DEBATE OVER LAW NUMBER 17 OF 2023 CONCERNING COMMUNITY ORGANIZATIONS: MAQASID AL-SHARI‘AH REVIEW

Sanuri

Abstract: This study explores the debate over Law Number 17 of 2013 concerning Community Organizations (COs) in light of the Maqasid al-Shari‘ah Framework (MSF). MSF is a theoretical construct used in Islamic law to identify the higher objectives and purposes of the legal system. Using a qualitative approach, this study examines the perspectives of key stakeholders, including government officials, legal experts, and civil society organizations, on the law's compatibility with the objectives of the Islamic legal system. The findings of this study are: first, for the contexts of Indonesia, Law Number 17 of 2013 should further protect to five essential aspects of human life, namely religion, soul, mind, lineage, and property; second, based on the feature of qat‘i al-dalalah (certainty in Islamic law), what the Government did by restricting and providing conditions to COs is the form of the government's responsibility to protect the State from various efforts that could threaten the Unitary State of the Republic of Indonesia; third, the COs’ various visions and missions that are increasingly far from the values of Pancasila and the 1945 Constitution reinforce the potential for disintegration of the nation is classified as daruriyyah (emergency) in nature that is in need of a strict policy from the Government; and fourth, dissolution of the COs, as stipulated in Law Number 17 of 2013, is as a reflection of implementing more prioritizing maqasid al-‘ammah (universal goals) than maqasid al-khassah (specific goals).

Keywords: Law No. 17 of 2013, community organizations, maqasid al-shari‘ah, values of Pancasila.
Introduction

Law Number 17 of 2013 regulates community organizations in Indonesia.¹ This law contains rules that govern the establishment, recognition, supervision, and dissolution of community organizations in Indonesia.² This law also regulates the obligation of community organizations to uphold the unity of the Republic of Indonesia, comply with applicable laws and regulations, and not engage in activities that threaten public security and order. As stated in one of the recitals of the law, community organizations are no more than a forum for exercising freedom of association, assembly, and expression, as well as participating in development to achieve national goals within the framework of the Unitary State of the Republic of Indonesia based on Pancasila.³

Widodo Sigit Pujianto,⁴ Head of the Legal Bureau of the Ministry of Home Affairs, emphasized that the recently enacted law on community organizations, previously passed as a Government Regulation, is necessary to ensure the freedom of assembly as a fundamental human right.⁵ Therefore, the state must be able to regulate citizens' individual and collective liberties with moral considerations to maintain the unity of the Republic of Indonesia and the ethical standards of social organizations that develop within society.⁶ Widodo went on to say that the Law on community organizations is part of the state's responsibility to create regulations that align with the country's characteristics and benefit the welfare of the people. This is to anticipate the growth of

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¹ “Attachment of Law Number 17 of 2013 Concerning Community Organizations,” n.d.
³ “Attachment of Law Number 17 of 2013 Concerning Community Organizations.”
ideologies that are contrary to *Pancasila* and the 1945 Constitution, including those from community organizations that may have an impact on national disintegration.\(^7\)

About the involvement and participation of citizens in realizing the national development goals, the role of the government is vital as a facilitator and stabilizer. Among the government’s authorities is overseeing the activities of social organizations and imposing sanctions if violations are found.\(^8\) In recent years, Law Number 17 of 2013 has garnered public attention due to several cases of dissolution of social organizations by the government, which were considered controversial and a violation of human rights. Some articles in this law, such as Article 59 and Article 62, provide broad authority to the government to oversee *Pancasila* and dissolve social organizations deemed to violate the state ideology.\(^9\)

Member of the National Commission on Human Rights (*Komnas HAM*), Sandrayati Moniaga,\(^10\) explained that the state must respect, protect, and fulfill all human rights, including the right to assemble and associate.\(^11\) In addition, the state has a positive obligation to provide legal protection. Meanwhile, the negative obligation relates to restrictions imposed only when necessary and proportional. Eryanto Nugroho,\(^12\) a Center for Legal

\(^7\) Mahkamah Konstitusi Republik Indonesia, “Pemerintah: UU Ormas Perlu Untuk Mengatur Kebebasan Berkumpul.”


