

**THE MECHANISM OF DISSOLUTION OF CIVIL SOCIETY
ORGANIZATIONS: A COMPARATIVE STUDY BETWEEN INDONESIA
AND TURKEY**

International Program for Law and Sharia, Faculty of Law, Universitas
Muhammadiyah Yogyakarta, Brawijaya Street, Tamantirto, Kasihan, Bantul,
Indonesia 55183

Email: pratiwigustian@gmail.com

ABSTRACT

This research aims to evaluate the mechanism of dissolution of CSOs in Indonesia and another democracy state namely Turkey. The research is normative legal research by implementing a qualitative approach which uses comparative legal and theory related to the mechanism of dissolution of CSOs. The research used secondary data which consisted of several legal materials namely of primary legal material, secondary legal material and tertiary legal material. The data were analyzed by using qualitative approach. The results of this research show the dissolution mechanism of CSOs between Indonesia and Turkey have similarities and differences in mechanism of dissolution. The similarity is in the involuntary dissolution, in which Turkey dissolved CSOs through the General Assembly decision, while Indonesia through the consent of the member. The difference is that Indonesia terminates CSOs through administrative measures, while Turkey uses court verdict. The Research recommends the Indonesian House of Representatives (DPR) and the President have to respect the rule of law and democracy as mentioned in the 1945 Constitution revised by the law of CSO. Secondly, the dissolution of CSOs in Indonesia should be done through impartial court decision which also provides a legal remedy so that the right of the defence is fully guaranteed after all the softeners measured by the administrative institution are done. Finally, the suspension of CSOs should be conducted through court verdict.

Keywords: *Civil Society Organizations (CSOs), Democracy, Dissolution.*

APPROVAL PAGE

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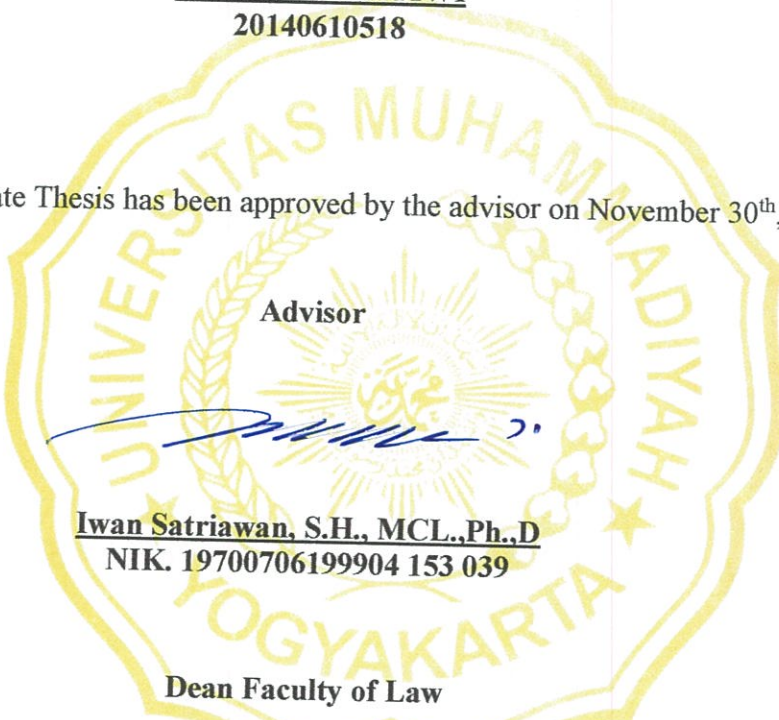
WRITTEN BY:

GUSTIAN PRATIWI

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This Undergraduate Thesis has been approved by the advisor on November 30th, 2018

Advisor



Iwan Satriawan, S.H., MCL., Ph., D
NIK. 19700706199904 153 039

Dean Faculty of Law

Universitas Muhammadiyah Yogyakarta



Dr. Trisno Raharjo, S.H., M.Hum
NIK. 19710409199702 153 028

1. Introduction

On July 10th 2017, the government of Indonesia issued the Government Regulation-In-Lieu of Law on Civil Society Organization (CSOs) No.2 of 2017 (*Perppu Ormas*) with the reason that the existence of such organizations which are not in line with the *Pancasila* and the 1945 Constitution feasibly to endanger national stability.¹ Furthermore, this *Perppu* has been approved by the House of Representative in the parliament building on October 24th 2017.² So, automatically *Perppu* became law, namely Law No. 16 of 2017.³ However, in the session of approval, not all political parties agreed to approve this *Perppu* to be a law.⁴ A faction of the Great Indonesia Movement Party (GERINDRA), Prosperous Justice Party (PKS), and National Mandate Party (PAN) rejected the *Perppu* to be enacted as law because the

¹ *Pancasila* is written in the preamble of 1945 Constitutions and usually called as the Indonesia Philosophy, *Panca* is lima and *Sila* is principles, the content of *Pancasila* are: (1) Belief in One and Only Almighty God; (2) A just and civilized humanity; (3) Unity of Indonesia (4) Democracy led by wisdom in the consultations (the people's) of representatives, (5) Social justice of all Indonesians.

²Reiny Dwinanda,"House Passes Perppu Ormas into Law" available at <http://www.republika.co.id/berita/en/national-politics/17/10/25/oyd9w2414-house-passes-perppu-ormas-into-law> accessed on November 20th, 2017 at 04.06 am.

