the freedom of association in Indonesia. The 1945 Constitutional of the Republic of Indonesia has become the law umbrella and guaranteed the freedom of association and gathered.

It should be understood that there are two legal frameworks for civil society organization in Indonesia. For non-member organization, Indonesia law provides legal entity of foundation which regulated by the Act of Foundation. While for the organization based on membership, Indonesia law provides legal entity of society which still regulated by the Statute of Society (Staatsblad/Stb) 1870-64 on association with legal entities (*Rechtspersoonlijkheid van Verenigingen*).

The rejection of the Act on Societal Base Organization does not mean the civil organizations

are disobedient entities. If the government intends to organize civil society organizations, they should set it in the right legal framework. The majority of countries with civil law system recognize two types of legal entities, namely foundation/*stichting* and Association/*Vereniging*. Civil Society Organizations (CSOs), Non-Governmental Organization (NGO), and the like is a practice term. The legal terminology will always refer to legal entity of foundation or association. The civil society organizations are better organized through both the Act on Foundation and the Act on Association.

METHODOLOGY

Monitoring carried out by KKB is part of the monitoring and evaluation legislation. In general, the purposes of law monitoring are (i) to find out the process of law implementation; and (ii) to document how the actors and the institutions achieved the goals. In other words, the recent progress of the Act of Societal Base Organization can be informed through monitoring (during period of July 2, 2014 until July 2, 2015) in relation with the level of effectiveness or the possibility of causing a new problem. We are also able to recognize the gap between the purpose of the regulation and the enforcement of the regulation.

The actors of the Act of Societal Base Organization are legal entities Mass Organizations (foundation and association) and non-legal entities, including (category) of foreign Mass Organizations. If we simulate, the actors of the Act of Societal Base Organization are the organizations that engage in almost all of the sectors, namely pesantren management institution, amil zakat (institution that organizes zakah – a form of alms-giving treated as religious obligation in Islam), orphanages, hospitals, youth organizations, community of arts and films lovers, association of science, profession, hobby, social organization up to family community. While the category of the operator institutions include actors from the government, namely Central Government (Ministry of Home Affairs, Ministry of Law and Human Rights, Ministry of Foreign Affairs, and some sectoral ministries), the National Intelligence Agency (BIN), Indonesian National Police, Judiciary Agency, and the Supreme Court. Meanwhile, at the region the actors include the Governor/Regent/Major, the Regional House of Representatives, District Court, Agency of National Unity, Politics and Public Safety, and some sectoral government offices.

The objects or the goals of the Act of Societal Base Organization monitoring divided into three groups: the impacts, policies and behavior of those who implement the Act. The division of the groups based on the map of response to the Act of Societal Base Organization. There is direct response and considered as the most authoritative one (directly impacts of the Act of Societal Base Organization or more technical and operational regulation) and organizationally, which means the effects arise from the actor who implement the Act and the connection that exist between the actors.

It would be possible there will be another implementation regulation in regional level (province and regency/municipality), besides the existence of Governmental Regulation as the technical regulation (derivative) of the Act of Societal Base Organization. The regulation could be in the form of local regulation (Perda), Governor/Regent/Major Regulation up to Circular Letter of heads of local government offices. The Act of the Societal Base Organization also regulates the behavior or action of the actors.

In monitoring the implementation of the Act of the Societal Base Organization, KKB collect, select, and verify the data and findings. The sources of the data among others are the media,

field reports up to policy documents (in the form of *qanun* / local regulation, Governor Instruction, and Circular Letter). KKB analyzed the online media. They put the news materials into the monitoring table contained explanations of type and description of the events, location and time, type of action, actor, and victim. The next step is the recapitulation of the categorization of number of data, such as the type of event and action to the potential victim. Then all groups of data that has been categorized are visualized (in graphics).

Some of policy documents obtained by KKB are *Qanun* of North Aceh Regency concerning people's benefits and orderliness, Circular Letter of Ministry of Home Affairs official (related to the explanation of Constitutional Court Decision) up to the circular letter of the government of Banyuwangi Regency, Gorontalo, Kapuas, and Bandar Lampung Municipality as well as Governor Instruction of DKI Jakarta.

To obtain a complete confirmation and context, KKB conducted interview and *Focused Group Discussion* (FGD) in five regions: Bengkulu, Pontianak, Bulukumba Regency, Banyuwangi Regency, and Gorontalo Regency. All data and findings derived from media monitoring to FGD are synergized and analyzed to get the conclusion of the second year of the Act on Societal Base Organization implementation.

FINDINGS AND ANALYSIS

Throughout July 2, 2014 until August, 2015 KKB obtained findings of the Act of Societal Base Organization implementation in the form of official actions and policy related to the Act.