\(^12\) Mochamad Januar Rizki, “Berbeda Dengan Ormas, Pahami Pengertian Organisasi Masyarakat Sipil.”
and Policy Studies (PSHK) researcher, pointed out a misconception in the practice that equates social organizations with community organizations. These two things have significant differences from perspectives in history, sociology, anthropology, and law.\footnote{Mochamad Januar Rizki.}

Human rights activists believe that certain parties can use the provisions in Articles 59 and 62 as a tool to restrict freedom of organization and expression and can lead to abuse of power by the government. In addition, some cases of dissolution of civil society organizations by the government that occurred after the enactment of Law Number 17 of 2013 are also considered controversial because they are suspected of not fulfilling human rights principles, such as a non-transparent process, the absence of a court examining the case, and the unclear reasons for the dissolution.

Irman Putra Sidin, a constitutional law expert, highlighted two reasons stated in the preamble of the Perppu, namely the urgent need to revise Law Number 17 of 2013 concerning community organizations and the existence of the principle of contrarius actus,\footnote{Muhammad Yasin Izharulhaq, Adrian E. Rompis, and Amelia Cahyadini, “The Role of the Contrarius Actus Principle in Oversight of the Growth and Development of Community Organizations,” Yustisia Jurnal Hukum 8, no. 3 (2020): undefined-undefined, https://doi.org/10.20961/yustisia.v8i3.31702.} which allows the state as the issuer of permits to revoke such licenses.\footnote{Fachri Fachrudin, “Perppu Pembubaran Ormas Dinilai Jalan Pintas Yang Mengancam Demokrasi,” n.d., https://nasional.kompas.com/read/2017/07/12/10054471/perppu.pembubaran.ormas.dinilai.jalan.pintas.yang.mengancam.demokrasi.} According to Sidin, Article 59, paragraph 4 of Law Number 17 of 2013 states that the prohibition on organizations that develop, embrace, and teach ideologies that are contrary to Pancasila is limited to the ideologies mentioned in the norm explanation, namely atheism, communism, Marxism, and Leninism. Therefore, it can be concluded that teachings outside those cited do not contradict Pancasila and, thus, cannot be subject
The controversy surrounding Law Number 17 of 2013 has sparked public debate and efforts to revise the law to align with human rights principles. Additionally, the law has been deemed controversial for its perceived threat to the existence of social and religious organizations and its restrictions on freedom of association. However, fundamentally, the law, enacted on October 16, 2013, aims to strengthen the role and function of social organizations in building a democratic, just, and prosperous society. Therefore, strict requirements exist for establishing rights, obligations, monitoring mechanisms, and dissolution of community organizations.

Some reasons why the discussion about Law Number 17 of 2013 is essential include: (1) its impact on freedom of expression and association. This law gives broad authority to the government to monitor and dissolve civil society organizations deemed to threaten public order and security, as well as Pancasila as the state ideology. This can restrict freedom of expression and association in Indonesia; (2) implications for human rights. Some provisions in the law are considered controversial and may violate human rights, such as the provisions that grant broad authority to the government to dissolve civil society organizations and (3) impact on democracy. The law can also impact the quality of democracy in Indonesia.

Based on the description above, the discussion about Law Number 17 of 2013 is essential. This is because, in addition to being

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16 Mochamad Januar Rizki, “Berbeda Dengan Ormas, Pahami Pengertian Organisasi Masyarakat Sipil.”
20 Izhharulhaq, Rompis, and Cahyadini, “he Role of The Contrarius Actus Principle in Oversight of The Growth and Development of Community Organizations.”
proof of citizen participation in providing oversight of government implementation, high levels of government involvement are risky and have significant implications for organizational life and freedom of expression in Indonesia. To deliver a balanced study, this research discusses Law Number 17 of 2013 from the perspective of maqasid al-shari’ah through some features.

