

CHAPTER FOUR

FINDING AND ANALYSIS

A. Historical Background of Civil Society Organization in Indonesia and Turkey

1. History of CSOs in Indonesia (before Independent to Reformation)

Before the independence of Indonesia, there were several Indonesian 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 1930.³⁸ 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*

³⁸ *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.

Inlandche Schools (HIS), 14 Madrasah (Islamic education), in total the *Muhammadiyah* has 4000 students and 113 teachers.³⁹

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 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.⁴⁰ 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.⁴¹

³⁹ Deliar Noer, 1996, *Gerakan Modern Islam 1900-1942*, Jakarta, LP3ES, p. 95

⁴⁰ 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.

⁴¹ 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

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.⁴²

2. History of CSOs in Turkey (Ottoman Empire to the Turkish Republic)

The development of Turkey cannot be separated from CSOs in the Ottoman Empire era. The school, hospital, graveyard, universities 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)*.⁴³ 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

⁴² 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

⁴³ 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.ankarabarasu.org.tr/site/AnkaraBarReview/tekmakale/2008-2/13.pdf> accessed on Monday August 13th, 2018

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.⁴⁴

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 1946.⁴⁵ 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 democratic because of the EU involvement and supported their funds.⁴⁶

⁴⁴ 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.

⁴⁵ The military coup occurs because the autonomous of CSOs at the time is too permissive.

⁴⁶ 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.

B. A Brief Introduction of Civil Society Organizations (CSOs) under Indonesia and Turkey Law

1. Civil Society Organization (CSOs) under Indonesia Law

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.⁴⁷

2. Civil Society Organization (CSOs) under Turkey Law

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.⁴⁸ The result of this

⁴⁷ 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

⁴⁸ 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 Directorate of Foundation, mostly old foundation and annexed foundation (if the descent unable to

unification is seen in law No. 3753 of 2008. Some terminologists are issued according to those new laws, among other:

Table 4.1
Foundation Act No. 5737 of 2008

Types of Foundations	Definition	Legal basis
Community Foundation	Foundation belongs to a non-muslim community whose member of citizens of Turkey and who gain legal entity under the abolished Foundation Law No.2762 of 1935 disregarding whether that they had a deed of trust.	Article 3d
Tradesman Foundation	Foundations established prior to the effective date of the Foundation Law No.2762 of 1935 and are managed by tradesman.	Article 3d
Registered Foundation	The foundation is managed and represented by Directorate General of Foundation and was established prior to effective date of Turkish Civil Code No.743 of 1926 and it was managed by Directorate General of Foundation under the abolished Foundation law No.2762 of 1935.	Article 3n

form organization structure in ten years), while the new foundation appointed its own council see Hatice Karacan,*Lo. Cit.*

Annexed Foundation	The foundation was established prior to effective date of the abolished Turkish Civil Code No.743 of 1926 and managed by those who descent from endower.	Article 3r
New Foundation	Foundation was established under the abolished Turkish Civil Code No.743 of 1926 and Turkish Civil Code 4721 of 2001.	Article 3b (b)

3. A Comparative Approach of CSOs in Indonesia and Turkey⁴⁹

The comparative study of Civil Society Organizations (CSOs) in Indonesia and Turkey by using laws of CSOs by give the definition, bylaws, organizations structure, and foreign organization, table below will explain:

⁴⁹ The table of Comparative Approach is combination of such laws from Indonesia and Turkey made originally by author.

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)
Branch of Association	Not mentioned	There is a branch in Association in Turkey in form of initiatives or movement or platform (but not enjoy legal entity status) to support the core objectives of association in Turkey. (Association Law 5253 of 2004 Article 2h)
Branch of Foundation	Not mentioned	Not mentioned

By-laws of Association	(a)name and symbols; (b)domicile; (c) Principle , purpose, and functions; (d) management; (e) rights and obligations of members; (f)financial management; (g)dispute settlement and internal audit mechanism; (h)dissolutions (CSOs Law No. 17 of 2013 .Article 35(2))	The name and center of associations; Objectives of associations, methods for pursuing their activities and field of activity; Meeting procedure and dates of general assembly; Duties and responsibilities of General Board, ways and principles for voting and decision making; Duties and responsibilities of executives and auditing board, conditions of being elected, the number of original substitute members; In case of an associations has branches, the necessity details about how to open branch and how it will be presented in the board of associations and with all duties and authorities; the ways of determining the annual amount of membership and annual fees; ways of borrowing; ways of internal auditing; The condition for the changing the statute; Dissolution of association and liquidation ways of its properties. (Association Law No. 5253 of 2004 Article 4).
------------------------	---	---