³ Government declare the state of emergency while issuance the *perppu ormas*. According to Article 12 of 1945 Constitution "The President declares the state of emergency. The condition of State of Emergency regulated by law" further article 22 of 1945 Constitution regulated the *perppu* as follow: (1) In compelling crisis situation the president shall have rights to issuance the government-regulation-in-the lieu of law;(2) The government regulation have to be approved by the parliament (DPR) in its next session;(3) if it (government regulation) not approved, it may revoked.

⁴ Because the deliberation of *perppu ormas* not attained after two hours lobbying off seven political party agree to passed those president regulation in-the-lieu-of law to become law, those fractions among others: Indonesia Democratic Party of Struggle (PDI-P); United development Party (PPP); National Awakening Party (PKB); Golkar Party; Nasdem Party; Democratic Party(Demokrat); People Conscience Party(Hanura) and three other rejects :Prosperous Justice Party(PKS), National Mandate Party (PAN) and Great Indonesia Movement Party(GERINDRA) however, of seven political party, third ask for Revision as well as possible after it enacted, namely: United Development Party (PPP), National Awakening Party (PKB), and Democratic party(Demokrat). Because the discussion is not attained result, the decisions shall be held by voting. The 445 members of parliament presented in the plenary meeting of *perppu ormas*. 314 members agreed *perppu ormas* passed to become law. Meanwhile, 131 disagreed. Therefore, by initiating the various notes that have been submitted by existing factions, *perppu ormas* becomes law. See "Perppu Ormas disetujui DPR melalui mekanisme voting", available at <http://www.dpr.go.id/berita/detail/id/18109> accessed on Thursday, July 19th, 2018 at 08.36 pm.

function of the ordinary court is abolished in this law. This is against the principle of a democratic state based on rule of law.⁵

This new law became controversies not only fractions of political parties but also the parliament. A constitutional expert, Yusril Ihza Mahendra argued that several issues of this law against the rule of law and arbitrarily against people rights that are not compatible with democracy and the purpose of reforms. He named it as the decline of democracy.⁶ There are problematic provisions in law No.16 of 2017 particularly in the abolishment of judicial function that is feasible to create abusing of the power of government. It is proven by the termination of *Hizbut Tahrir*, a religious organization through revocation of their legal entity status before the enactment of this law. However, President Joko Widodo allows the interested party to proceed the case to Court if they disagree with the new law.⁷

Indeed, a question arises, “how to seek justice without trial” which means no due process of law. In fact, Indonesia is a country based on rule of law.⁸ Not only to negate the function of the court which is not in line with the 1945 Constitution but also to diminish the role of Civil Society Organizations in nowadays life. This research attempts to evaluate the mechanism of dissolution of CSOs in Law No.16 of 2017. The research also studies on the mechanism of dissolution of CSOs in Turkey as Comparison.

⁵ Yulisda Medistiara, “Tolak UU Ormas ini alasan, PAN, Gerindra dan PKS” see <https://news.detik.com/berita/3698638/tolak-uu-ormas-ini-alasan-gerindra-pan-pks> accessed on Thursday, July 19th, 2018 at 11.21 am.

⁶ Mesha Meidani, “Yusril Sebut Pemerintah sewenang-wenang dengan perppu ormas”, available at <https://www.cnnindonesia.com/nasional/20170712184328-12-227457/yusril-sebut-pemerintah-sewenang-wenang-dengan-perppu-ormas> accessed on Thursday July 19th, 2018 at 08.29 am.

⁷ Dithya Novianti, “Tidak Setuju Perppu Ormas Jokowi Persilahkan Tempuh Jalur Hukum”, available at <https://www.suara.com/news/2017/07/16/115806/tidak-setuju-perppu-ormas-jokowi-persilahkan-tempuh-jalur-hukum> accessed on Thursday July 19th, 2018 at 05.04 pm.

⁸ See Article 1(3) of 1945 Constitutions

2. Research Method

2.1 Type of Research

Type of this research is normative legal research. Normative legal research is research based on library research. Library research means conducting research through literature learning; this method is conducted by examining the existing laws and regulations pertaining to dissolution mechanism of Civil Society Organizations (CSOs) in Indonesia and Turkey and the evaluation of the laws and regulation based on legal theory. This research will use an approach by analyzing the mechanism of dissolution of CSOs in both Indonesia and Turkey.

2.2 Type of Data

The research used secondary data which consisted of several legal materials namely of primary legal material, secondary legal material and tertiary legal material, each of these materials will be described as follow:

1. Primary legal material consists of:
 - a. Indonesian laws and regulations namely:
 - The 1945 Indonesia Constitution
 - Indonesian Civil Code
 - Civil Society Organizations Act No. 17 of 2013 as amended to Civil Society Organizations Act No. 16 of 2017
 - Foundation Act No. 16 of 2001 as amended to Foundation Act No. 28 of 2004
 - *Staatblaad* 1870-64 on Association (Dutch Colonial State Gazette).
 - Other Regulations
 - b. Turkey Laws and Regulations namely:
 - The 1982 Turkey Constitution
 - Turkey Civil Code No. 4721 of 2002

- Association Act No. 5237 of 2004
 - Foundation Act No.5237 of 2008
 - Other regulations
2. Secondary legal materials are related to primary legal material, among others:
 - a. Books;
 - b. Scientific Journals;
 - c. Other legal document related to the issue;
 - d. Trusted sites internet; and
 - e. Other non-legal document related to this research.
 3. Tertiary legal materials are legal or non-legal materials to support the primary and secondary legal material, such as:
 - a. Black's Law Dictionary;
 - b. Oxford Dictionary;
 - c. English dictionary; and
 - d. Indonesia dictionary.