Most of the action conducted by the officials is in the form of the socialization of the Constitutional Court verdict with some contents. *First*, the mass organizations are allowed to register in all level of government offices or not register. *Second*, the central and the local government will not serve the unregistered mass organizations. However, the government is not able to set the organization as forbidden and ban their activities as long as it does not disrupt security, public order, and violate the law. *Third*, the Notification of Registration (SKT) issued for the central board or other names applied to all structure of mass organization board. *Fourth*, data of mass organization shared through database application of the mass organization. *Fifth*, the empowerment of mass organization is no longer monopolized by the central and local government.

There are 11 policies related with the Act on Societal Base Organization issued by the central government, province and regency. The greatest number is the Circular Letter (6 policies), the others are in the form of Governor Instruction, Decree, *Qanun* and Bill of Local Regulation. There is local Regulation (*perda*) issued in Aceh.

Monitoring of Policy Related to the Act of Societal Base Organization

A few months after the verdict of the Constitutional Court, the Ministry of Home Affairs issued the Circular Letter Number 220/0109/Kesbangpol concerning the explanation of Constitutional Court Verdict towards the Act No.17/2013. It contains and emphasizes the verdict of the court as mentioned above.¹ Unfortunately the court did not explain more about

¹ Constitutional Court, "A Constitutional Court verdict No. 82/PUU-XI/2013 regarding Law on

the services. The interpretation of the phrase potentially causes legal uncertainty. It could be misinterpreted at the local level and just the opposite of the Act on Societal Base Organization and threaten the democracy in Indonesia.

The North Aceh Regency issued *Qanun* of North Aceh Regency of 2015 concerning the people's benefits and orderliness. It requires each mass organization to register, including obtaining a license before they carry out activities. The *Qanun* also mentions that the Agency of National Unity, Politics and People Safety will evaluate the activities and the performance of the organization every five years.

It seems that regulation is enacted to ensure all activities of mass organizations are in line with what is call as "the people' benefits and orderliness" based on Islamic *Syariah* principles that applied in Aceh. If we read the substance in the *Qanun* that issued in April 2015, it completely ignored the Constitutional Court Verdict that related to the judicial review proposed by PP Muhammadiyah and some civil societies and individuals joined in the Coalition for Freedom of Association.

Table 1: Monitoring of Policy Related to the Act of Mass Organization

NO	ISSUED	LOCATION	TYPE OF POLICY	EXPLANATION
1.	March 12, 2014	Banggai Regency, Province of Central Sulawesi	Circular Letter of the Head of the Agency of National Unity, Politics, and People Safety of Banggai Laut Regency concerning	Circular Letter is addressed to the chairman / leader of Mass Organization in Banggai Laut. One of the contents is the requirement to register mass organization/CSOs. The expired SKT should be renewed.
2.	September 10, 2014	Bulukumba Regency, Province of South Sulawesi	Guidance of Registration of Mass Organization in the Ministry of Home Affairs and Local government	Containing guidance of registration that refers to Minister of Home Affairs Regulation No.33/2013 concerning the Guidance of Mass Organization Registration in Ministry of Home Affairs and Local Government and the Act No.17/2013 concerning Societal Base Organization.

Societal Base Organizational," pages 124-125.

http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_2103_82%20PUU%202013_Ormas-telahucap-23Des2014_header-%20wmActionWiz.pdf (downloaded at 7 November 2015).

NO	ISSUED	LOCATION	TYPE OF POLICY	EXPLANATION
3.	January 16, 2015	National Jakarta	Ministry of Home Affairs Circular Letter No. 220/0109/Kesbangpol concerning the Explanation of the Constitutional Court Verdict towards the Act No. 17/2013	<p>CL is addressed to the Head of the Agency of National Unity, Politics, and People Safety at Province level in Indonesia. It contains the Constitutional Court Decisions:</p> <ul style="list-style-type: none"> • The mass organizations are allowed to register in all level of government offices or not register. • The central and the local government will not serve the unregistered mass organizations. However, the government is not able to set the organization as forbidden and ban their activities as long as it does not disrupt security, public order, and violate the law. • The Notification of Registration (SKT) issued for the central board or other names applied to all structure of mass organization board. • Data of mass organization shared through database application of the mass organization. • The empowerment of mass organization is no longer monopolized by the central and local government.
4.	January 22, 2015	Province of South Sulawesi	Head of the Agency of National Unity, Politics, and People Safety Circular Letter No. 220/0109/Kesbangpol concerning the Explanation of the Constitutional Court Decision towards the Act No. 17/2013	Circular Letter is addressed to Head of the Agency of National Unity, Politics, and People Safety at Regency/Municipality level in the Province of South Sulawesi. It contains the Minister of Home Affairs Circular Letter.