This is a qualitative study to provide a deeper understanding of the controversy that arises and enables the researcher to obtain more decadent and more complex information about the views and thoughts of stakeholders. Data is collected through documentation techniques from various sources, such as legal documents, media reports, and opinions from stakeholders such as NGO activists, religious figures, politicians, and the general public. The collected data is interpreted holistically to generate a deeper understanding of the controversy and to what extent the law can be accepted from the perspective of maqasid al-shari’ah.

This research is discussed from the perspective of the maqasid al-shari’ah theory, which emphasizes the main objective of Islamic law: maintaining human welfare. Through the maqasid al-shari’ah theory, researchers can analyze and identify the extent to which the law aligns with Islamic legal principles. In addition, the researcher also examines the controversy of Law Number 17 of 2013, which includes the factors causing controversy, the views and arguments of different parties, and the debate’s impact on society and the state.

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Maqasid al-Shari’ah as Theory of Islamic Law

Etymologically, maqasid al-shari’ah\(^{24}\) consists of two words, namely maqasid and shari’ah. The word maqasid is the plural form of the word was, which means "purpose," "goal," "desire," "will," "intentions," "heading towards a goal," "fair and not exceeding limits," "straight path," and "consistent in achieving a certain goal." The second element is the word shari’ah.\(^{25}\) 'Izz al-Din Ibn’ Abd al-Salam thinks that the word al-shari’ah means hiya al-manhaj al-mustaqim alladhi irtadahu Allah li’ibadihi (the straight path and the rules of law that Allah SWT is pleased with for His servants).\(^{26}\)

More briefly, Ali al-Tahanawi defines al-shari’ah as al-i’timar bi iltizam al-‘ubudiyyah (the result of carrying out a command that involves the obligation to worship Allah). The word shari’ah is also interpreted as "towards the source of justice".

Thus, maqasid al-shari’ah, according to Imam al-Shatibi is al-maqasid al-shar’iyyah fi al-shari’ah (the legal objectives contained in Islamic law), and maqasid min shar’ al-hukm (the objectives behind the enactment of Islamic law for humanity).\(^{27}\) Furthermore, Muhammad Tahir Ibn Ashur defines maqasid al-shari’ah as "the true purpose or wisdom that the legislator of shari’ah, namely Allah SWT, intended in all His shari’ah provisions to demonstrate the magnanimity, comprehensiveness, and humane values contained in shari’ah laws, especially in specific legal cases that are binding on its adherents."\(^{28}\)

Slightly different from some of the definitions above, Allal


\(^{25}\) Fayruz Abadi, Al-Qamus al-Muhit (Beirut: Muassasah al-Risalah, 1987), 32.


\(^{27}\) Bakar and Rahim.

al-Fasi defines *maqasid al-shari’ah* as "the goals and secrets desired by the *shari’ah* Maker (Allah SWT and His Messenger) in all Islamic legal provisions."\(^{29}\) While Jasser Auda, in his book "*Maqasid al-Shari’ah as Philosophy of Islamic Law a Systems Approach*", defines *maqasid al-shari’ah* as "the goals and secrets behind the provisions and rulings of Islamic law."\(^{30}\) Of these Islamic legal scholars mentioned above, they emphasize more on the aspect of goals and secrets or wisdom behind each command and prohibition.\(^{31}\)

1. The Hierarchy of *Maqasid al-Shari’ah*: *Kulliyyah-Naw’iyyah-Juziyyah*

   In the study of *maqasid al-shari’ah*, there is a hierarchy of goals. Imam al-Juwayni referred to this hierarchy as *maratib al-maqasid*.\(^{32}\) Furthermore, al-Khadimi divided this hierarchy of *maqasid* into two categories, namely *al-maqasid al-kulliyyah* (universal goals) and *al-maqasid al-juziyyah* (partial goals). Meanwhile, 'Abd Majid al-Najjar\(^{33}\) divided it into three, namely: (1) *al-maqasid al-kulliyyah*; (2) *al-maqasid al-naw’iyyah*; (3) *al-maqasid al-juziyyah*.