2.3 Data Collection

Data collection in this research is conducted by reading, analyzing, comparing, and tracing and finally trying to make a conclusion from related documents, such as a book, scientific journal and others which are related to the main object of this research.

2.4 Data Analysis

The data were analyzed by qualitative approach. The data were selected based on the relating issues that need to be analyzed. So that, the result can comprehensively illustrate the fact of this descriptive qualitative research.

3. Discussion

3.1 An Overview

The existence of CSOs is an essential part of the development of communities in democratic states. Generally, the states allowed the existence of CSOs as the manifestation of freedom of association in that country. Both Indonesia and Turkey are democracy states which guarantee the rights of people that are written on their constitutions, particularly freedom of association among others:

Article 28E The 1945 Indonesia Constitution state that: “Each person has the rights to freely associate, assemble, and express his opinion”

The 1982 Turkey Constitution article 33 state that:

“Everyone has right to form associations, or become member of associations, or withdraw from membership without prior permission, no one shall be compelled to become or remain a member of an association, freedom of association may only be restricted by law on the ground of protecting national security and public order, or preservation of criminal commitment, or protecting public morals, public health.”

Despite there is a constitutional guarantee of associational rights in both states, there is no guarantee that those states will not dissolve CSOs as a manifestation of associational life in democratic states. The government of Indonesia and Turkey shared the experience in the termination of these organizations. For instance, in the past, Indonesia closed down societal organizations in 1987, namely *Pelajar Islam Indonesia or PPI* (Indonesia Islamic Student) and *Gerakan Pemuda Marhaenis or GPM*⁹ (Marhaenis Youth Movement).¹⁰

⁹ GPM is organizations found by the Indonesia first president, Soekarno.

¹⁰ Pelajar Pemuda Indonesia was dissolved by Decree of Ministry of Home Affairs No.120/1987 while Gerakan Pemuda Marhaehis was by Decree of Ministry of Home Affairs No. 12/1987 available

Similar to Indonesia, the dissolution also occurred in Turkey in September 1980, after the Military Coup Turkey took control over trade unions and student associations.¹¹ Under the state of emergency, Indonesia and Turkey have banned several CSOs after the issuance *perppu ormas* Indonesia government disband societal organization,¹² which is prejudiced to have an affiliation with *Khilafah* (Islamic teaching in the political matter) namely, *Hizbut Tahrir Indonesia* (HTI) that is not in line with *Pancasila*.¹³ While Turkey issuance 31 emergency decrees, five of those decrees influence the existence of CSOs, which has an affiliation with Fethullah Gulen Terrorist Organizations (FETO) which is proven by 1447 Association and Foundation closed after the coup of 2016.¹⁴

The dissolution of CSOs may affect the ongoing democratic process in Indonesia and Turkey because those CSOs are more popular day-to-day in the democracy process. The participation of CSOs is good for democracy which is articulated in current development states that embrace democracy as their

at <http://ip52-214.cbn.net.id/id/arsip/1988/03/19/KL/mbm.19880319.KL26644.id.html>; <http://majalah.tempointeraktif.com/id/arsip/1988/02/06/NAS/mbm.19880206.NAS26288.id.html> accessed on Wednesday, August 1st, 2018

¹¹ Bali. Rifat N., *Sivil Toplum Haretkin iki Zaafi: Isadamiari ve elitism*, Brikim, No. 130, 2000, p 33 in Ozum Yesiltas, 2006, *Civil Society and Democratization in Turkey: A Critical Evaluation of Civil Society-Democracy in the context of Turkey-EU Relations* (Unpublished Thesis, The Department of International Relations, Middle east Technical University . P.72.

¹² See Indonesia Disband Islamic Group Hizbut Tahrir available at <http://www.thejakartapost.com/news/2017/07/19/govt-disbands-hti.html> accessed on Saturday, Februari 24th, 2018 at 12.01 pm.

¹³ Hizbut Tahrir Indonesia is one of largest Hizbut Tahrir Organization, founded in Jerusalem by Islamic Scholar, namely Sheikh Taqi Al-Din Al-Nabhani which is promoting islamic values, particularly islamic politics. Hizbut Tahrir itself means party of liberation that is found to create the governmental system namely *Khilafah Islamiyyah*. See Mohamed Nawab Mohamed Osman, "The transnational network of Hizbut Tahrir Indonesia", South East Asia Research, Vol.18, No.4, Special issue: Islamic Civil Society In South East Asia –Localizations and Transnationalism in The Ummah, December 2010, p. 736.