<p>By-law of Foundation</p>	<p>(a)name and symbols; (b)domicile; (c) Principle , purpose, and functions; (d) management; (e) rights and obligations of members; (f)financial management; (g) dispute settlement and internal audit mechanism; (h)dissolutions (CSOs Law No.17 of 2013 Article 35(2))</p> <p>While the minimum standard of by-laws of foundation in the Foundation Law No.16 of 2001, among other: (a) name and centre of foundation; (b). Objectives of associations, methods for pursuing their activities and field of activity; (c) the period of establishment; (d) the amount of wealth of association is differed too from individual wealth;(e) methods for pursuing their fund; (f) procedures of appointment of governing board, supervisory board and executives board; (g) Duties and responsibilities of appointed governing board, supervisory board and executive board (h) Meeting procedure and dates of general assembly of foundation ; (i) regulation on the changes of by-laws of association procedures; (j) merger and dissolution of foundation; (k) the distribution of wealth after liquidation (Foundation Law No.16 of 2001 Article.14)</p>	<p>Deed of Trust by notarized, such as: if the founder is a person or foundation objectives, foundation goods and rights, the title deed information of real estates, and foundation organ (Regulation of Foundation Article 9)</p>
-----------------------------	--	---

Organization Structure of Association	<ol style="list-style-type: none"> 1. The Chief of Organization or another term. 2. Secretary or another Term 3. The treasurer or another term (CSOs Law No.17 of 2013 Article 29). 	<ol style="list-style-type: none"> 1. General Assembly of Association 2. The Board of Director 3. The Auditor Board. (Turkish Civil Code No. 4721 of 2001 Article 72)
Organization structure of the foundation	<ol style="list-style-type: none"> 1. Governing Board; 2. Supervisory Board 3. Executive Board (Foundation Law No. 16 of 2001 Article. 2) 	<p>The organization's structure of Foundation is divided into two organs, as follow: (1) Management: the management organ of the new foundation shall be composed according to the deed of trust. A majority of the managers shall be resident in Turkey: if any vacancy occurs in any organs of a foundation due to death, resignation or any other reason, such as vacancy shall be filled according to the deed of trust; (2) Audit. An auditing is compulsory of the new foundation. (Regulation of Foundation Article 13).</p>
Association cooperate with a government institution	<p>In order to empower the CSOs the government (central and/ or regional) cooperate with CSOs, the empowerment is;</p> <ol style="list-style-type: none"> a. Policy facility that supports the empowerment of CSOs b. Strengthened institution capacity, in the form 	<p>Association may implement a joint project about their duties with public institutions and organizations may provide aid in kind and monetary aid amounting maximum 50% of project costs.</p>

	<p>(a) management; (b) data and information;(c) partnership to another institution; (d) expertize, program and partnership ;(e) strengthened of leadership and cadres; (f) awarded; (g) research and development.</p> <p>c. Improvement of human development in the field of education and training, internship and courses. (CSO Law No.17 of 2013 Article 40)</p>	(2004 Association Law Article 10).
Foundation cooperation with government Institution	<p>a. Policy facility that supports the empowerment of CSOs</p> <p>b. Strengthened institution capacity, in the form (a) management; (b) data and information;(c) cooperation to another institution; (d) expertize, program and cooperation;(e) strengthened of leadership and cadres; (f) awarded; (g) research and development.</p> <p>c. Improvement of human development in the field of education and training, internship and courses. (CSO Law No.17 of 2013 Article 40).</p>	The Directorate General of Foundation is representing the foundation in Turkey in field of charity by opening Soup Kitchen (provide hot meals and dry food and soup kitchen for whose income is not greater than the minimum wage), provide monthly salary for the needy (the children who don't have father or mother), education salary (for pupils whose economic condition is not adequate to do so), and soon (cited and elaborated some provision in the regulation of foundation)
Foreign Association or international activities of the association	Not mentioned	Association may involve in international activities and cooperate, may open representation or branches, found association or supreme

