

The Joint Ministerial Decree (SKB) of Islamic Defenders Front (FPI): Quo Vadis The Rule of Law and Human Rights?

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ABSTRACT

The freedom of association is one of the fundamental rights of a country. However, in Indonesia, the problems regarding the legitimacy and recognition of the right to freedom of association have become stronger after the issuance of a The Joint Ministerial Decree (SKB) regarding the dissolution of the Islamic Defenders Front (FPI). This research is a legal research. This research uses statutory and conceptual approaches by using primary and secondary legal materials. The two legal materials are inventoried in order to obtain a prescriptive legal analysis; as well as providing a holistic conceptual study of the legal issues discussed. The research result states that the dissolution of FPI by the government is an act that violates human rights, particularly the right to freedom of association. The government uses the doctrine of the militant democracy to dissolve FPI. Then, the dissolution of FPI by SKB contradicts by the principle of the rule of law. Therefore, the dissolution of FPI was not carried out through to the court. Therefore, it is necessary to follow up on the action against 'radical mass organizations' in the form of presidential regulations or government regulations as a derivative renewal of the regulations concerning mass organizations.

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1. INTRODUCTION

The world interaction encourages the formation of a common command and concern between various elements of society, especially to take joint action for the achievement of common goals. Therefore, various social communities have emerged that often advocate for the interests of the wider community rather than partisan or sectoral interests through various forms; as well as demonstrations, hearings, petitions, and so on. This social community is a pillar for maintaining the rule of law and democracy in a country so that it always devotes the values of social justice to all existing societies. With the capacity of social communities that are oriented towards action and advocacy, they have a contribution to keep society inclusive and democratic through the right to freedom of association (Shah & Sivakumaran, 2021). Without freedom of association, a country cannot identify itself as a democracy (Bruzelius, 2019). A dictatorship imposed

by the government will quickly dissolve social communities. Thus, to achieve a goal or win an argument, the amount of strength from a community will affect the possibility (Kharytonov & Kharytonova, 2019). Thus, the more power there is made up of various individuals, the greater the potential goals will be achieved. This is what underlies the formation of the right to freedom of association and assembly. This right is an important part of safeguarding the essence of human life so that it is always just and democratic.

The right to freedom of association and assembly is a form of political freedom which shows that there are conditions and conditions in which people effectively exercise the right to carry out the dynamics of the nation's journey by using their constitutional rights (Bakken, 2000). Therefore, the laws and regulations owned by each country are indirectly agreed upon by the public as a sovereign body whose function is to protect against unjust violations of freedom and power (Adams-Prassl & Adams-Prassl, 2020). However, the rights to freedom of association and assembly give impetus to every country to draft laws and regulations which always contain the principles of the rule of law and the principles of human rights (Cox, 2020). On the other hand, the people are the main actors in the international and national arenas because with their sovereignty and their constitutional strength, they have the right and take part in caring for the strength of the nation through various advocacy efforts and so on. (Dawood, 2013). By exercising this right, all elements of society are free to actively participate in determining the direction of national development through various channels; as well as social volunteers, community organizations, political parties and other social communities. Freedom is perhaps the most favored aspect of human rights and social ideals (R. Smith & Molloy, 2020). Human rights give freedom to everyone to do what he wants as long as he does not violate the same freedoms as other people. This is a logical consequence because in expressing one's personality, such as words, thoughts, piercings, must also act on others; it is like acting without restricting the freedom to think, speak, and act of others. By having human rights, people have the freedom to form social movements based on mutual agreement as a form of community synergy.

Social movements formed by society usually take the form of mass organizations (Tann, 2020). This is because mass organizations tend not to be political organizations; so that it is free from political interests (Tann, 2020). Mass organization refers to the basis of the state. On the other hand, mass organizations are allowed to have ideologies related to both religious and social fields as long as they do not conflict with the basic consensus of the state. As the name implies, the general goal of mass organizations is to build society; particularly in human resource development. Therefore, mass organizations must not 'threaten' ethnicity, religion, race and between groups or use these issues in carrying out their various activities. Mass organizations tend to move using strategies by upholding ethics, morals and morals in accordance with the basic values of the state. Although not from political organizations, mass are part of the national political infrastructure where mass organizations can provide a strategic viewpoint to the government to provide input that can be considered in making public policy. Therefore, a country has the right to frame the existence of mass organizations under legal instruments as a form of formal legitimacy and protection of the constitutional rights of society.

As a social community or association, every mass organization has rights and obligations that are inseparable from the Civil Society (Chaney, 2020). This is related to the essence of the principles of a democratic state which provides the conditions for the

formation of a healthy and strong democracy, namely the existence of a strong civil society (Schrijver, 2020). In fact, the number of members of mass organizations will be taken into account in politics because all members of mass organizations have political rights. Not only that, the solidarity of mass organizations allows community organizations themselves to become prospective associations that can be taken into account in the nation's political events (Yazid & K. Pakpahan, 2020). So, it does not rule out the possibility that mass organizations will be easier to take part and can become a node for political and social participation of community members. Community empowerment through mass organizations is a functional pillar to create a country that upholds democratic aspects holistically. However, in Indonesia, the regulation of community organizations has drawn pros and cons when the government publishes Law No. 16 of 2017 regarding the Enactment of Government Regulation in Lieu of Law (Perppu) No. 2 of 2017 on the Amendment of Law No. 17 of 2013 regarding Mass Organizations (hereinafter referred to as the UU Ormas). This is because the UU Ormas is considered unfair; because the government has more authority to control community organizations which in practice ignore the legal process. The provisions contained in the old Ormas Law regarding the regulation of the mechanism for dissolving mass organizations with due regard to supremacy; has been removed by the government through the Lieu of Law (Perppu) No. 2 of 2017.