¹⁴ Civic Freedom Monitor: Turkey, The International Centre for Non-Profit Law, available at <http://www.icnl.org/research/monitor/turkey.html> accessed on Thursday, July 19th, 2018 at 10.16 a.m.

government system. The positive participation of CSOs is by strengthening democracy quality through their participation to control the state power in improving political system within the state.¹⁵

3.2 Historical Background of Civil Society Organization in Indonesia and Turkey

Before the independence of Indonesia, there were several Indonesia movements against a colony of the Dutch. The young man established organizations like students' and religious organizations, such as *Boedi Oetomo* (1908), *Sarekat Dagang Islam* (1805) *Muhammadiyah* (1912) and *Nahdatul Oelama* (1926); the purpose of these initiatives was to restore Indonesian dignity over the world. Even the social movement was restricted at that time because the influence of Indonesia technocrat made this organization changes into political movement as proven by the change of *Sarekat Dagang Islam* into a political party or so-called *Partai Syarikat Islam Indonesia* in 1930.¹⁶ While *Muhammadiyah* is still in form of association rather than political party, and therefore attracts people sympathy. Furthermore, *Muhammadiyah* became the center of education to enforce *da'wah amar ma'ruf Nahi mungkar* (religious missionary to do good deeds and prevent evil) reform by establishing 8 *Hollands Inlandche Schools* (HIS), 14 Madrasah (Islamic education), in total the *Muhammadiyah* has 4000 students and 113 teachers.¹⁷ Association (as part of CSOs) had developed in the day-to-day people live in Indonesia from colonial until the reform era. Undoubtedly, the action of movement of students

¹⁵ Anders Uhlin, 2009, "Which Characteristic of Civil Society Organizations Support What Aspect of Democracy? Evidence from Communist Letvia", Vol.30. No.3 p.272

¹⁶ *Sarekat Dagang Islam* change its name several times, namely, *Sarekat Islam* (SI) in 1912, *Partai Sarekat Islam* (PSI) in 1923, *Partai Sarekat Islam Hindia Timur* (PSIHT) in 1927 and the last is *Partai Sarikat Islam Indonesia* (PSII) in 1930.

¹⁷ Deliar Noer, 1996, *Gerakan Modern Islam 1900-1942*, Jakarta, LP3ES, p. 95

associations fructifies Indonesia political reform to democracy or *reformasi* in 1998 by self-resigning president Soeharto because of his authoritarian regime which banned the freedom of associations in Indonesia. The condition of CSOs at the time is unstable because it is dominated by government organizations or foundations.¹⁸ The most important of CSOs policy at the New Order (under Soeharto regime) was issuing the Law No. 8 of 1985 on Civil Society Organization, one the major problem of this law is the dissolution of CSOs mechanism without impartial court.¹⁹

After reforming the flourishing of CSOs as the new vibrant of democracy, CSOs in Indonesia has to lead the political agendas which play the role in the political arena to challenge undemocratic system by applying openness political opportunities. The first arena is to be involved in policy making by giving advice or provide assistance to parliament, the second arena is CSOs participation in a political party (be candidates of political party) or only to be team success.²⁰

The development of Turkey cannot be separated from CSOs in the Ottoman Empire era. The school, hospital, graveyard, universities

¹⁸ According to Soeharto, the establishment of foundations is necessary to empower the government and citizens, to get citizens participation, Soeharto make himself to part of citizens who support the president duty or mandatory, the foundation established at the time such as *Yayasan Dharma Bakti Sosial* or *Dharmais* (Social Service and Charity Foundation), *Yayasan Supersemar* (Supersemar Foundation), *Yayasan Amal Bakti Muslim Pancasila* (Muslim Charity of Pancasila Foundation) and *Yayasan dana abadi karya bakti* (Dakab Foundation), Dakab foundation is red-plated foundation support the position of Soeharto as Indonesia president for thirty two years. See Anwar Boharima, 2010, *Kedudukan Yayasan di Indonesia (Eksistensi Tujuan, dan Tanggungjawab Yayasan)*, Jakarta, Kencana Predana Media Group, p. 37.

¹⁹ The government has authority to revoke legal entity status after ask the consideration of Supreme Court (If CSOs in national level) and relevant institutions appointed by Ministry of Affair (in the local level CSOs) if CSOs conducted wrongdoing as stipulated law no.8 of 1985 article 2, 3, 4, 6, 13a, 13b, 13c,16 and 18 in see, Eryanto Nugrogo, 2013, “Bill on Societal Organizations (*Rancangan Undang-undang Ormas*) and Freedom of Association in Indonesia”, *This paper was written for research fellowship program conducted by International Center for Not-Profit Law (ICNL) and European Center for Not-for-Profit-Law (ECNL)*, accessed on August 7th, 2018 at 09.15 pm

²⁰ Aditya Perdana, 2015 “ The Politics of Civil Society Organizations (CSO) in Post-Reformation 1998”, *MASYARAKAT; Journal Sosiologi*, Vol.20, No.1, accessed on August 7th, 2018 at 09.20 pm

are the result of the richest endowers before Turkey becomes a republic. Most of the institutions in the development of Turkey are inherited in form of foundation or *vakif* (*awqaf*, *waqaf*).²¹ Turkey government handle the wealth of *vakif* to be used by poor people or to support education institution in Turkey. When Turkey became a republic in 1923, there were several terminologists of Turkey foundations to differ the old and the new foundation. The authority empowers those foundations and were regulated in Directorate General of Foundation (GDoF) under the direction of Prime Ministry of Turkey.²²

Meanwhile, association in the Republic era is developed by the state. The association is used by Mustafa Kemal Attaturk to spread the philosophy of new regime; the association was sponsored by the state to be political agendas then after Mustafa Kemal ended officially, the successor, Ismet Innonu gave the opportunity to CSOs to be developed freely and relatively permissive in 1946.²³ President Turgut Ozal in 1983 gave autonomous of CSOs after a traumatic coup in 1980. Turkey CSOs suspiciously do some political activity, particularly in the era of President Necmetin Erbakan who is supporter the Islamic CSOs. However, after the acceptance of Turkey as candidate membership of the European Union in 1999, the CSOs became more