NO	ISSUED	LOCATION	TYPE OF POLICY	EXPLANATION
5.	February 16, 2015	DKI Jakarta	Instruction of the Governor of DKI Jakarta No. 23/2015 concerning the process of Operational License of Foreign Mass Organization	The instruction is addressed to the Majors and Regents in Kepulauan Seribu. It contains the suggestion to arrange the operational permit to the Government of DKI Jakarta c.q Head of the Agency of National Unity, Politics, and People Safety of the Province of DKI Jakarta.
6.	April 12, 2015	Aceh Regency, Province of NAD	<i>Qanun</i> of North Aceh Regency concerning the people's benefits and orderliness.	The <i>Qanun</i> contains the implementation of people orderliness, of of them related to CSOs; the statutory of registration and obtaining license before they carry out activities in North Aceh Regency and should clearly explain their vision, mission, and work plan. The Agency of National Unity, Politics and People Safety of the Regency will evaluate the activities and the performance of the organization every five years.

NO	ISSUED	LOCATION	TYPE OF POLICY	EXPLANATION
7.	April 13, 2015	Gorontalo Regency, Province of Gorontalo	Regent of Gorontalo Circular Letter No. 200/BKBPL/182/IV/2015 Concerning the Existence of CSOs	<p>It is addressed to the head of governmental office, the assistants and expert staff, division head, head office, directors of State Owned Enterprise, Region Owned Enterprise, Head of District, the Head of Kelurahan/Village in Gorontalo Regency. It contains at least three things.</p> <ol style="list-style-type: none"> 1. There is no facilitation for CSOs which do not have SKT. 2. The facilitation includes ignoring serving all kinds of funding facilitation, and giving explanation/interview, attending invitation from the CSOs. 3. Conducting persuasive development to prevent and order the activities that potentially caused disharmony.
8.	April 21, 2015	Tanah Datar regency, West Sumatera	Tanah Datar Regency, West Sumatera No. 220/121/Kesbangpol-2015 concerning the termination of activities addressed to the head of CSO LP2M.	The reason of the termination letter is expire date of the Notification of Registration of LP2M and AustraliaAid as the partner of LP2M has not obtained the principle license and operational license.
9.	May 13, 2015	Kapuas Regency, Central Kalimantan	Circular Letter Number 220/253/Kespolin. 2015	Circular Letter is addressed to Mass organization and CSO in Kapuas Regency. It contains the order to all the heads of governmental offices, State Owned Enterprise, Region Owned Enterprise and Heads of Districts in Kapuas Regency to only serve mass organization/CSOs that has fulfilled the requirement as legal entity or owned the Notification of Registration and has registered their existence.

NO	ISSUED	LOCATION	TYPE OF POLICY	EXPLANATION
10.	August 18, 2015	National Jakarta	Circular Letter of Minister of Home Affairs No.900/4527/SJ concerning the strengthening of Chapter 298 Article (5) the Act No. 23/2014 concerning Local Government.	It is addressed to the Governor, Regent/Major, and the chairman of House of Representative of Regencies/Municipalities in Indonesia. The contents are some articles in the Act of Societal Base Organization as a reference of regulating the agencies, institution, and legal entities of Mass Organization in Indonesia.
11.		Wajo Regency	Circular Letter of Wajo Regency No. 300/111/Kesbangpol of Wajo Regency	The suggestion to register to the Agency of National unity, Politics, and People Safety, to obtain the Notification of Registration (SKT) for five years. The SKT should be renewed if the leader of the organization changed.

http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_2103_82%20PUU%202013_Ormas-telahucap-23Des2014_header-%20wmActionWiz.pdf (downloaded at 7 November 2015).

The local government of Gorontalo interprets the verdict of Constitutional Court in phrase "...the Mass Organizations who do not register to the government authorities do not get services from the government (state)..." by issued the policy that they will ignore the funding proposal in any terms, refuse to give explanation or interview, or do not attend the invitation from the unregistered organizations. This policy enacted in Circular Letter of Regent No. 200/BKBPL/182/IV/2015 concerning the Existance of Mass Organization/CSOs. The letter is addressed to the head of governmental office, the assistants and expert staff, division head, head office, directors of State Owned Enterprise, Region Owned Enterprise, Head of District, the Head of Kelurahan/Village in Gorontalo Regency.

When the existence of the circular letter is being confirmed by KKB through FGD in Gorontalo, Mr. Azhari as the head division of Democratization of the Agency of National Unity, Politics, and People Safety stated that before the circular letter of Acting Directorate General National Unity, Politics, and People Safety of the Ministry of Home Affairs No. 220/0109/Kesbangpol of January 16, 2015 is issued, the Agency of National Unity, Politics, and People Safety of Gorontalo Regency has ever met and consulted to National Unity, Politics, and People Safety of the Ministry of Home Affairs. The result of the consultation is becoming a more realistic reference to interpret "service scope" for mass organization/CSOs.