At present, the problem of the UU Ormas is targeting other problems; which is not the result of the UU Ormas itself. In Indonesia, problems regarding the legitimacy and recognition of the right to freedom of association have become stronger after the issuance of The Joint Decree of Indonesian Minister of Home Affairs, Indonesian Minister of Law and Human Rights, Indonesian Minister of Communication and Information Technology, Attorney General of Indonesia, Chief of Indonesian National Police, and Chief of National Counter Terrorism Agency No. 220-4780 of 2020/ No. M.HH-14.HH05.05 of 2020/ No. 690 of 2020/ No. 264 Year 2020/ No. KB/3/XII/2020/ and No. 320 of 2020 on the Prohibition of activities, The use of symbols and attributes, and The termination of activities of the Islamic Defenders Front (hereinafter referred to as SKB) which confirms that the Islamic Defenders Front (FPI) is considered a banned mass organization (PD, 2021). FPI is accused of having the potential to interfere with security and public order with the presence of several FPI members who have legal problems (Reuters, 2020); on the other hand, there are accusations that the FPI's AD / ART is considered to be contradicting with Pancasila, that's why FPI is deemed not to have registered with the Ministry of Law and Human Rights within the specified time limit (Ami, 2020). So far, only Hizbut Tahrir Indonesia (HTI) and later FPI have been declared prohibited from carrying out activities by the government. The government actually prohibits or even dissolves mass organizations. However, the dissolution and prohibition of mass organizations must be based on the procedures and principles of rule of law.

Therefore, the policies taken by the government above can be said to be political decisions. So, it is very reasonable to question why the FPI was dissolved. Moreover, since the new of UU Ormas was enacted, there have been two mass organizations dissolved by the government; namely Hizbut Tahrir Indonesia (HTI) and FPI. Both organizations are mass organizations that do not support the government. Of course, the disbandment of FPI illustrates a violation of the right to freedom of association and assembly and the elimination of the principle of legal certainty and the principles of a rule of law. Accordingly, based on the above background; This legal research

addresses two legal issues. *First*, what is the human rights review of the problems of freedom of association in the case of the disbandment of FPI. *Second*, whether the principles of rule of law have been implemented in the legal instruments issued by the government (SKB) in relation to the dissolution of FPI? This legal research aims to describe the concept of the right to freedom of association that was violated by the government in the case of the; as well as describing the problems with the existence of the SKB as a legal instrument in the dissolution of FPI. The benefits of this research consist of two things; that is, theoretical and practical benefits. Theoretically, this legal research is a form of scientific development of human rights law in the form of affirming the essence of the right to freedom of association. Meanwhile, the practical benefit in this research is the application of the *contrarius actus* principle which should be carried out by the government to revoke the SKB regarding the dissolution of FPI.

2. METHOD

The research entitled "*The Joint Ministerial Decree (SKB) of Islamic Defenders Front (FPI): Quo Vadis The Rule of Law and Human Rights?*" is a legal research. Legal research is a series of attempts to obtain the truth of coherence by identifying the relevance of the prevailing regulations with the norms that include the relevance of legal principles to regulatory norms, and the harmony of legal actions against legal principles or norms (Marzuki, 2017). This legal research uses conceptual approach and statute approach. This research uses primary legal materials in the form of statutory regulations, both national and international regulations. In addition, researchers use secondary legal materials in the form of national and international journals, books, and other legal works. The two legal materials were collected and inventoried by researchers using the literature study method to obtain a prescription for the legal issues being studied. Then, the researcher used data analysis using a deduction pattern to explain the various regulatory norms related to legal issues first and then to explain the legal facts later. The data analysis is arranged in a systematic, orderly, logical, thorough manner, and is described in a holistic and detailed manner. Thus, the reasoning pattern is arranged systematically so that a conclusion can be reached from the legal issue being studied.

3. RESULTS AND DISCUSSION

3.1. Freedom of Association and Dissolution of FPI : The Human Rights Review

The freedom of association is a fundamental right enjoyed by every human being to ensure that every individual is free to organize and form a group both formally and informally (Berggren & Gutmann, 2020). The right to freedom of association is owned by every level of society. Freedom of association usually refers to the support of the majority of groups that have the same desire and are used in both social and labor contexts to refer to a single political support (Mokhonchuk & Romaniuk, 2019). Therefore, the right to freedom of association provides an opportunity for every citizen to become an instrument of control over other human rights situations in a country and to support the implementation of policies regarding human rights by a country (Ramji-Nogales & Goldner Lang, 2020). Various provisions of international law have recognized the rights to freedom of association and assembly, as well as provisions regarding the recognition of the right to peaceful assembly and the right to freedom of association as contained in Article 22 of the International Covenant on Civil and

Political Rights of 1966. Likewise with Article 8 of the International Covenant on Economic, Social and Cultural Rights of 1966, which gives freedom for each person to have the right to form a Worker Union or join a Trade Union of his own accord; and everyone has the right to act freely without being subject to any restrictions other than those determined by a statutory regulation. Not only that, Articles 1-11 of the International Labor Organization Convention No. 87 of 1948 provides a provision that everyone has the right to form or join a federation or confederation regarding work affiliations in order to provide an active right of the group of workers.