		committees at abroad or may join to the association or institution with foreign headquarters. Foreign association or supreme committees in Turkey upon the permission of Ministry of Interior and consult of the ministry of foreign affairs. (Association Law No.5253 of 2004 Article 5)
Foreign Foundation or international activities of the foundation	Indonesia foreign foundation is divided into three, as follow: (1).Foreign foundation with legal entity status, or similar institutions with any other titles/ names; (2) Foreign foundation with legal entity status formed by a foreigner and Indonesia citizens';(3)Foreign foundations with legal entity status formed by a foreigner (CSOs Law No.17 of 2013 article 41(2)).	Not mentioned

According to table 4.2, 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.⁵⁰ 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 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

⁵⁰ 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*.

court, general court or civil court since the foundation is the collection of treasures.

C. Comparative Mechanism of Dissolution of Civil Society Organizations (CSOs) in Indonesia and Turkey

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 fasco* causes, general assembly resolution, and court mechanism to dissolved CSOs.

1. The Wrongdoing of CSOs that Subject to Dissolution under Indonesian and Turkish Law⁵¹

⁵¹ 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.

Table 4.3

Provisions subject to Dissolution under Indonesian and Turkey CSOs Law

No.	Legal Basis of Dissolution/ Wrongdoing	Indonesia	Turkey
1.	Constitutional Basis		<p>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</p>

			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 ⁵²
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 accomplishment of state purposes.⁵³ 7. CSOs use name and symbols, flag, or other attributes which have similarities 	

⁵² 1982 Turkey Constitution Article 33

⁵³ Indonesia 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>using the name, symbol, or flag of the Republic of Indonesia to become a flag or symbols of CSOs.</p> <ol style="list-style-type: none"> 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. 13. CSOs commit blasphemy toward the acknowledgement religion in Indonesia. 14. CSOs held the separatism movement that endangers national stability. 15. CSOs conduct activity that is harsh; disturb the public order, or damages public facilities. 16. CSOs perform activities which fall under the duty and authority of the law enforcement agencies in accordance with 	
--	--	--	--

		<p>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>.⁵⁴</p>	
3.	Law of Association		<p>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 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</p>

⁵⁴ 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>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>
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. 	<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.⁵⁵ “The termination of a foundation shall be registered in the</p>

⁵⁵ 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.

		<p>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>	<p>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.⁵⁶</p>
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</p>	<p>The dissolution of Association under Turkish Civil Code is divided into three ways namely: ipso facto⁵⁸; under general assembly resolution; and court verdict.</p> <p>In Article 87, dissolution ipso facto may occur in the following circumstances:</p> <p>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;</p> <p>2). It is failed to convene general assembly within the</p>

⁵⁶ Foundations Act No. 5737 of 2008 Article 19, 20, 21 and 22

		<p>deeds, regulation or agreement, or until the object of the association has been attained.⁵⁷</p>	<p>lawful period and one of the legal organs of association is not constituted;⁵⁹</p> <p>3). If the association declared insolvent;</p> <p>4). If the board of director is not elected during the period specified in the by-laws;⁶⁰ and</p> <p>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.⁶¹</p> <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>
--	--	---	---

⁵⁸ According Black Laws Dictionary *Ipsa facto* is derived from Latin word which is means “ by itself”

⁵⁷ Indonesia Civil Code Article. 1663 and 1664

⁵⁹ According to Turkish Civil Code in article 73 General assembly is the highest authorization body of association; it comprises members registered in association

⁶⁰ 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.

⁶¹ 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 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.

			<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>
--	--	--	---

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. 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.”⁶²

⁶² Marta Acler, *Op. Cit.* 24-p5

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.