²¹ The Ottoman Empire legal system is Islamic law or sharia. The *waqf* is part Islamic sharia (inherited by Prophet Muhammad *pbuh* or *sunnah*). Since the modern Turkey reconstructed their legal system radically and become republic, this state separated the state with religion (secular state) see Ozgur Metil, 2008, Onul Gelbal, *The Path to Modern Turkish Law*, Ankara Bar Review available at <http://www.ankarabaru.org.tr/siteler/AnkaraBarReview/tekmakale/2008-2/13.pdf> accessed on Monday August 13th, 2018

²² Even though Turkey changes the law (Turkey not used the sharia anymore), the Islamic foundations continuous its existence and obtain legal entity status. The first law regulated this foundation is law no. 2762 of 1953 on foundation see Hatice Karacan, 2011, *The Impact of Wakf law on Education in Turkey*, Turkish National Police Academy. p. 3.

²³ The military coup occurs because the autonomous of CSOs at the time is too permissive.

democratic because of the EU involvement and supported their funds.²⁴

3.3 A Comparative Approach of CSOs in Indonesia and Turkey²⁵

The difference between Indonesia and Turkey is on the definition of CSOs, Association and Foundation. Indonesia has CSOs law while Turkey has not any single law on it. The CSOs law in Indonesia is not separated from political context since the New Order era while the Indonesia CSOs at that time seems belong to the anti-state organization.²⁶ Former President of Indonesia, Soeharto, tried to formulate the law to control CSOs by using one single principle (called *Pancasila*) to prevent such ideology which contravenes *Pancasila*. The loyalty of Indonesian CSOs is proven by the compulsory to follow this one single principle through their participation for Indonesia development. Comparing to Turkey, CSOs law is not mentioned in any legislation but Turkey has association law and foundation law where the objectives of Turkey CSOs do not require the state purpose as their aims.

Besides the unified definition of association and foundation in Indonesia, it has another definition of the foundation that is mentioned in foundation law. Meanwhile, the association has no specific definition, except it is defined by a member-based organization which is different from the foundation as non-membership legal entity. Turkey has successfully distinguished association and foundation from the definition of these both CSOs. Thus, it gives the positive impacts

²⁴ Bulen Aress, *et al*, 2017, *Trends in Turkish Civil Society Center for American Progress*, Center of American Progress, Istanbul Policy Center and Instituto Affari Internazionali. p.43.

²⁵ The table of comparative approach is combination of such laws from Indonesia and Turkey made originally by author

²⁶ The Anti-state is claimed by government because of the translation Non-Government Organizations (NGOs) or Indonesia term so-called *Organisasi Non-Pemerintah* or *Ornop*.

from both CSOs. Not only different membership of association and non-membership of association but Turkey association also widely permitted the legal entity as a member of the association. The failure of Indonesia CSOs to define association and foundation is proven by different substances of the minimum standard of by-laws of CSOs in CSOs law to by-laws of the foundation. This differentiation between both laws has legal implication particularly in the mechanism dissolution whether the foundation is dissolved through administrative court, general court or civil court since the foundation is the collection of treasure.

The law of Indonesia CSOs made some progress, new law has been made such as; Foundation Law No.16 of 2001 as amended by Foundation Law No.28 of 2004, CSOs Law No. 17 of 2013 as amended by CSOs Law No.16 of 2017. Eventhough the law of association was still under the Dutch Colonial Gazette or *Statsblaad* 1870-64, there was still ambiguous terminology and provisions rejected under CSOs law.²⁷ Different from Indonesia, Turkey distinguishes the law of Association and Foundation, namely Association Law No.5253 of 2004 and Foundation Law No.5737 of 2008. This CSOs law was also complemented by Civil Code no.4721 of 2001. The accession process of Turkey to European Union makes some changes in foundation law to harmonize old and new foundation in Turkey.²⁸

²⁷ Eryanto Nugroho as the expert witness of *Muhammadiyah* on judicial review law no.17 of 2013 on CSOs to Constitutional Court. He stated that the terminology of *ormas* or civil society organizations 1985 is not free from the political context in Soeharto era, because the unity of association and foundation under civil society organizations law because association is membership and foundation is non-membership. See Putusan No.82/PUU/-XI/2013 available at http://www.bphn.go.id/data/documents/82_puu_2013_ormas-telahucap-23des2014_header-wmactionwiz.pdf accessed on Tuesday August 7th , 2018 at 10.56 pm

²⁸ Turkey Foundation distinguish its foundation to old foundation and new foundation, this foundation is registered under General Directorate of Foundation, and some of this organization is representing by

Table 4.2
Law of CSOs in Indonesia and Turkey

At a glance of CSOs	Indonesia	Turkey
Definition of CSOs	Civil Society Organization is any organizations founded and established by people voluntarily on the basis of similar aspiration, will, needs, interest, activities, and objectives in order to participate in the development and achieve the objectives of Unitary State of Republic of Indonesia based in <i>Pancasila</i> and 1945 Constitution. (CSOs Law No.16 of 2017 Article 1 (1))	Not mentioned
Definition of Association	Not mentioned	An association is defined as society formed by unity for at least seven person or legal entities for realizations of a common object other than profit sharing by collecting information and performing studies for such purposes. (Turkish Civil Code No.4721 of 2001 Article 56)
Definition of Foundation	Foundation is defined as a non-membership legal entity which is formed by designating assets of founders to fulfil the specific objectives in the social, religious, or humanitarian field. (Foundation Law No. 16 of 2001 Article 1 (1))	Foundations are assets in the status of a legal entity formed by real persons or legal entities. Dedicating their private property and rights for public use (Turkish Civil Code No. 4721 of 2001 Article 101)