The right of association and assembly came into existence when the US Supreme Court recognized this right in *NAACP v. Alabama* (1958), on the pretext that individual members of civil rights groups (civil society organizations) have the right to assemble together free from undue state interference (Schermer, 1980). However, freedom of association is often considered a political right for the community. This was confirmed by the US court's decision in the *Tashjian v. Republican Party of Connecticut* (1986) which states that a political party can invite independent voters to vote in the primaries election (Peck & Hunter, 1986). However, union freedom must be exercised based on the will of each individual. That is, there is no compulsion from someone to become a member or participant of an association or community organization. This provision was reinforced by the decision of the US Supreme Court in *Abood v. Detroit Board of Education* (1977) states that a Trade Union or Workers' Association cannot compel employees to pay "mandatory fees" for ideological and political activities that are irrelevant to the basic duties of the collective labor association (Poulson, 1983). The court also ruled that public employees could only pay fees to support ideological goals of violating the rights of employees of a company.

Freedom of association and assembly is actually intended to provide a 'deep social' recognition of human efforts to protect individuals from the 'isolation' - borders - imposed by the state in pursuit of their goals; as argued by *Mounted Police Association of Ontario v. Canada* case (2015) (Dunn, 2015). On the other hand, In the case of *Lavigne v. Ontario Public Service Employees Union* (1991), freedom of association and assembly is thought to aim at protecting the collective actions of individuals in pursuit of their common goals (Manfredi, 1991). Not only that, in *Dunmore v. Ontario* (2001) case, the right to freedom of association is considered to serve to protect individuals from stronger entities (Cameron, 2002); thus empowering vulnerable groups and helping them overcome the appropriate imbalances in society. This allows the achievement of individual potential through interpersonal relationships and collective action. The right to freedom of association protects three classes of activity (Kittichaisaree, 2020). *First*, constitutive rights. Constitutive rights are the rights of every individual to join others and form associations. *Second*, derivative rights. This right means that everyone has the right to join others in pursuing other constitutional rights. *Third*, aiming right. This right is intended as the full authority of each individual regarding his or her choice of life to join other people in order to fulfill the power and strength of other groups or entities more equally.

With "constitutive rights", the state is not allowed to prohibit or interfere with meetings between individuals or dissolve an association. However, the state is allowed to impose limits on the activities carried out by an association. Then, 'inherited rights' serve to protect the activities of associations that are specifically related to other constitutional freedoms; but does not protect the activities of other associations. Whereas 'purposeful rights' serve to protect the activities of associations, including

collective bargaining and strikes, allowing vulnerable and ineffective individuals to meet on more equal terms the power and power of those who interact or conflict with their interests. Therefore, in the world of work, the right to freedom of association guarantees every employee to associate in order to achieve the goal of "dignified welfare" (Singadimeja et al., 2019).

The freedom to regulate the formation of an employee association or trade union lies at the "heart of protection" of the right to freedom of association (de Cecco, 2014). Although that right is one that guarantees the process; it does not guarantee the results or access to the model of employment relationships that employees expect (Nyström, 2020). Therefore, the right to the collective bargaining process guarantees every employee to enjoy the right to unite, convey demands to employers collectively and engage in discussions in pursuit of workplace-related goals (Cabrelli, 2020). The collective bargaining process seeks to maintain the balance of power between employees and employers necessary to ensure the achievement of meaningful workplace goals; so that "substantially" the company's goals become more meaningful (Cabrelli, 2020). The right to freedom of association in the world of work functions to eliminate various actions that have the potential to violate other human rights, such as: arbitrary termination of work, arbitrary assignment of duties and responsibilities, prohibits collective action without opposing protections, makes employee workplace goals impossible or establishes processes that employees cannot control or influence effectively.

The right to freedom of association and assembly includes organized and professional organizations such as political parties, trade unions, public associations or mass organizations, and non-official civil society organizations that have many members in each district, organizations that include entities without legal entities, volunteers, etc (Howie, 2018). This right is included in the ability of an association to seek, receive, manage human resources to regulate the governance of the organization or social group in order to promote and protect every human right in a peaceful and prosperous manner (Ashraf, 2020). Thus, the obligation of states is to provide certainty that everyone is free to participate in and form an association or association or mass organizations in any form independently and is allowed to carry out activities in accordance with public order and benefit, including the mass organizations (Bellace, 2016). The formation of mass organizations is a reflection of progress to unite beliefs and ideas as part of the form of building the country through the channels of freedom of association (Tann, 2020). The boundaries of this idea do not have content limitations, be it economic, religion, culture, politics, and other aspects of life. The mass organizations also play a role in advocating for an issue from various sensitive viewpoints; both targeting the public and private spheres, especially those that are controversial (Berggren & Gutmann, 2020). On the other hand, mass organizations are a form of communication channel protected by the constitution of every country which becomes a technique for achieving legitimate goals of public political expression (Bantekas & Oette, 2020). The mass organizations is an important component of democracy; considering that community organizations can play a role in empowering all elements of society by expressing their political opinions. Thus, they can be involved in economic, cultural, political, social and other aspects of life development activities.

The mass organizations as a manifestation of the collectivity of the right to freedom of association and opinion from society create a dependency and linkage between

community rights and the respect of a state for these community rights (Cox, 2020). This is because mass organizations provide legitimacy and recognition for the recognition and empowerment of transnational and private rights. However, the state is obliged to participate in all activities related to the fulfillment of human rights of each individual and the actualization of the democratic life of the nation. These consequences are contained in Article 2 of the International Covenant on Civil and Political Rights, which stipulates that "each State Party undertakes to respect and ensure that all individuals within its territory and subject to its jurisdiction are subject to the rights recognized in the Covenant, without distinction of any kind, such as race, color, gender, language, religion, politics or other opinion, national or social origin, property, birth or other status "and Article 26 of the International Covenant on Civil and Political Rights which guarantees all individuals equal and effective protection against discrimination on the reasons identified in Article 2 of the International Covenant on Civil and Political Rights.