   First, *al-maqasid al-kulliyyah* (universal goals). Universal goals are *maqasid* with the broadest scope of *maslahah* because they are at the macro level. Therefore, *al-maqasid al-kulliyyah* is projected to be...
able to move freely while adhering to the basic values of al-Qur’an and al-Sunnah. Examples of al-maqasid al-kulliyah are realizing a dignified system of government for the sake of the maslahah of human life, realizing the principle of ease (al-taysir) and eliminating difficulty (raf’u al-haraj), and maintaining the institutions of the people.34 Thus, it is not a matter of which state system is agreed upon. What is important is how the state system can realize goodness for its people. By realizing the goals of the shari’ah at the macro level (kulliyah), according to 'Allal al-Fasi, it automatically maintains and realizes the goals of the shari’ah at the micro level (juziyyah).35

Second, al-maqasid al-naw’iyyah (specific goals).36 Branch goals are a number of shari’ah legal provisions intended to achieve one goal, such as a number of shari’ah legal provisions related to family law to strengthen and maintain family ties. Another example is a codification of Islamic laws pertaining to al-mu’amalat al-maliyyah intended to realize hifz al-mal (preserving wealth).37 Islamic laws that govern criminal offenses are a codification of Islamic laws related to qisas intended to realize hifz al-nafs. Al-maqasid al-naw’iyyah is also often called al-maqasid al-khassah (specific goals).

Third, al-maqasid al-juziyyah (the most specific goals).38 Specific goals are those which are intended to be achieved through one specific legal provision. The particularity of the goal does not mean that it is not important. However, the fulfillment of particular goals is an integral part of achieving universal goals. For example, the goal of the commandment of wudu is to purify

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38 Susilawati, “Stratifikasi Al-Maqasid Al-Khashmah Dan Penerapannya Dalam Al-Dharuriyat, Al-Hajijiyat, Al-Tahsiniyyat.”
oneself. This goal is directly expressed in one verse of al-Qur’an by performing a specific command.

2. *Maslahah as the Essence of Maqasid al-Shari’ah*

   The essence of maqasid al-shari’ah is how to achieve the greatest good and benefit for humans, both in this world and in the hereafter. So, maqasid al-shari’ah is the "goal," "purpose," or "wisdom behind the provisions of Islamic law" in the form of maslahah or "benefit" that is intended to be achieved by the shari’ah itself or "bringing about good and warding off harm" (jalb al-masalih wa dar’ al-mafasid). Imam al-Juwayni used the term "al-masalih al-‘ammah" (the target of the maslahah is universal in nature). At the same time, Abu Hamid al-Ghazali elaborated his theory of maqasid with al-maslahah al-mursalah (the search and establishment of maslahah based on provisions and determinations of al-Qur’an and al-Sunnah). He elaborated on the benefit for humans and the benefits according to shari’ah itself. However, benefits, according to shari’ah, must remain the benchmark. Thus, Abu Hamid al-Ghazali’s concept of maslahah is not only about how we can extract benefit and avoid harm, but the essence of maslahah is also how we can uphold the objectives of the shari’ah.

   The concept of maslahah has continued to shift in line with human thought advances. Al-Tufi said that maslahah is more anthropocentric, where the basic assumption is that humans are the ones who know what is good for them, as long as it does not conflict with the fundamental principles of faith, ethics, and


42 Sucipto and Khotib.
transactions in *al-Quran* and *al-Sunnah*.\(^{43}\) Therefore, with all their strengths, humans have the most significant authority to determine *maslahah* for their own lives.\(^{44}\) Slightly different from his predecessors, Jasser Auda, in his book "Maqasid al-Shari‘ah as Philosophy of Islamic Law," breaks down *maslahah* (interest) into several aspects. From a material perspective, he divides *maslahah* into two: (1) *maslahah al-‘ammah*, which is universal and concerns the interests of many people, and (2) *maslahah al-khassah*, which is partial and concerns personal interests. However, in principle, Auda has a similar view to al-Tufi that the orientation of achieving *maslahah* is under the authority of humans (fi dhihnil al-faqih), who should determine *maslahah* based on actual knowledge and research.\(^{45}\)