3.3 Comparative Mechanism of Dissolution of Civil Society Organizations (CSOs) in Indonesia and Turkey²⁹

Dissolution of CSOs in Indonesia occurs in several conditions, the condition of dissolution is set in different laws and regulations. Not only 2017 Indonesia CSOs law applied, but also the law of foundations and regulation of associations. The dissolutions may occur because of the expiry date, the attained or unattained of objectives, court order, or by administrative measure. While in Turkey there are *ipso facto* causes, general assembly resolution, and court mechanism to dissolved CSOs. Guidelines of associations of ODIHR stated that

:“...The only legitimate aims recognized international standard for restrictions are national security or public safety, public order (order public). It is the protection of public health or morals and the protection of the right; freedom of others. The scope of legitimate aims shall be narrowly interpreted . . . The need for restriction shall be carefully weighted, therefore, and shall be based on compelling evidence. The last intrusive option shall never completely extinguish the right nor encroach on its essence. In particular, any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates imminent threat violence or other grave violation of the law which shall never be used for address minor infraction. All restriction must be based on the particular circumstances of the case and no blanket restriction shall be applied.”³⁰

Although for the best practice of dissolution of an association is not easy because their rights are guaranteed under Constitution namely the “right to freedom of association. The minor infringement of restrictions of CSOs in Indonesia and Turkey used the wrongdoing that easy to rectify as causes of dissolution.

²⁹ The wrongdoings of CSOs in Indonesia and Turkey that subject to dissolutions is comparatively made by the author in accordance with the prevailing law in Indonesia and Turkey.

³⁰ Marta Acler, *Op. Cit.* 24-p5

1. The Wrongdoing of CSOs that Subject to Dissolution under Indonesian and Turkish

Table 4.3

Provisions subject to Dissolution under Indonesian and Turkey CSOs Law

No.	Legal Basis of Dissolution/ Wrongdoing	Indonesia	Turkey
1.	Constitutional Basis		Article 33: Everyone has the right to form associations, or become member of associations, or withdraw from membership without prior permission, no one shall be compelled to become or remain a member of an association, freedom of association may only be restricted by law on the ground of protecting national security and public order, or preservation of criminal commitment, or protecting public morals, public health. The formalities, conditions, and procedures, governing the exercise of freedom of association shall be prescribed by law. Association may be dissolved or suspended from activity by the decision by the cases where it is necessary to prevent the perpetration or the continuation of the crime or to effect apprehension, An authority designated by law be vested with the power to suspend association from the activity. The decision of this authority shall be submitted

			for the approval of the judge in charge within twenty-four hours. Unless the judge declares a decision shall be annulled automatically provision of the first paragraph shall not prevent the imposition of restriction on the right of armed forces and security forces official and civil servant so require. The provision of this article is also applicable to the foundation” ³¹
2.	Law of CSOs	<ol style="list-style-type: none"> 1. CSOs do not implement activities in accordance with the objectives of the organizations. 2. CSOs do not fulfil their obligations related to keeping the unity and integrity of the nation and unitary State of the Republic of Indonesia. 3. CSOs fail to preserve the values of religion, culture, moral, ethnic, and decency norms as well as to serve the people (Indonesian). 4. CSOs fail to maintain the social order and courage the creation of peace within society. 5. CSOs fail to manage finance in a transparent and accountable manner. 6. CSOs fail to participate in the 	

³¹ 1982 Turkey Constitution Article 33

		<p>accomplishment of state purposes.³²</p> <ol style="list-style-type: none"> 7. CSOs use name and symbols, flag, or other attributes which have similarities using the name, symbol, or flag of the Republic of Indonesia to become a flag or symbols of CSOs. 8. CSOs use name, symbols and flag and any attributes of a government institution. 9. CSOs use the name, symbol, or flag of international organizations without prior permission. 10. CSOs use name, symbols, or flag which has similarities entirely or partially to separation movement or banning organizations. 11. CSOs use name, symbols, or flag which has similarities entirely or partially to political parties and other CSOs. 12. CSOs spread hostility between ethnic group, religious group, and or racial groups. 	
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³²Indonesia CSOs Act No.16 of 2017 article 60(1) *juncto* Indonesia CSO Act No.17 of 2013 article. 21a, 21b,21c,21d,21e,21f

		<p>13. CSOs commit blasphemy toward the acknowledgement religion in Indonesia.</p> <p>14. CSOs held the separatism movement that endangers national stability.</p> <p>15. CSOs conduct activity that is harsh; disturb the public order, or damages public facilities.</p> <p>16. CSOs perform activities which fall under the duty and authority of the law enforcement agencies in accordance with the prevailing law and regulations.</p> <p>17. CSOs received from or give any form of aid which conflicts with prevailing law and regulations.</p> <p>18. CSOs gather fund for political party interest.</p> <p>19. CSOs follow, develop, and spread teaching or ideology that is a conflict with <i>pancasila</i>.³³</p>	
3.	Law of Association		Article 28: Use of names such as Turks (Turkish), <i>Turkiye</i> (Turkey), <i>Mili</i> (National), <i>Cumhuriyet</i> (Republic), Ataturk, Mustafa Kemal, or other phrases originated by adding abbreviation at the beginning or at the end of these words may