The existence of interdependent social interactions and contacts through the form of mass organizations is a valuable indicator of a country's respect for the freedom of expression and association of the people (Ross, 2020). Therefore, a key aspect of freedom of association and assembly is the ability of a group to get along with like-minded people. The mass organizations is a form of active and effective participation as part of non-state actors in encouraging and overseeing the economic and social legal policies of a country. Mass organizations are called the 'heart of democracy' and the rule of law itself, where society becomes the main functional pillar in determining the steps of the state through 'critical voices'. Not only that, the rights to freedom of expression and association through mass organizations are an integral part of a free and open society. The guarantee of freedom of association and assembly has become the main basic principle as a core part of the Sustainable Development Goals (SDG's) that seeks to fully realize human rights (Slutskiy, 2020). Efforts to fulfill all aspects of human rights underlie several SDG's targets, among others: 1. Called for the protection of the labor rights of all workers (Target 8.8); 2. Seek to promote the rule of law both nationally and internationally (Target 16.3); 3. Demand the development of effective, accountable and transparent institutions at all levels (essential for the protection of freedom of association) (Target 16.6); and 4. Order protection of fundamental freedoms (Target 16.10).

Government policy is obliged to always provide a reflection of support for various principles of national democracy (Hamilton, 2020), one of which is the maintenance of the existence of mass organizations. Government policies are not allowed to actually make it difficult for mass organizations to move. For example, the official registration of a civil society organization may not serve as a means of controlling the establishment of a mass organizations, rather, it is a means of establishing mass organizations with legal status in jurisdictions where such action is required. Thus, refusal to register for organizations that 'challenge' or criticize the government is a violation of the right to freedom of association and is an effort to delegitimize the existence of mass organizations. Refusing to register as a form of government repression will in fact hamper the formation of an open and plural society; given the existence of actions that exclude civil society from public dialogue and the sustainable development of a country. The procedures governing the registration of mass organizations play an important role in dominating civil society space. The state should not impose a lengthy, burdensome or too bureaucratic registration process, as this would undermine the effective functioning of mass organizations. The procedures

governing the registration of mass organizations play an important role in dominating civil society space. On the other hand, laws and regulations regarding the establishment of mass organizations must be guided by the principles of rule of law; meaning that it must be determinable, non-retroactive, legal, proportional and non-discriminatory. Freedom of opinion both orally and in writing is a constitutional right which can be limited or reduced; because there are other interests or rights that have 'greater content'. However, these restrictions must be based on the principles of the rule of law and human rights. Regarding the dissolution of FPI, it can be said that it is not a 'dissolution', but 'an operational prohibition to carry out an activity on behalf of the FPI'.

The phenomenon of 'the disbandment of FPI' is an effort to "eradicate" the right to freedom of association. In fact, this event is an implementation of one of the doctrines used in limiting freedom of association and assembly, namely *the militant democracy doctrine*. *Militant democracy doctrine* gives authority to the country to determine the limits of tolerance for organizations that are considered to be against and against democratic principles (R. K. M. Smith, 2020). The practice of the militant democracy doctrine once developed in Germany which aims to tolerate extreme anti-democratic organizations that eventually gave rise to the Hitler regime (Macklem, 2006). Although substantially it has good goals and orientation, but militant democracy doctrine has the potential to also foster the arbitrariness of state power (in this case the government), especially against its political opponents (Invernizzi Accetti & Zuckerman, 2017). It can be possible, when there are community organizations that are critical and even politically do not support the government; then the government can make militant democracy doctrine as the "logical reason to beat the opponents" which is valid and legal. Thus, this doctrine has the potential to insure the right to assembly and association of mass organizations. This is also reinforced by the view that no matter how good and noble the goals of the government are, the government is still a political institution whose policies and decisions cannot be separated from the social, political, economic, and power circles around them (Howard, 2019). Therefore, no matter how good the intentions and actions of the government are in implementing the militant democracy doctrine; the government still has the potential to make majoritarian decisions that have the potential to use militant democracy doctrine as a means to "kill" various parties who are against the government.

The state should not be subject to narratives of intolerance or hatred echoed by a group of people. However, in dealing with this problem, the government should always respect, fulfill and protect human rights; particularly with regard to freedom of association and organization in a state of law based on the principles of the rule of law. It must be noted, the idea of the right to freedom of association and assembly is based on the principle of equality which emphasizes that all human beings have the same or equal position to create a proportional dignity (Gunatilleke, 2021). This is in line with the principle of "equal pay for equal work" which in the Universal Declaration of Human Rights is considered equal rights for equal work (Fraser, 2020). Not only that, the right to freedom of association has become a general principle of international law, considering that this right has met the requirements of acceptance and recognition from the international community (Fraser, 2020). Thus, 'the dissolution of FPI' is a form of discrimination because it is against the principle of equality, where when all people are treated equally, there should be no discriminatory treatment. This principle is often regarded as the principle of non-discrimination contained in the Universal Declaration of Human Rights. However, various positive actions of a state as a response and a

logical consequence of the provisions of human rights are a form of the state's obligation to protect, guarantee and fulfill the human rights of every individual; considering that individuals are 'those who hold human rights' (right bearer) while the state has a position as 'the holder of the obligations towards human rights' (duty bearer) (R. K. M. Smith, 2020). Moreover, the ruler or government is the party who has power on the basis of power so that the existing authority is far greater than that of individuals and their social communities. Thus, the obligation to protect human rights imposed on the authorities on society is a logical consequence that must always be carried out.