In addition, the *maqasidiyyun* (Muslim Scholars in the field of *maqasid*) also agree that the *maqasid al-shari‘ah* theory have a prioritization scale of realization, namely *daruriyyat*, *hajiyyat*, and *tahsiniyyat*. This priority is essential in mapping out which needs must be prioritized and which are less urgent. In a book entitled "tartib al-maqasid al-‘ammah min al-tashri,‘" 'Abd al-Qadir 'Awdah explains in great detail about *al-maqasid al-daruriyyat* and the importance of achieving these goals for human. Failure to do so would be a severe threat to human existence as a *khalifah* on earth. To facilitate the understanding of the priority of achieving *maslahah*, he divided it into three parts: *daruriyyat*, *hajiyyat*, and *tahsiniyyat*, in which these three goals must be realized in sequence, first *daruriyyat*, then *hajiyyat*, and only then *tahsiniyyat*.\(^{46}\)

From the perspective of the strength of *maslahah*, 'Awdah's


\(^{45}\) Munadi and Iswanto, “The Concept *Maslahah* of Najamuddin al Tufi and It’s Relevance of Sharia Business.”

opinion is in line with that of the *maqasid al-daruriyyah* who also divided it into three parts, namely; (1) *al-maqasid al-daruriyyah* (a primary and emergency goal). According to al-Shatibi, there are five things that fall into this category, or are often called *al-daruriyyat al-khams*, namely *hifz al-din* (preserving religion), *hifz al-nafs* (preserving life), *hifz al-aql* (preserving intellect), *hifz al-nasl* (preserving lineage), and *hifz al-mal* (preserving property);\(^47\) (2) *al-maqasid al-hajiyyah*; (the secondary needs). Adnan M. Umamah added that *hajiyyah* is meant to provide relief for humans from difficulty and hardship (*innaha taftaqiru ilaiha min haithu al-tausi’ah li raf’i al-daiq al-muaddi fi al-ghalib ila al-khuruj wa al-mashaqqah*);\(^48\) and (3) *al-maqasid al-tahsiniyyah* (tertiary needs). According to Imam al-Ghazali, *tahsiniyyah* is a need that does not threaten the existence of any of the five essential things (*al-daruriyyat al-khams*), nor does it cause difficulty.\(^49\) Al-Shatibi defines *tahsiniyyah* as appropriateness according to local customs, avoiding anything unpleasant to the eye, and adorning oneself with beauty that is by the demands of norms and ethics in various aspects of life, such as worship, transactions, and punishments.\(^50\)

**Indonesian Socio-Political Atmosphere and Law Number 17 of 2013**

Politically, the emergence of this Law was driven by several factors,\(^51\) including the need to regulate the growth of increasingly expanding civil society organizations in Indonesia and to enhance

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debate over the activities carried out by such organizations. Additionally, the need to tackle the proliferation of organizations that engage in violent acts, damage public facilities, engage in incitement or provocation, and violate human rights was also an essential reason behind the appearance of Law Number 17 of 2013.

In general, Law Number 17 of 2013 contains several fundamental regulations, including (1) requirements for the establishment of community organizations, which must have at least three founders who are 18 years old and be registered with the Ministry of Law and Human Rights; (2) rights and obligations of community organizations, including the right to conduct activities that are in line with their goals and fields of activity, and the obligation to report their activities and finances transparently; (3) mechanisms for monitoring and dissolving community organizations, including through internal and external monitoring, as well as mechanisms for dissolving community organizations through legal processes by applicable laws and regulations. Some essential points of Law Number 17 of 2013, as a form of government presence and responsibility on the one hand and perceived as limiting the human rights of community organizations on the other hand, are as follows:

1. Constitutionalizing Community Organizations

Article 59, paragraph (4) states that establishing community organizations must be by the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and not conflict with the religious, moral, and ethical norms recognized by society.
Meanwhile, article 59, paragraph (2) states that social organizations are not allowed to use violence, threats, or violent actions to achieve their organizational goals.\textsuperscript{56} Furthermore, this article also says that community organizations are not permitted to engage in activities that damage national unity and integrity, threaten state sovereignty, and disturb public order and security. And article 59, paragraph (3) states that community organizations are prohibited from receiving support from foreign parties or organizations.