³³ Indonesia CSOs Act No.16 of 2017 article 60(1) *juncto* Indonesia CSO Act No.17 of 2013 article. 59(1a), 59(1b), 59(1c), 59(1d), 59(1e).59(2a),59(2b)59(2c),59(2d),59(2e),59(3a),59(3b), and 59(4)

			<p>only be used upon the receiving permission from the Ministry of Interior.</p> <p>Article 29: Use of names, logos, symbols, rosette, and similar other signs of political party, union or supreme organization, association or supreme organization of an association which is active or subject to liquidation or dissolution under the court decision, or use of flag, logo or pennant of another country or previously founded Turkish states prohibition by the law.</p> <p>Article 30: may not found to serve a purpose expressly prohibited by the Constitution or the law. The penalties will end by dissolution of association as stipulated in article 32n and 32p, among other:</p> <p>Article 32n: Unless the offences do require heavier punishment, a punitive fine at the amount of not less than 100 day, is imposed to the executives of the associations who use the names in article 28 without permission and act contrary to the prohibitions stated in article 29, in spite of the warning made in writing, and also decision is taken for the dissolution of the association.</p> <p>Article 32p: Unless the offences do require a heavier punishment, imprisonment from one year to three years and punitive fine at amount of not less than paragraph 50 days is imposed to the executive of association who act contrary to paragraph (b) of article 30, and establish associations prohibited in the paragraph, and also decision is taken for dissolution of association.</p>
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4	Law of Foundation	<p>Article 62, the dissolution of foundation occurs if:</p> <ol style="list-style-type: none"> a. The expiry period specified in the article of associations. b. The objectives specified in the article of associations attained or unattained. c. Final and binding court verdict because of several reasons, as follow 1). Foundation violates public order and decency; 2). Unable to pay its debts after being declared bankrupt, or 3). Property of foundations is not enough to pay off its debt after the bankruptcy statement revoked. 	<p>Article 20: if the objective of a foundation is included under the last paragraph of article 101 of the Turkish Civil Code, an application shall be made to the competent basic civil court by the Directorate General for the dissolution of the foundation.³⁴ “The termination of a foundation shall be registered in the central register and announced in official Gazette by the Directorate General. Any goods and rights remaining after the liquidation of the debts of a terminated new foundation shall be transferred to a foundation having a similar objective subject to a court decision according to the provisions of the deed of trust, or if no specific provision exists in the deed of trust, by taking the Directorate Generals opinion and the opinion of the foundation to which such transfer is to be made, and any goods and rights remaining after the liquidation of the debts of dissolved new foundation shall be transferred to be the Directorate General.³⁵</p>
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³⁴ 2001 Turkish Civil Code Article 101: The foundation are charity groups in the status of legal entity formed by real persons or legal entity dedicating their private property and right of public use. The entire property or all kinds or income received from the person the person or legal entity may be endowed in the foundation. There is no membership in the foundation. There is no membership in the foundation. Formation of foundation contrary to the characteristics of the republic is defined by Constitution. Constitutional rules, ethics, national integrity, and national interest, or with the aim of supporting a distinctive race or community, is restrictive.

³⁵ Foundations Act No. 5737 of 2008 Article 19, 20, 21 and 22

5.	Civil Code	<p>The dissolution of association which has no legal entity status, as follows;</p> <p>Article 1663: All other legal entities shall continue in existence until they expressly dissolved. In accordance with deeds, regulation and agreement, or until the object of association has been attained.”</p> <p>Article 1664: If the ordinances of legal entities shall continue in existence until they are expressly dissolved. In accordance with their deeds, regulation or agreement, or until the object of the association has been attained.³⁶</p>	<p>The dissolution of Association under Turkish Civil Code is divided into three ways namely: ipso facto³⁷; under general assembly resolution; and court verdict.</p> <p>In Article 87, dissolution ipso facto may occur in the following circumstances:</p> <ol style="list-style-type: none"> 1). If the objects of the association are not realized, or it becomes impossible to reach the goal and object of association, or in the event of the lawful period; 2). It is failed to convene general assembly within the lawful period and one of the legal organs of association is not constituted;³⁸ 3). If the association declared insolvent; 4). If the board of director is not elected during the period specified in the by-laws;³⁹ and 5). If it is failed to convene the general assembly repeatedly two times. Any concerned person may request verification of dissolution ipso facto from the judge of the common court.⁴⁰
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³⁶ Indonesia Civil Code Article. 1663 and 1664

³⁷ According Black Laws Dictionary *Ipsa facto* is derived from Latin word which is means “ by itself”

³⁸ According to Turkish Civil Code in article 73 General assembly is the highest authorization body of association; it comprises members registered in association

³⁹ According to Turkish Civil Code article 84 and 86, Board of directors which the numbers are indicated in the by-laws of the association. It is always provided that such number of members may not be less than five principal and five alternative for board of directors.