Mass organizations as a manifestation of the implementation of the right to freedom of association can actually overcome imitation of geographic limitations as well as the existence of racial differences, sex, religion, language or culture that are inherent in a person (Fraser, 2020). Therefore, the essence of the right to freedom of association is actually a right that is universal because of its inherent nature as a consequence of gifts from God and is not a gift from people or rulers (R. K. M. Smith, 2020). Regarding its implementation, mass organizations must be directed and adapted to local environmental situations and conditions given the complexities of multidimensional human rights interpretations. Therefore, the act of disbanding the FPI mass organizations is a form of violation of a human rights norm which illustrates the failure of the state or government to legally comply with existing human rights norms. In fact, violations of human rights in any aspect have the potential to become 'extraordinary crimes' (Sander, 2020); because there are indications of abuse of power based on their position. Protection of mass organizations is precisely the responsibility of the state, considering that state responsibility arises as a consequence of the principle of sovereignty and the principle of state equality contained in international law (R. K. M. Smith, 2020). Even though the state's responsibility does not have a specific international agreement, the habit of states to respect the rights of individuals and other countries is a moral consequence of 'what should be global life' (Etuvoata, 2020). In the case of FPI dissolution, the subject to which the party declaring dissolution is the government itself. When studied in the teachings of the doctrine of imputability; be it a minister or a government office at the level of a minister, if they carry out a policy that violates human rights, it means that state officials or people acting on behalf of the country can be imposed on that country as well (Nazareno, 2020). With this imposition, human rights violations in the form of dissolving mass organizations by state officials give rise to state accountability.

It is impossible for a country to be built with conditions that are not peaceful and prosperous, if there is no peace and equitable development. It is impossible for the community to enjoy development if they do not have a guarantee of protection of their human rights. Therefore, there is a reciprocal relationship between freedom and protection of human rights. Although the government has the obligation to annul various acts based on hatred and incitement, the government must not abuse their power to silence freedom of association and peaceful assembly by issuing laws and regulations that criminalize the right to freedom of association. However, mass organizations have the right to disclose or demand that the government be better. Mass organizations are also entitled to express approval or rejection of a policy issued by the government. In this case, the disbandment of FPI is actually a violation of the rights to freedom of association and assembly. This is because the rights to freedom of association and assembly are necessary in a democratic society for the interests of integrity and national development. Freedom of association is the lifeblood of a

nation's democratic life which provides a channel for various perspectives and ideas that can be considered by the government to determine a consensual policy decision. On the other hand, restrictions on the right to freedom of association mean that there is bad faith by the government to delegitimize parties who actually have the right to express their expression in any form in order to achieve the ideals of the nation. Not only that, this right is a representation of the dignity and value of a nation. Therefore, by fulfilling the guarantee of freedom of association, the state means fulfilling and respecting the beliefs, thoughts, ideas of every citizen who wishes to contribute to the country itself..

3.2. The Joint Ministerial Decree: Quo Vadis the Rule of Law ?

Law as a rule and relational principle of society that regulates and controls all the exercise of power in a country must have a character from its form adapted to the duties of human law (Scalia, 1989). That is, the appreciation of "humanizing human beings" formally is very important, especially in the field of expression and in preserving its social strength. On the other hand, basically law is understood and derived from developing values and supports the expectations of society for the creation of a just and prosperous social condition (Letwin, 1989). The values that are actually contained in statutory regulations are expressed in general principles and norms developed by society and the law in a social environment (Posner, 1998). Various forms of protection are carried out by the government by drafting binding legislation in general. 'Recht' doesn't just mean 'law'; it's a 'right'. Likewise with 'ius' which does not have the meaning of 'law' alone, but has the meaning of 'right' (Berman, 2018). This concept is a consequence of the concept of 'human dignity' which states that progressive legal development is based on the belief that all people have special rights or values that are solely tied to their humanity; and does not take into account social stratification, race, sex, religion, ethnicity, or any other factor other than them as humans. Therefore, at the level of the rule of law principle, there is a provision that regulations are not allowed to be applied and applied by the government based solely on the interests of the ruler (Honore, 1993). On the other hand, the determination of laws and regulations unilaterally by the authorities is very irrelevant to the nature of the purpose of the law which actually guarantees justice for the whole society without exception, and not only protects a handful of people in power.

The mass organizations that violate various obligations in Article 21, Article 51, and Article 59 Paragraph (1) and Paragraph (2) of the UU Ormas will be subject to administrative sanctions; The applicable provisions in Article 60 Paragraph (1) of the UU Ormas. In fact, mass organizations can also be subject to administrative sanctions and / or criminal sanctions for violating the provisions of Article 52, Article 59 Paragraph (3) and Paragraph (4) of the UU Ormas; stated as stated in Article 60 Paragraph (2) of the UU Ormas. Administrative sanctions in the provisions of Article 60 Paragraph (1) of the UU Ormas contain written warnings, cessation of activities, and / or revocation of registered certificates or revocation of legal entity status (Article 61 Paragraph (1) of the UU Ormas). Meanwhile, administrative sanctions for the provisions of Article 60 Paragraph (2) of the UU Ormas are in the form of revocation of a registered certificate by the minister and revocation of legal entity status by the minister who administers government affairs in the field of law and human rights (Article 61 Paragraph (2) of the UU Ormas).