2. The Procedures of Dissolution of CSOs in Indonesia and Turkey.

Table 4.4
The Compilation of Dissolution of CSOs under Indonesian Law

Figure 4.1

Dissolution of Association and Foundation under Indonesian CSOs Law No.17 of 2016

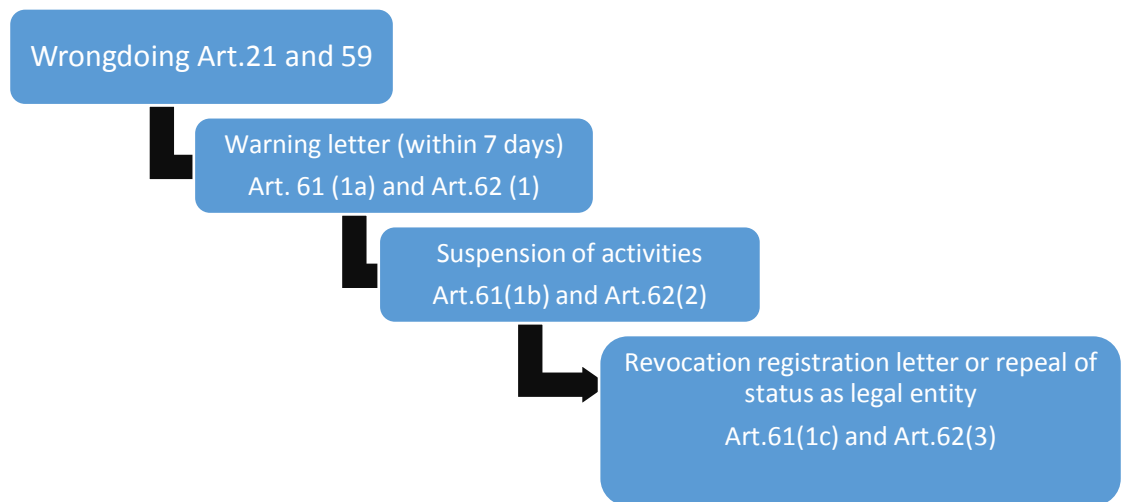


Figure 4.2

Dissolution of Foundation under Indonesian Law No.17 of 2001

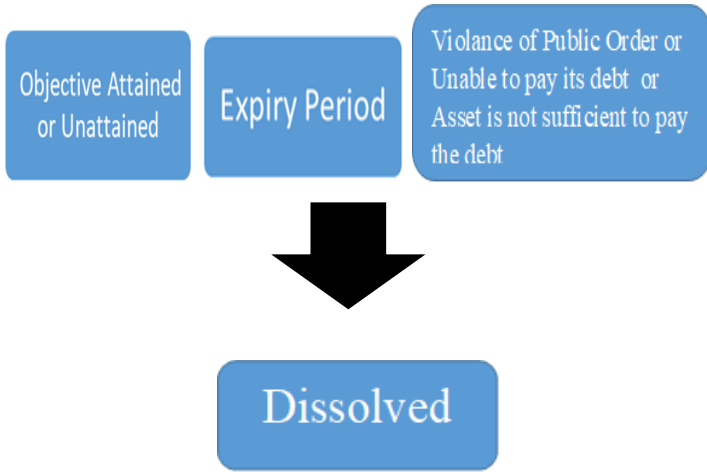