From the principle of freedom of association, the phrase does not receive government services is obviously problematic. It is not only discriminatory, but also limits the access of communities to participate and access public services. Whereas freedom to organize and participate in unions must be guaranteed both for individuals including unregistered group or association. This guarantee also applies to legal entities and corporate institutions, members of minority ethnic, national, sexual, and religious; national and non-national (including those who stateless, refugees, foreigners, asylum searcher, migrants and tourists); children, women and men.

This decision has important implications. Local government can hide behind the decision to cover public information as guaranteed in Public Law. As published in the Constitutional Court Verdict No. 3/PUU-XII/2014, in some cases, the legal registered organizations are even not easy to access public information, moreover those who have not registered. This is as example experienced by FITRA Foundation of North Sumatra. The Information and Electronic Data Processing Office of Karo Regency of North Sumatra rejected the request for information from FITRA. The reason is that because the organization has not listed in the Agency of National Unity, Politics, and Public Safety of Karo Regency. In fact, FITRA is a legal organization in the form of foundation since December 2012.

The restrictions of access that legitimized by verdict of the Constitutional Court would seem to be a restrictions pattern on the practice of organization for unregistered to organizations. Although considered legal and their activities not prohibited, certain organizations or forums will be highly constrained to deal with the government and governmental issues.

Regulations to prohibit the activity have also become another challenge for freedom of association in Indonesia. This will be faced by many foreign NGOs or NGOs that cooperate with foreign NGOs. Prohibition of NGO activity had ever been issued by the Government of Tanah Datar few months after the verdict of the Court. The Assessment and Community Empowerment Foundation (LP2M) which cooperated with Australia Aid was banned to do their activities.² The reason was because the Notification of Registration of LP2M had been

² LP2M established on September 7, 1995 in Padang with the legal status of foundations by deed of Establishment of the Notary Frida Damayanti S.H in Padang No. 02 dated September 7, 1995, the

expired and Australia Aid otherwise did not have principle license and operating license as requirements documents to cooperate with LP2M. This policy showed that Tanah Datar considered Australian Aid as "Foreign NGO". Therefore it exposed to liability as required in chapter 44 of the Act on Societal Base Organizations.

Monitoring the Media

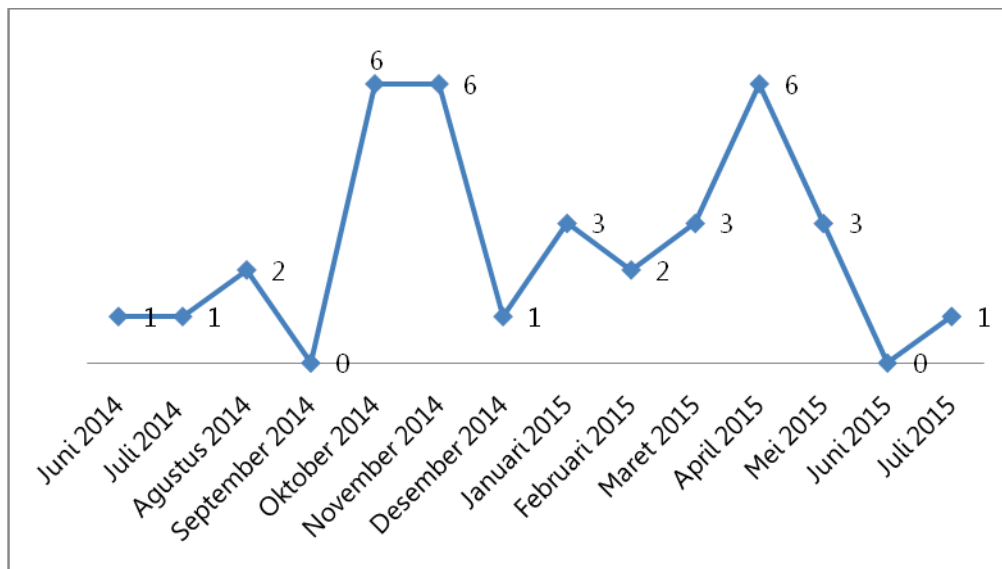
Throughout July 2014-July 2015, KKB monitoring media related with the implementation of the Act on Societal Base Organizations. Online monitoring source is the national and local media. This monitoring has two purposes. First, monitoring the cases categorized as contrary to the principle of freedom of association. Second, monitoring the trends of issues related to issues of freedom of association. Throughout the monitoring period, there were 35 events and 39 actions considered contrary to the principle of freedom of association. The difference number between actions and events because in a single event could occur two or more actions. The monitoring results compiled in a monitoring map based on websites, it is available today at the link <http://bit.ly/1jegVw6>.