Looking at the provisions in the UU Ormas, the basis for government action through the SKB against FPI can be said to be problematic. If it is said that the issuance of the SKB as FPI's 'revocation of legal entity status', of course it cannot be justified; considering that FPI does not have legal entity status. On the other hand, the issuance of the SKB as 'revocation of Registered Certificate' can also be given; view that FPI does not have SKT because it did not re-register. Moreover, the status of revocation of legal entities and SKT is the last resort that can be done by the government; after issuing and sending a written warning letter to FPI - allegedly violating the provisions of Article 21, Article 51, and Article 59 Paragraph (1) and Paragraph (2) of the UU Ormas- and terminating activities carried out by FPI. Therefore, the government's authority in FPI problems; is only limited to revocation of SKT and revocation of legal entity status. On the other hand, FPI in this case is not a legal entity as a non-profit organization; as well as foundations and associations. However, the basis for the formation of mass organizations is Human Rights (HAM) to organize.

The issuance of the SKB becomes more problematic when the procedure for imposing sanctions on FPI does not comply with the provisions of Article 62 of the UU Ormas. Supposedly, the imposition of sanctions against mass organizations that violate the provisions of the UU Ormas begins with a written warning letter that is given only once within seven working days from the date the warning is issued (Article 62 Paragraph (1) of the UU Ormas). Furthermore, if the organizations take sides in not obeying and obeying a written warning letter within a period of seven days, the ministers and ministers who manage or regulate government affairs in the field of law and human rights in accordance with their authority may impose sanctions to stop the activities of the said mass organization (Article 62 Paragraph (1) Article 62 Paragraph (2) of the UU Ormas). After going through these two stages, the government can revoke a registered certificate or revoke the status of a legal entity from an mass organization that does not comply with the sanctions for cessation of activities (Article 62 Paragraph (3) of the UU Ormas). However, the fact is that FPI has never received a written warning or letter of cessation of activities from the government. Thus, it can be said that the FPI dissolution procedure is 'legally flawed', so that FPI can file a lawsuit at the State Administrative Court (PTUN) to 'assess' the existence of a wrong procedure.

The existence of mass organizations is actually divided into organizations registered with the government and organizations that are not registered. There is no obligation that organizations must be registered with the government; If the registration of mass organizations with the government becomes a requirement that must be met, then the government must have a role to control the mass organization. In this case, FPI itself is included in the political legal framework regarding mass organizations; which leads to the right of association and assembly. In fact, mass organizations are not legal entities even though they have a legal framework; instead, mass organizations are political platforms. This is because reports from mass organizations are addressed to the Ministry of Home Affairs; not the Ministry of Law and Human Rights. Therefore, when viewed from the administrative legal authority, the dissolution of FPI should be carried out by applying the contrarius actus principle by revoking the registered certificate or revoking the status of a legal entity. So, there is no action that can be taken by the government to become a legal entity or revoke a registered statement if an organization does not have a legal entity status or a registered certificate.

Then, on what basis has FPI been able to carry out activities so far? The aspects of freedom of association and assembly and of opinion as stated in Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) serve as the

basis for FPI to carry out various activities of a general nature. The right to freedom of association and assembly is an element of the rule of law. Thus, a country cannot be said to be a constitutional state if its basic rights are not guaranteed (Natalia et al., 2020). The right to freedom of opinion of association and assembly arises from the principle of checks and balances; which is the principle for controlling human character who has broad authority and power as well (Albert & Roznai, 2020). The principle of checks and balances is the principle so that someone who already has power does not expand, enlarge and manipulate power; considering human nature cannot control oneself (Laptev & Fedin, 2020). At the government level, the principle of checks and balances is carried out by opposition political parties; however, in the life of a state, opposition can be carried out by groups of people or individual citizens. Thus, the government is not authorized to prohibit or declare that an association and assembly organization is a 'prohibited organization'; considering that freedom of association and assembly are human rights. Moreover, the issuance of legal instruments such as the SKB can 'injure' the human rights values; considering the SKB has the potential to be used as a legal instrument interpreted by the government to delegitimize parties who are opposed to the government.

On the other hand, the revocation of the SKT and the revocation of the legal entity does not mean that FPI is prohibiting various activities. Although they can move under the pretext of 'freedom of association and assembly' to carry out activities; FPI will not be able to carry out administrative legal relations with various agencies. Even if there are restrictions on freedom of association and assembly as with organizations; this must be stated by a court decision that is legally binding, considering that Indonesia is a country of law. With this court decision, the government can issue a decision letter regarding the dissolution or prohibition of FPI activities as an organization. However, the existence of the SKB is considered effective as a legitimization that FPI should be 'dissolved' and 'declared as a prohibited organization'; although the SKB only states that the FPI has disbanded *de jure* because it did not register the SKT. On the other hand, the SKB did not dissolve FPI, considering that there was no nomenclature in the SKB which stated that 'FPI was dissolved by SKB'. Legally, there is no meaning of 'forbidden organization'; even in the norms of the UU Ormas, there is no mention of 'prohibited organizations'. Only the Indonesian Communist Party (PKI) was declared a 'forbidden organization' by the MPRS Decree Number XXV / MPRS / 1966.