Figure 4.3

Dissolution of Association under Indonesian Civil Code

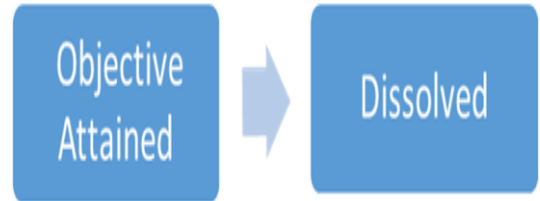


Table 4.5

The Compilation of Dissolution of CSOs under Turkey Law

Figure 4.4

Dissolution of Association under Turkish 1982 Constitution

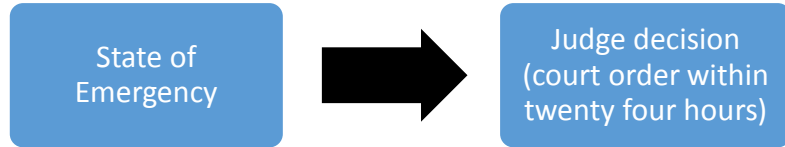
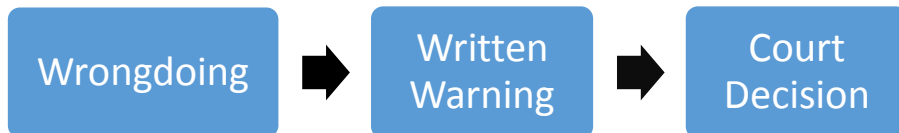
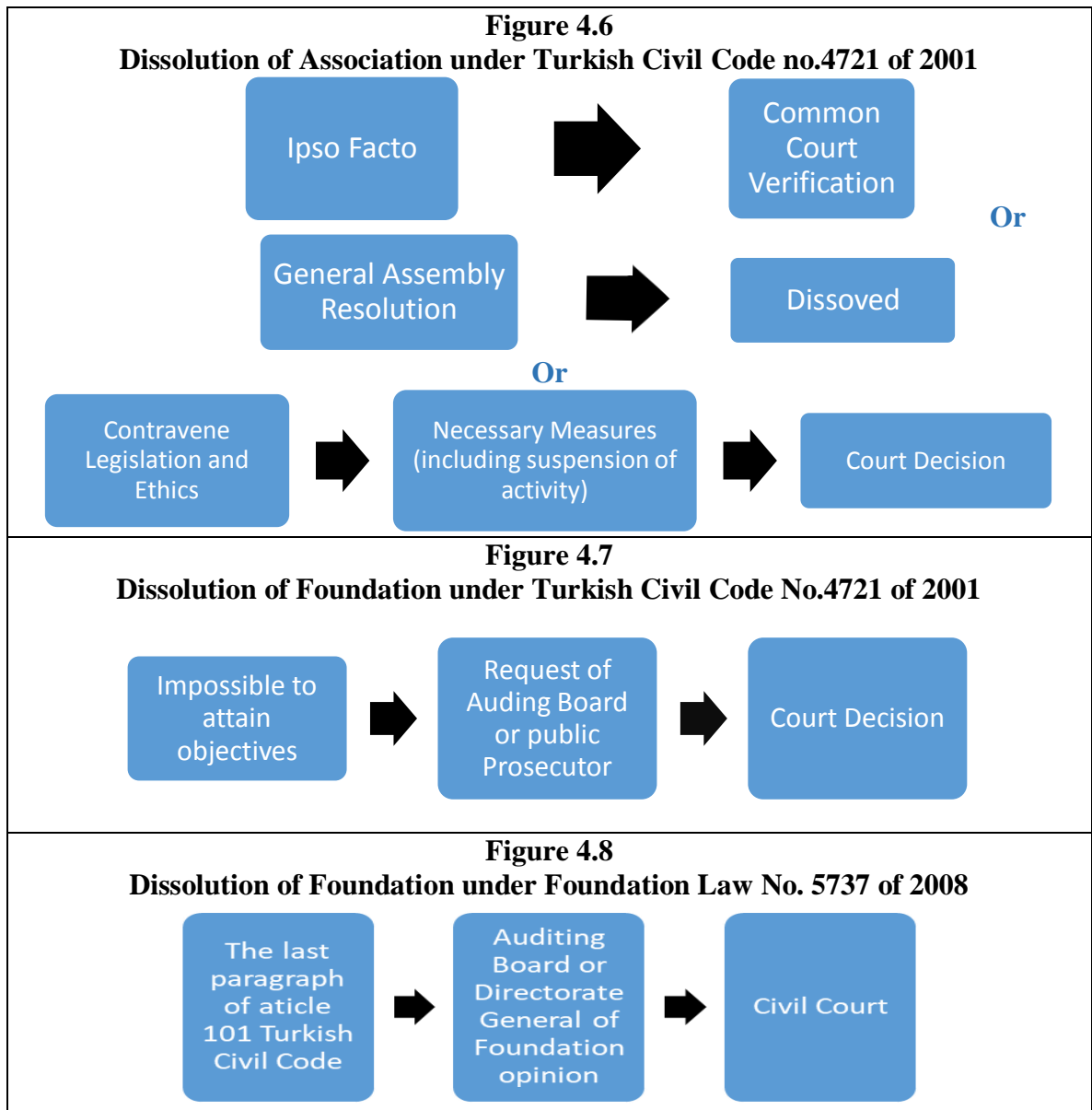