Period of Events

From the period, it can be seen that most events occurred in October-November 2014 (12 events) and April 2015 (6 events). In October-November 2014, the biggest number of events is the socialization activities from Agency of National Unity, Politics and People Safety that took place in a number of areas related to the Act of Societal Base Organization. The socialization produced some policies, including statements from government officials related to the Act of Societal Base Organization. In April 2015, an increase of event number caused by the socialization activities after the issue of Circular Letter of the Ministry of Home Affairs that consisted of Constitutional Court verdict on Mass Organizations Act.

Decree of the Minister of Justice No. C 166 HT 03 01 Year 1994. Through the congress on November 19, 2006, LP2M changed to the Association by Deed Mohammed Ishaq SHNo.05 dated July 9, 2008 and ratification of the Association legal entity by Ministry of Law and Human Rights No. AHU-0001676.AH.01.07.TAHUN 2015. Currently, its office is at Kubu Dalam Kompleks Vila Nusa Indah No. 9 Parak Karakah, Kecamatan Padang Timur, West Sumatra. In brief, the establishment of LP2M started from the discussions which followed by several NGO activists in West Sumatra and one person from North Sumatra. The discussions about the negative impacts of development that caused social injustice and gender inequality has built a commitment and a shared vision to develop a movement to realize the social transformation for the marginalized people, especially women in West Sumatra. The initial step was initiated by three founders independently: Fitriyanti, Lusi Herlina, and Slamet Rahmadi. A more complete view of this organization is available in their official website <http://lp2m.or.id/> (accessed 7 November 2015).

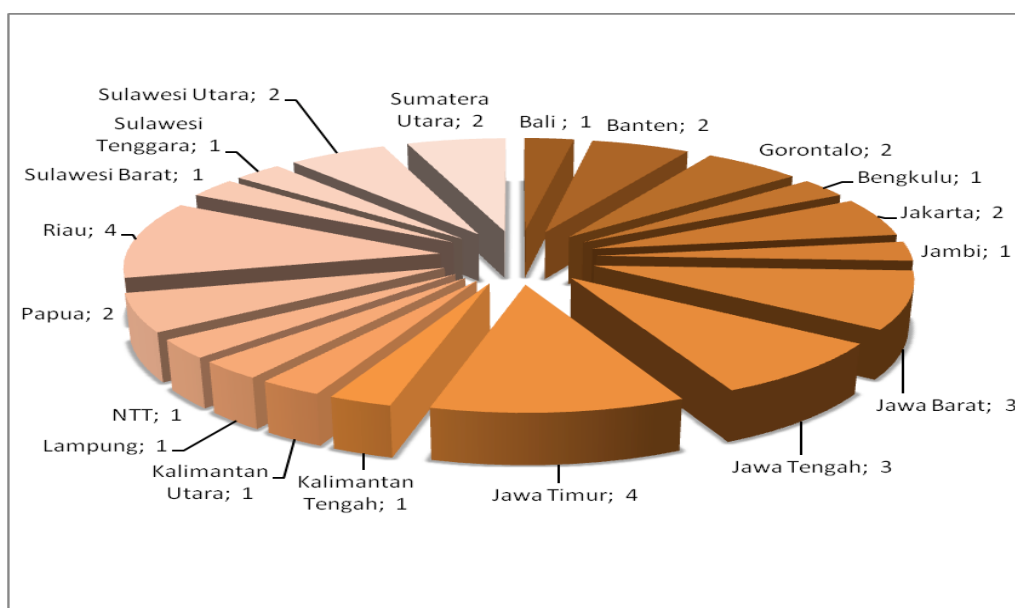
Table 2: Period of Events



Location of Events

The events mostly were carried out in East Java (4 events) and Riau (4 events). Followed by Central Java (3 events) and West Java (3 events). In East Java, the events were carried out in Ponorogo Regency, Malang, and Jember Regency. In Central Java, the events were carried out Semarang, Pati Regency, and Lamongan Regency. While in West Java the events were carried out in Sukabumi, Bogor City, and Bogor Regency.

Table 3: Location of Events



Type of Action

Type of actions considered contrary to the principle of freedom of association is the obligatory to register (17 actions). The verdict of Constitutional Court confirms the freedom of mass organizations in Indonesia to register or not. The government is also not able to set the unregistered organization as forbidden and ban their activities. The verdict of the court emphasizes that the ban is possible if the mass organization disrupt security, public order, and violate the law. In practice, this phrase could be applied carelessly and violate the justified principles.

Although it prefers "urge" or "push", the Agency of National Unity, Politics, and People Safety at the level of provincial, regency/municipality in the end lead to the obligation to register. Without registering, the organization will not be able to be served by the government, such as accessing funds. Even in some cases the organization could be banned to carry out activities or get public access from the government.