SKB is not part of statutory regulations; SKB is only 'setting' (beschikking), not 'regulating' (regeling). However, the SKB was aimed at the issuance of the Chief of Police's Decree; which is also not a statutory regulation. Therefore, SKB as a legal instrument can also be said to be a 'bad legal instrument'. The element of a 'bad legal instrument' is a legal product that is not democratic and does not aim at respecting human rights. Even if promulgated or declared legally formal, 'bad legal instruments' or 'bad' can arise from authoritarian government action. 'Bad legal instruments' will become a weapon for the ruling government to terrorize those who oppose them. The issuance of the SKB also shows that the government has not complied with the Constitutional Court Decision Number 82/PUU-XI/2013; because the Constitutional Court Decision Number 82/PUU-XI/2013 canceled the provisions of Article 16 Paragraph (3) and Article 18 of the UU Ormas which obliges community organizations to have SKT. This is because the canceled provisions are contrary to the UUD NRI 1945. Regarding the consequences are non-legal aspects; just as mass organizations that do not have an SKT will not get services from the government or the state. However, the state cannot designate these mass organizations as prohibited organizations; The state

also cannot prohibit the activities of mass organizations as long as they do not carry out activities that interfere with security and public order.

SKB is a form of legal instrument commonly used in practice; as stipulated in Article 8 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations *jo*. Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations. It's just that, regarding the case of FPI dissolution through SKB; there is no sentence stating 'FPI dissolution', but 'banning FPI activities'. This is different from the case of the dissolution of Hizbut Tahrir Indonesia (HTI) which explicitly contains the words 'banning activities' and 'dissolving' from HTI. However, why is this SKB often seen as an SKB stating the dissolution of FPI? Therefore, the impact of making the SKB is quite large, for example the SKB is very effective in the technical or practical realm. The SKB is considered a statement to strengthen (legitimize) the actions of prohibiting FPI activities by law enforcement officials; although the SKB has no statutory value because the SKB cannot form a new norm. The existence of this decree is getting stronger considering that the legal construction of the Ormas Law allows the government to unilaterally disband it. The provisions in the Ormas Law are loosely structured and have derogated the rights to freedom of association.

The dissolution of FPI can also be said of the excessive use of power. At the level of constitutional democracy principles, excessive practice is the act of the government to carry out a single interpretation by exercising absolute power and authority to 'suppress' and weaken its political opponents (Henderson, 1991); so that the potential for human rights violations in the political and social fields. This is because excessive action by the government will destroy the democratic life of the nation; so that the dynamics of democracy are no longer passionate and beautiful, because they are not carried out in elegant ways within the corridors of the rule of law and the principles of constitutionalism. The concept of constitutional democracy that guarantees human rights also does not allow a country to make a group of people close to the authorities to beat other groups of people. On the other hand, the state must not allow itself to be used by one group of people to hit or 'destroy' another group of people. The government must use a persuasive vision to control social unrest related to the potential for banned organizations in the community. If the coaching or persuasive aspects cannot be carried out again by the government, then the only way to get an absolute and legally valid truth is through court. Due process of law is 'undisputed' for a country that adheres to the principle of a rule of law. Therefore, the organization can be prohibited from carrying out activities in general by means of a court decision; so that political factors or general accusations can be proven objectively. Moreover, the rule of law principle provides an obligation that legal and clear evidence is within the domain of the court.

The 'dissolution' of the FPI which was declared a 'forbidden organization' was one of the acts which was classified as repressive as well; considering that there are human rights that could potentially be violated by the government. This is because the government is acting into *extractive institutions* by exploiting and seizing the political rights of society by using the arrogance of power through various actions of government instruments (Acemoglu & Robinson, 2012). Extractive institutions describe groups of people who are opposite the government to be the cause of 'harmony between communities'; and considered as 'the cause of disintegration in the community' (Acemoglu & Robinson, 2012). That government's perspective is very dangerous; and can turn a country into a power state (machstaat). This viewpoint is

based on concerns about a political group that has the potential to have great power and develop in the future; so that it becomes a political group that endangers a power. Therefore, the way to pursue justice through the courts provides a limit to the government through various regulations and institutions so that it does not act absolutely. The principle of proportionality prohibits the abuse of imbalance of power by the government against mass organizations. Thus, regarding the dissolution of FPI; indeed it is imperative that the court's role be involved in an analysis sufficiently comprehensive to investigate the actions and positions of the government and the FPI to determine whether there has been consultation in good faith or not between the two (government & FPI). This aspect of good faith requires the parties to meet and engage in meaningful dialogue; where the position of each party is explaining, listening, reading, and considering.

Judgment is "the heart of justice" (Slosser, 2019). Therefore, the court is often seen as *the institute of counter-majoritarian mechanism* (Mishler & Sheehan, 1993); the court is considered an institution capable of correcting all government decisions. Not only that, the court is considered an institution that can evaluate political products between the people's representative institutions through a *judicial review* mechanism (Kelsen, 1942). The court is a reflection of the principle of independence from the rule of law principle; considering that the court becomes the "tool of control" over *majoritarian decisions* that are formulated, passed, and promulgated or issued by the government (Farinacci-Fernós, 2021). Therefore, as *the guardian of human and constitutional rights*, it is common for courts to have a duty to uphold *the majority right and minority rule* (Croley, 1995). The role of the court in assessing majoritarian decisions is not only implemented mechanically and procedurally as stated in the UU Ormas. This phenomenon, as stated in the Dutch postulate, states that "*Het recht is een hekkensluiter*" which means that the law is only a cover for the gate (van der Schyff, 2020). This means that when all matters have been completed, the law will become the final procedure for completing them. This also seems to place the position of the judicial institution as a *juristocracy*; so that the court is only a condition and mechanism to indicate the fulfillment of the principle of a rule of law, even though in reality the law is still discriminatory.