⁴⁰ There are two types of meetings of general assembly; ordinary meetings and extraordinary meetings. The general assembly meetings that are held at times indicated in the by-laws of the association upon call of the board of directors are called “ordinary” meetings and should be held at least once every three years. The general assembly may called for an “extra-ordinary” meeting by the board of the director whenever deemed necessary

			<p>In Article 88, dissolution under general assembly resolution</p> <p>“The association may be dissolved at any time under the resolution of general assembly”</p> <p>In article 89, dissolution by the court.</p> <p>If the object of the association is not compatible with legislation and ethics, the court may give judgment for dissolution of association upon the request of a public prosecutor or any concerned person. The court takes all the necessary measures during the proceeded of the case, including suspension of activity.</p> <p>Dissolution of Foundation under Turkish Civil Code No.4721 of 2001</p> <p>Article 116: The foundation may dissolve ipso facto where the realization of the object becomes impossible and amendment of the object is out of the question and the name of the foundation is deleted from the official record upon obtaining court decision. Where it is not possible to amend the object of foundation revealed to carry out restricted activities, or the object is determined to be contrary to legislation: the foundation is dissolved upon requesting of auditing board or, the public prosecutor.</p>
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by the board of the directors or auditor’s board, or by writing request of the one-fifth of the members. Where the board of directors for convening the general assembly meeting makes no call, the judge of common court assign three members to call for general assembly meeting upon application of one of the members.

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Table 4.3 explains the different wrongdoing in Indonesia and Turkey and its legal basis of dissolution. Indonesia puts so many restrictions upon the act of CSOs in its legislation while Turkey only limits some restrictions make CSOs terminated officially. Similarly, both of these states also restrict the minor infringement as wrongdoing which makes CSOs possible to terminate. The prohibition of using flags or states, foreign organizations, banning organizations or sacral terms in Turkey is as the basis of dissolution of CSOs both in Indonesia and Turkey. Even though Turkey does not implement many restrictions of CSOs act in the particular legislation such as association law and foundation law as many as Indonesia, Turkey implements another possibility for case to be brought to court if CSOs contravene ethics and norms according to 1982 Turkey Constitution and Turkey criminal code for particular person who is member of CSOs.

It is recognized that the dissolution of CSOs takes a long time before the revocation of legal entity status, which is maximal 9 until 11 months for administrative measures before final and binding court verdict after court in the first level court (Article 70 (1)) and cassation level for legal remedy (Article 70 (3)). The abolishment role of the general court in the dissolution has given the government power to dissolve a legal entity which cannot be accepted as it is not in the line with checks and balances. The government has power to interpret the law whether the CSOs has been violated the restriction of law then banning the suspected CSOs or not. Even though the law interpretation is the hand of the judiciary and the administrative court is part of judiciary body, the administrative court only

handles the administrative dispute of state and citizens or the factual action of government that causes disadvantage of citizens.⁴¹

Besides, the abolishment function of the general court in the 2017 CSOs law actually does not absolutely diminish the function of the judiciary. Meanwhile, changing the competence of a general court into an administrative court is not in accordance with the Indonesian 1945 Constitution. The administrative measures are taken to make effectiveness and efficiency of government decisions making.⁴² However, the administrative power may not take the duty of the general court to interpret the law such as abstract ideology like *Pancasila* and so on that is related to violations of the CSOs law.

Undoubtedly, the government has obligations, but it does not mean that the state may act arbitrarily. According to John Emerich Dalberg Alton, also known as Lord Acton (1834-1902), “Power tends to corrupt, absolute power corrupts absolutely”. The dominance of government power on the dissolution of such societal organizations seems that the government rejection of (or weak commitment to) democratic rules of the game which characterized by anti-democratic measures.⁴³ Restricting the basic civil right (right of association) by banning certain organization that what by Steven Levitsky and Daniel Ziblatt called as is one of four indicators of “authoritarian behaviour”.

4. Conclusion and Recommendation

4.1 Conclusion

⁴¹ Bambang Arwanto, 2016, “Perlindungan Hukum Bagi Rakyat Akibat Tindakan Faktual Pemerintah”, *Journal of Universitas Airlangga*, Vol.31 No.3 p. 361 accessed November 4th, 2018 at 00.02 am.

⁴² Bettie McNee, 2000, “Public Administrative Law and Public Corporation”, available at www5.austlii.edu.au/au/journals/AdminRw/2000/3.pdf, accessed November 5th, 2018 at 00.05 am.

⁴³ Levitsky, Steven and Daniel Ziblatt, 2018, *How Democracy Die*, United States of America, New York: Crown Publishing, p. 23

From the discussion in the previous chapter, it can be concluded that the CSOs in Indonesia and Turkey have similarity and difference in which Indonesia and Turkey can terminate CSOs involuntarily. The involuntary dissolution in Turkey can be conducted through the decision of general assembly of the association, while in Indonesia it is conducted by means of the consent of members of CSOs. On the other hand, the method of voluntary dissolution in Turkey and Indonesia is totally different. In Turkey, the dissolution of CSOs is conducted through the court verdict after giving a warning to the CSOs when they violate the regulation while in Indonesia it is conducted through administration decisions, such as giving a warning letter in seven days, the suspension, and the revocation of legal entity status of the CSOs.

4.2. Recommendation

Considering the conclusion above, the researcher proposes some suggestions as follows:

1. DPR and the President of Indonesia have to respect the principle of democracy and the rule of law as stipulated in the 1945 Constitution
2. DPR and the President of Indonesia have to revise CSO Law No.16 of 2017 Article 62, particularly about the dissolution mechanism of CSOs which only uses administrative measures by revoking CSOs legal entity. The state has to give them access to court and legal remedy of CSOs before the status of the legal entity is revoked. The administrative measuring process should not take too many stages before the case of dissolution of CSOs falls to an ordinary court. Meanwhile, the suspension of CSOs is not part of administrative measure but it shall be based on the court decision.

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