Referring to the statement of the National Law Commission Member Roichatul Aswidah before the Judge of the Constitutional Court, the obligatory to register and prohibition to carry out activities is contrary to at least three important aspects of the guarantee of freedom of association.

First, the guarantee of the registration process that is free from arbitrarily actions. Second, the guarantee of the organization is free from the control of their activities. Third, the guarantee of the organization is free from the arbitrarily restriction and dissolution.³

According to Roichatul there are two role models of the authorities to regulate civil society organizations: notification and registration (registration). Admission to certain civil society organizations as a form of state involvement is possible. However, there are a number of principles that cannot be ignored. Registration itself is meant to be the legal basis of the establishment of an organization. So, it is administratively and it is not allowed to do restrictions on things that are substantive, such as restriction of the objective of the organization. When the policy of registration is enacted, the media of complaints should be given adequately. This is to provide a process of appeal against the government decisions if the organization does not agree to register.

The second level of actions found in media monitoring is CSO stigmatization and access restrictions. This stigmatization takes two forms: the accusation as a stooge of foreign and illegal organizations. The accusations as foreign stooge are experienced by Greenpeace and WWF, two organizations that are critical to voice the struggle against environmental destruction. Constitutional Court's verdict cannot set the unregistered organization as illegal, in practice the stigmatization is still happening in a number of areas. In the long term, this stigmatization can be a serious challenge for CSOs to participate in democracy. Not only government will prohibit the activities of the organization but also group of communities against other communities.

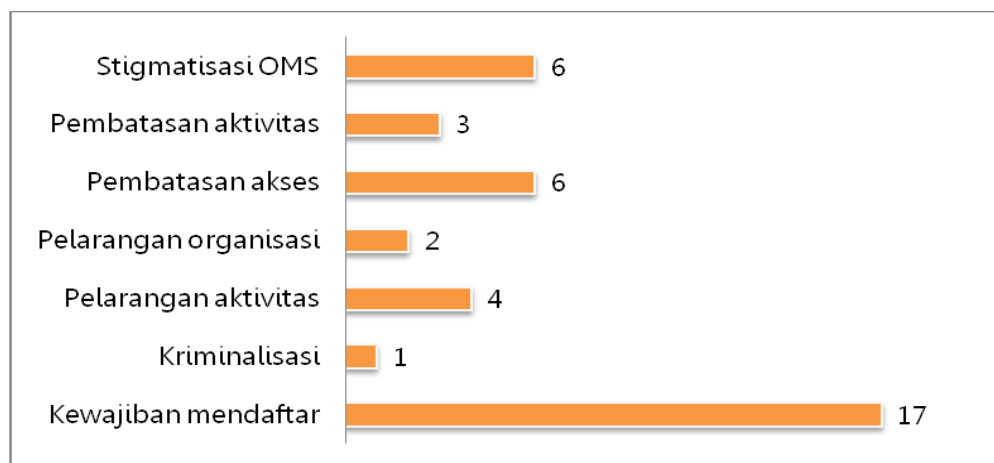
Statements of illegal organizations, for example, are still used by a number of government officials. For example, Head of the Agency of National Unity, Politics, and People Safety of North Sulawesi province, Gun Lapadengan, to the Pelopor Angkatan Muda Indonesia (PAMI)

³ Roichatul Aswidah, Member of the National Law Commission, Court of Jucial Review of the Act on Societal Base Organization (Case Number 3/PUU-XII/2014 concerning Judicial Review of the Act on Societal Base Organization), Thursday February 27, 2014.

in Manado; the Secretary of the Agency of National Unity, Politics, and People Safety of Lampung Richard Syarnubi to the unregistered organizations in April 2015; Head of the Agency of National Unity, Politics, and People of Kendari Ridwansyah Taridala to the unregistered organizations, in July 2015.

Meanwhile the third most action occurs in the form of prohibition of activity (4 actions). This prohibition is generally the continued impact of the policy to register and termination of services for unregistered organizations. Other cases occurred in relation to prohibition article against Pancasila (the state sign of the Republic of Indonesia) in Article 3. It overrode Gafatar.