Figure 4.5

Dissolution of Association under Turkish Association Law No. 5352 of 2004





What are exactly the differences between the procedures in Indonesia and Turkey on the dissolution mechanisms? Indonesia dissolves CSOs through administrative measures while Turkey through court order or court verification even the state in the condition of emergency. The competence of Directorate

General of Foundation (DGoF) in Turkey gives its opinion in the field of CSOs which cannot achieve the objectives. Albeit the role of Directorate General under the Prime Ministry of Turkey and as the facilitator of foundation in Turkey which handles the foundation establishment since the Ottoman Empire, it seems like the state interference through CSOs. However, the position of General Directorate of Foundation (GDoF) only gives an opinion and the audit results to bring to the court whether such organization can be terminated or not.

Meanwhile, the ipso facto of CSOs in Turkey is in line with the law since the establishment of CSOs like what is mention in the minimum standard of by-laws that requires meeting procedure and dates of the general assembly and the procedure of electing the executives of organizations. The failure of fulfilling this standard subjects to dissolution. Once again it must be based on court verification after the interest party filling to court.

D. What Indonesia Can Learn From Turkish CSOs Dissolution Mechanism

1. The Different Between Indonesia and Turkey in the Mechanism of Dissolution.

From the tables above, it can be seen that even in some provisions, Turkey extensively interferes the internal of CSOs, for Instance, CSOs may be dissolved if they do not officially appoint the executives according to time or not gather in annual meeting (Article 87 Turkish Civil Code) which is required by its own CSOs by-law. There are at least five things

that Indonesia can be different from Turkey in terms of dissolution of CSOs. These are as follows:

- a.) Turkey does not use the terminologist of CSOs to refer association and foundation rather than distinguish it in the different law namely; association law and foundation law. While Indonesia uses the terminologist of CSOs as a law to unify both association and foundation.
- b.) Turkey may dissolve CSOs through its Constitution but the Indonesian government uses Constitutional justification to dissolve CSOs through “*Perppu*”. There is no specific provision in the Indonesian Constitution related to the dissolution of CSOs;
- c.) Turkey only imposes a sanction to “executives” if they disobey the law related to prohibition of using several names that must have a permit from the government. It means the sanction is only imposed on a particular person. In Indonesia, the wrongdoing of a particular person may lead to dissolution. It means Indonesia CSOs law prefer to ban a legal entity rather than impose the wrongdoer;
- d.) Turkey suspends and dissolves CSOs through court order while Indonesia dissolves both suspension and termination of CSOs under administrative measures;

- e.) Minor infringements of CSOs in Turkey do not make CSOs dissolved by its wrongdoing. On the other hand, Indonesian minor wrongdoings affect CSOs life or CSOs may be disbanded because of these minor wrongdoings.

2. Ideal Mechanism of Dissolution of CSOs in Indonesia

After distinguishing the dissolution of Indonesia and Turkey, there are some facts about Turkey dissolution of CSOs that differ from Indonesia law of CSOs, namely the “use of court order” in every decision of involuntary dissolution of association and foundation. For Instance, the dissolution of CSOs within the limited time of twenty-four hours after either the judge has decided to suspend or dissolve the association or the foundation has stated the emergency of the situation. Furthermore, the dissolution *ipso facto* in Turkey still needs the verification of court before declaring dissolution. Additionally, the suspension of CSOs in Turkey also should be based on the court verdict. Meanwhile, for Indonesian dissolution mechanism, tis country terminates the CSOs only through administrative measures which are ended by the revocation of legal entity status. Turkey slightly uses administrative measures in dissolving CSOs, while suspension and dissolution depend on the judge whether the CSOs should be suspended or banned an organization when it contravenes the law.