Then, is the government's action to dissolve FPI without going through the courts a violation of the rule of law principle? Yes. The principle of rule of law provides an obligation for the government to establish and enforce laws in an open and transparent manner that can be clearly identified and applied equally to all elements of society (Sajó, 2019). On the other hand, the principle of a rule of law imposes an obligation on the state to use court channels as an independent institution to decide cases without political influence or other matters (Teitel, 2002). This principle applies regardless of or considering the level of wealth, color, religion, occupation, sexual orientation, gender, or other personal characteristics of humans (Bingham, 2007). Thus, in dealing with a legal problem, the state must apply this principle as the moral consequence, namely the assurance of ethical quality of the principle of legal certainty for the whole society (Kramer, 2004). Therefore, regarding the issue of disbandment of FPI through SKB seriously hurts the essence of the rule of law principle and reflects arbitrary actions and without good faith from the government. This can be seen from the prevailing regulations as a form of legitimacy for the disbandment of FPI, which from the beginning did not pay attention to the principles of rule of law; by not using court facilities to decide or dissolve a community organization. In the absence of application of this principle, any individual can be imprisoned without a reason. In fact, the removal of the rule of law principle may constitute an arbitrariness for the government

to be able to confiscate property owned by others and injure others without reason (Krygier, 2019). The existence of regulations on mass organizations that do not show the rule of law does not reflect a special concern for the government to prevent the exercise of arbitrary powers. In fact, respect for the rule of law and universality and human rights cannot be separated from one another, have become the principles of the formation of international law that apply to all citizens of the world.

If this principle is not applied, it means that everyone is not treated fairly and equally. It must be understood that no one has a position above the law; in fact, everyone is obliged to obey the law and court (Kulshrestha et al., 2020). Regulations regarding mass organization should not only be a powerful instrument or tool but must be widely understood, where there is the fulfillment of the rights of social communities that are organized legally or illegally as a form of reflection of democratic values and social respect (Lenaerts, 2020). In fact, as a result of the disbandment of FPI which did not pay attention to the principles of the rule of law, various social turmoil arose from dishonesty, rejection of court decisions, insistence on equality of justice, dismissal of respect for individual integrity and dignity, and so on. Not only that, the removal of the rule of law principle will give birth to a bad jurisprudence for a justice institution in a country (Suzor, 2018). In fact, the legal system and society should be jointly built and defended by referring to the values of morality that are in the provisions of laws and regulations. The balance expected by the fish directorate through various legal facilities by providing an accommodation for individual rights to be maintained and respected by the state. On the other hand, various legal products such as regulations concerning mass organization are expressions of all personalities that reflect the values that sustain society. Therefore, it becomes a moral consequence that the state must provide space for the community to assess the extent to which the moral values and aspirations of society can be crystallized in the form of laws and regulations (Krygier, 2019).

Actually, the principle of rule of law is 'translated' into the following measures such as protect and promote human rights and fundamental freedoms, ensure the separation of powers between the government, the parliament, and the judiciary, strengthen institutional and administrative capacities of justice institutions, promote good governance and accountability, modernise the justice system and improve prison conditions, enforcing civilian control and oversight over the functioning of the justice system (Lucy, 2020). So, the dissolution of mass organizations without going through to the court shows that Indonesia's legal personality is no more than just a *de jure* attribute. In fact, the expression of human character or society (*de facto*) as a whole must really be carried out and implemented as stated in the laws and regulations. On the other hand, every individual has the right to seek and obtain law before an independent court. This independence is very important if an impartial decision will be given in assessing the legality of actions taken by the Government. The act of delegitimizing the principle of rule of law actually destroys feelings, emotions, and a sense of wholeness, which becomes an element in the formation of laws in society. Therefore, it is very clear that the government's action to dissolve FPI through the legitimacy of the SKB is an act that is not based on rule of law principles.

UU Ormas requires other derivative regulations, for example a Government Regulation or a Presidential Regulation as a form of follow-up action against 'the radical mass organizations'; which later the regulation will include several legal norms, such as: sanctions, procedures for granting permits, procedures for monitoring of mass organizations, revocation of permits for mass organizations, and so on. Not only that, the preventive approach by the government in the form of guidance through various

stakeholders needs to be encouraged more intensely; so that community groups or mass organizations conform to the provisions of the UU Ormas. This recommendation needs to be done considering that human rights must be regulated through a legal mechanism which certainly does not deny the existence of human rights itself. On the other hand, the legal product must also refer to various human rights legal instruments; both nationally and internationally. By elaborating various local and international elements into a legal means, the ideals of upholding universal values of human rights for the creation of a life of peace and prosperity are not a mere necessity.

4. CONCLUSION

The disbandment of FPI uses militant democracy doctrine against human rights in particular, the right to freedom of association. This is because freedom of association has been included in various provisions of international law, such as Article 22 of the International Covenant on Civil and Political Rights of 1966, Article 8 of the International Covenant on Economic, Social and Cultural Rights of 1966, Articles 1-11 of the International Labor Organization Convention No. 87 of 1948, etc. Not only that, the right to freedom of association is intended to provide social recognition and legitimacy to people who have aspirations and efforts to build a state together through various means, especially advocacy. On the other hand, community organizations as a manifestation of the right to freedom of assembly and association are based on the principle of equality which emphasizes that all human beings have the same position to create dignity that is proportional to national development. Furthermore, community organizations are one of the sources of democratic life in a nation that can channel various perspectives and ideas that can be considered by the government to determine a consensual policy decision. The dissolution of FPI through a decree also violates the principles of the rule of law. In fact, the principle of a rule of law gives the position of the court to be the "heart of justice" which is considered the institute of counter-majoritarian mechanism. Not only that, the dissolution of community organizations through the courts will provide an independent analysis to investigate the actions and positions between the government and the FPI to determine whether there has been consultation in good faith or not between the two.

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