Table 4: Type of Action



The Actors

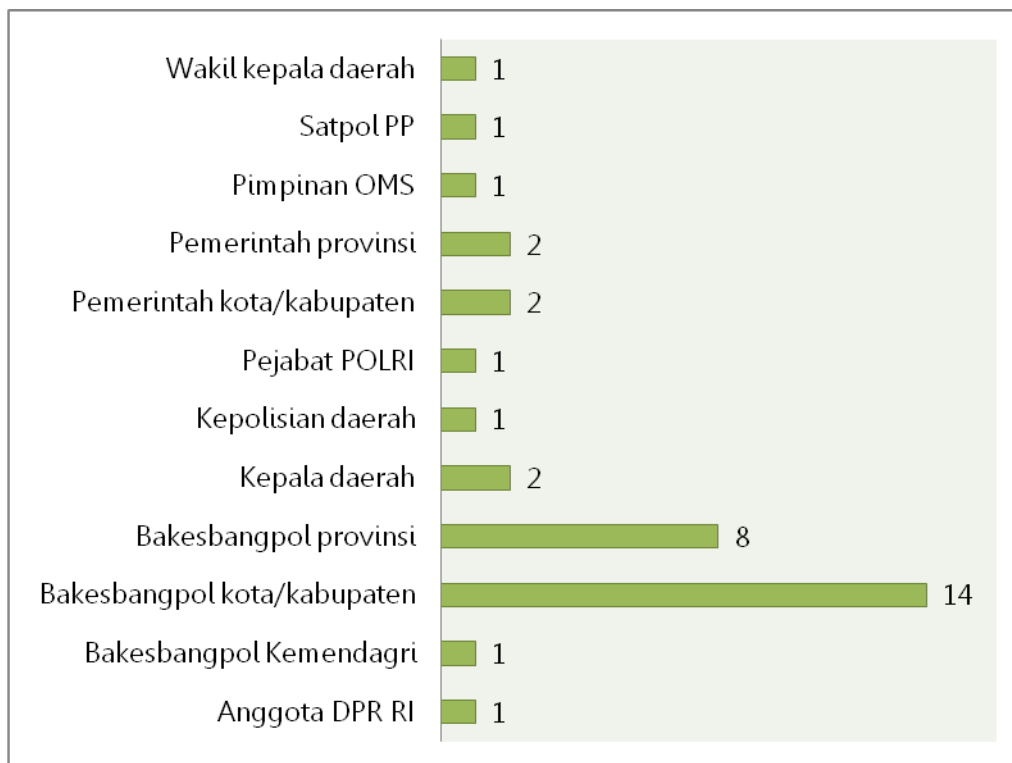
The Agency of National Unity, Politics, and People Safety of Regency/municipality is the largest actors in the actions which is contrary to the principle of freedom of association (14 events). Next followed by provincial Agency of National Unity, Politics, and People Safety (8 events), the next is the head of the region (2 events), the provincial government (2 events), and the government of regency/municipality.

The map of the actors is to confirm the KKB denial since the Act was still the draft since the government uses political and security approach rather than the law to overview the community social sector. The interpretation of this approach is carried out under the supervision of the Ministry of Home Affairs through the Director General of the National Unity and Politics. This political approach actually is already abandoned the majority countries in the world. It is the commitment to reflect the principle of law state. The minority of states are generally still authoritarian, putting social sector supervision under the Ministry of Home Affairs or Ministry of Politics, Law, and Safety.⁴

⁴ Press Release "The Act on Societal Base Organizations Proposed to the Constitutional Court Advocacy Team for Freedom of Association ". This press release published on December 20, 2013. See

<http://pshk.or.id/site/sites/default/files/unduhannya/5BSiaran%20Pers%20KKB%5D%20Pendaftarannya%20JR%20UU%20Ormas%20Des13.pdf> (accessed on November 7, 2015).

Table 5: The Actors



Victims

The biggest potential violations of freedom of association occurred to the unregistered organization. Meanwhile, for the registered organization, the restrictions occurred related with the Notification of Registration ownership, including the renewed notification. Other types of organizations which are vulnerable to be the victims are those from minority groups based on religion and beliefs, or those who receive radical stigma or allegedly involved terrorism.

Table 6: Victims

20 members of KNPB	CSOs in Jember	CSOs are not registered in Bolmong
Foreign CSOs	CSOs in Banten	CSOs are not registered in the Province of Lampung
Community that affiliated with ISIS	CSOs in Bogor Regency	CSOs in Ponorogo Regency
CSOs in Riau	PAMI of North Sulawesi	CSOs in Papua
CSOs in the Province of Jambi	Gafatar Bali	CSOs do not own the Notification of Registration in Kapuas
FPI	CSOs in Pati Regency	CSOs are not registered in Kendari
CSOs in Sibolga	Gafatar Bone	CSOs are not registered in Gorontalo
CSOs in West Sulawesi	CSOs in North Kalimantan	CSOs are not registered in Bolmong
CSOs in Sukabumi Regency	Gafatar Kepahiang	CSOs are not registered in the Province of Lampung
CSOs in Malang	CSOs are not registered	CSOs in Ponorogo Regency
CSOs in Bogor	CSOs in Lamongan Regency	CSOs in Papua
CSOs are not registered in Indonesia	CSOs in Pelalawan	CSOs do not own the Notification of Registration in Kapuas
Gafatar	CSOs in West Papua	
FPI	CSOs are not registered in Gorontalo	

In the case of FPI violence, Basuki Tjahaja Purnama –he was still the vice governor of DKI-also use the Act on Societal Base Organizations to crack down FPI.⁵ He said that the FPI was not registered in the Agency of National Unity, Politics, and People Safety (Kesbangpol) of DKI Jakarta and was not registered in the Ministry of Home Affairs. Its Notification of Registration expired in 2013.