What Indonesia learns from Turkey in the mechanism of dissolution of CSOs is the strict judiciary role towards the CSOs. It is proven by the suspension and dissolution of CSOs that it should be based on the judicial verdict. Meanwhile, the administration function only has an authority to give warning letter when the failures of CSOs follow any

regulations. The recommendation of the Human Right Council United Nations has clearly stated:

“... The suspension and involuntary dissolution of association and severest types of restriction on freedom of association, and as the result, should be made possible when there is clear and imminent danger resulting flagrant violation of international human rights law, and it shall be strictly proportional to legitimate aim when softer measure would be insufficient, and decision only by independent and impartial court, so that the rights of defence are fully guaranteed.”⁶³

Therefore, dissolution can occur in an extremely serious case and when all the softer measures are done. In addition, it is important to give legal remedy towards CSOs then it is strengthened by the Inter-American Commission on Human Rights opinion on Report on The Situation on Human Rights Defender in America such as:

“ ... The state should provide an appropriate and effective remedy, based on the result of due process. That makes it possible to challenge any decision restricting the exercise of the right of assembly such as a decision to suspend an organization’s operation, dissolve an organization, or disallow its registration- before a court that is independent of the body that established the restriction. The ICAHR consider that resolution that results in the dissolution of an organization must base on a judicial decision.”⁶⁴

In accordance with democracy and the concept of rule of law, the abolishment of function judiciary in dissolution of CSOs is not allowed. Indonesian law on CSOs does not totally remove the court order when

⁶³ UN Human Rights Council, 2012, *First Thematic Report of the Special Rapporteur on the right of peaceful assembly and of association*, Maina Kiai see http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf accessed on May 23th 2018 at 04.40 pm

⁶⁴ IACHR, 2011, *Second Report on the situation of Human Rights Defenders*, see <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> accessed on May 23th 2018 at 02.49 pm

deciding to disband an organization. In other words, the banning organizations may go to administrative court if particular CSOs disagree with the revocation letter by the government. However, the Law No.16 of 2017 on CSOs gives legitimation to the government to act beyond their duty. The first legitimation is by using the *contrarius actus*⁶⁵ principle in the consideration of CSOs Law No.16 of 2017⁶⁶ when this principle is explicitly written in law, it would prevail in all government officials. Furthermore, referring to Government Administration Law No.30 of 2014 Article 64, *contrarius actus* may occur in the case of a defective authority, procedure and/or substances. It is not necessary to be normatively stipulated in 2017 CSOs law because it is given automatically.⁶⁷ Let us see the former CSOs Law No.17 of 2013, the revocation of legal entity status is under the government official but only after the verdict of the court. As a matter of fact, the case cannot be filled to the court before the administrative measure such as warning letter, suspension, and termination of grants and/or assistance (CSOs Law No.16 of 2013 Article 70(3)).

⁶⁵ Contrarius Actus means the office who has issuance a permit may revoke that permit too

⁶⁶ Consideration of CSOs Law No.16 of 2017 point e.

⁶⁷ Victor Immanuel W Nalle, 2017, "Asas Contrarius Actus pada Perppu Ormas: Kritik dalam Perspektif Hukum Administrasi Negara dan Hak Asasi Manusia", *Padjajaran Jurnal Ilmu Hukum*, Vol.4, No.2, p.254 accessed October 10th, 2018 at 01.24 am.

Table 4.6

Dissolution of CSOs under Indonesian CSOs Law No.17 of 2013

Steps	Legal Basis	Days
Persuasive Measure	Article 60 (2)	-
Administrative Measures: Warning Letter, Termination of Assistance and or/ Grants and Revocation of Legal Entity Status	Article 61	-
First Warning Letter (Allows it to send twice)	Article 62 (a) & Article 63 (1)	30 days
Second Warning Letter (Allows it to send twice)	Article 62 (b) & Article 63 (2)	30 days
Third Warning Letter	Article 62 (c)	30 days
Termination of Assistance and or/ Grants (With Consideration of Supreme Court for national level CSOs and Regional Representatives, Public Prosecutor or Policy According to the level of CSOs	Article 62 (c) & Article 65	Max 6 Months
Revocation of Legal Entity Status after final and the binding court verdict	Article 67 & 68(2)	-

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.⁶⁸

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.⁶⁹ 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

⁶⁸ 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.

⁶⁹ 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.

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.⁷⁰ 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”

⁷⁰ Levitsky, Steven and Daniel Ziblatt, 2018, *How Democracy Die*, United States of America, New York: Crown Publishing, p. 23