⁵ <http://news.metrotvnews.com/read/2014/10/07/301631/ahok-tuding-fpi-ormas-ilegal>

In judicial review, including in many statements in the media during the discussion of the bill on Societal Base Organization, the government used the Act on Societal Base organization as the reference to address organizations who often act violence. Through the regulation, unregistered mass organization which is proven doing violation would be terminated and dissolved by the government without impartial judicial process. Meanwhile, the dissolution of the group of violation actors is not the solution. They will easily form a new organization. To overcome the violation, it only needs the law enforcement through regulations that are already enacted. Rejecting the policy of the organization dissolution does not mean rejecting the "restriction". Principle of Siracusa⁶ called the principle of "need" (Necessary). Explanation of the "necessary" implies to restrictions. First, it is based on one of the reasons that justified in the covenant. Secondly, answering social needs. Third, it is to achieve a legitimation of purpose. Fourth, proportionate to the above-mentioned objectives.

For KKB, if the main purpose is to reduce the dissolution of violence doing by certain groups, carry out a fair and independent law could actually effective to achieve that goal. Dissolution is not only the answer. The policy provides a reason to dissolve the organization for the interests of the authorities.

CONCLUSION

1. The Constitutional Court verdict related to the phrase "... the Societal Base Organizations that do not register to government agencies shall not receive services from the government (state) ..." still leave even cause new problems. This phrase gives a chance of distorted interpretation by the government and local governments like the government of Gorontalo. The government can interpret farther beyond the scope of services that already affirmed by the Court, which is performing an activity by using the state budget and gives guidance against the organization by the government.
2. The policy related to the Act on Societal Base Organization issued by the government and local governments after Judicial Review in Constitutional Court MK material still showed some irregularities. For example, further interpretation by the local government on the phrase of "do not get services". Most cases also show some policies even contrary to the verdict of the Court itself. For example, they often refer to an illegal organization.
3. The obligation to register is the most action that opposite the principle of freedom of association. The second most action is CSOs stigmatization and access restrictions. Those show a direct impact of the obligation of registration. The Act on Societal Base Organizations would lead organizations to register. The paradigm that emerged after judicial review is not much different from the paradigm that was canceled: the obligation to get the Notification of registration (SKT).
4. The results of monitoring showed that the Agency of National Unity, Politics, and People Safety of central and regional as the first and second largest actors in the events

⁶ The Siracusa Principles on the Limitation and Derogation Provisions In The International Covenant on Civil and Political Rights, E/ CN.4 / 1985/4. Siracusa Principles are principles on the provision of limitation and reduction of the rights stipulated in the International Covenant on Civil and Politics. These principles are produced by a group of international legal experts who met in Siracusa, Italy, in April and May 1984. Paragraph 15-18. It is taken from the Statement of Expert Roichatul Aswidah to KKB in the Judicial Review of the Act on Societal Base Organization in the Constitutional Court, February 27, 2014.

categorized as contrary to the principle of freedom of association. This indicates that the Act on Societal Base Organizations using political and security approach in looking at the social sector, not the law. This political approach has left by the majority of countries in the world since those countries prefer to display their commitment to law state.

5. "The unregistered organization" is a potential victim of the policy of the Act on Societal Base Organization. Most of them are vulnerable and minority groups such as Gafatar or communities that get negative stigma, such as engaging in a separatist action or blasphemy.
6. The government's efforts uses the act on Societal Base Organization to address committed violence on behalf of a particular organization can be seen as the beginning of a violation of the guarantee to be free from restrictions and dissolution. In fact, this reason to overcome violence even has never been implemented. There are no organizations were terminated for a while and was dissolved because they often commit acts of violence.

RECOMMENDATIONS

1. Repeal the Act on Societal Base Organization and restore the arrangement of CSOs through the right legal framework, which is a legal entity Foundation (for social organization without members) and the Association of legal entities (for social organization with members). The reason to repeal the law means there are a legal vacuum unfounded. To set it back we can use existing laws such as the Local Government Act or the Act of State Ministry.
2. To encourage discussion of the bill that has entered the National Legislation program (*Prolegnas*) 2010-2014. From a legal standpoint, the Bill on Association has more bases. This bill would renew the arrangement of legal entities of association which is still set in the ancient rules of Stb.1870-64 concerning the associations own Legal Entity (*Rechtspersoonlijkheid van Verenigingen*). Various arrangements related to membership-based organization will be regulated in this Act on Association.