In addition to several fairly strict rules regarding the establishment and operation of community organizations, Law Number 17 of 2013 also guarantees the rights for them in carrying out their organizational activities, including the right to assemble and to express opinions and aspirations. So, as long as they carry out their activities in a way that does not conflict with applicable laws and values, freedom of association and expression can still be protected.\textsuperscript{57} Several articles in Law Number 17 of 2013 are considered to limit freedom of association.

2. Strict Internal and External Control

Law Number 17 of 2013 requires internal and external supervision. This oversight aims to ensure that they carry out their organizational activities that comply with applicable laws and values. Internal supervision is carried out by the management of the social organization itself by evaluating and controlling the organization’s activities. Social organization administrators must also make regular activity reports and carry out internal audits to ensure that the organization’s activities have been carried out correctly.

Meanwhile, external parties, namely the government and the community, carry out external supervision. The government has the authority to monitor and oversee the activities of social organizations, including taking preventive and repressive actions.

\textsuperscript{56} Fahlevi.

\textsuperscript{57} Mahkamah Konstitusi Republik Indonesia, “Pemerintah: UU Ormas Perlu Untuk Mengatur Kebebasan Berkumpul.”
if violations of laws or policies that are detrimental to the state and society are found. Meanwhile, the community can also supervise by providing input, criticism, and suggestions on the activities of social organizations and reporting if they violate the rules.

Internal and external supervision of this community organization is further regulated in Article 53 of Law Number 17 of 2013. Articles 37 and 38 state that community organizations must prepare guidelines for financial management and supervision and conduct audits of economic management. Meanwhile, Articles 53-56 explain that the government can establish a Community Coordinating Board (CCB) to coordinate and supervise their activities. The authority given to the government to conduct internal and external supervision of community organizations is a crucial point for the stability of the state. However, in practice, the supervision carried out has the potential to restrict the freedom of community organizations to carry out activities that align with their goals and areas of activity.

3. *Pancasila* and the 1945 Constitution as Barometers

Law Number 17 of 2013 grants the government authority to dissolve community organizations deemed to be contrary to the values of *Pancasila*, the 1945 Constitution of the Republic of Indonesia, and religious, moral, and ethical norms recognized by society. In addition, the dissolution of community organizations can also be carried out if some actions or activities could threaten national security, cause harm to others, engage in violence or anarchy, or engage in activities that contradict prevailing social norms.

However, the government cannot carry out the dissolution of social organizations unilaterally. Dissolution must go through

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59 Fachri Fachrudin, “Perppu Pembubaran Ormas Dinilai Jalan Pintas Yang Mengancam Demokrasi.”
clear legal procedures and regulations. Community organizations to be dissolved must be allowed to defend themselves and provide clarification regarding the accusations or activities in question. Additionally, the government must prove that the community organizations' activities to be dissolved do indeed contradict the values of Pancasila and the 1945 Constitution. The dissolution of social organizations that do not adhere to the values of Pancasila and the 1945 Constitution is also regulated in Article 59 of Law Number 17 of 2013. The dissolution process is carried out through several stages, such as issuing a warning, imposing administrative sanctions, and, ultimately, dissolution. Community organizations that have been dissolved are also prohibited from engaging in activities or forming the same organization again.

4. Regulating vs. Restricting the Freedom of Community Organizations and Press

Meutia Ganie Rochman, a sociologist at the University of Indonesia, explained that the state should make it easy for organizations to develop, including driving it easy to assess government critically. Precisely, by organizing, the community will learn how to contribute to development. In line with Meutia, Amir Efendi Siregar also stated that the principles in the Law on community organizations did not meet the expectations of members of the press because the activities of journalists' organizations could also be stopped because they discussed matters “deemed” contrary to Pancasila. Surya Tjandra added that in Aceh and several other places in Indonesia, many social organizations were prohibited from carrying out activities because they were not or had not been registered with the Agency for National Unity and Politics (Kesbangpol).60

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Even though Law Number 17 of 2013 provides rules regarding the dissolution of social organizations contrary to the values of *Pancasila* and the 1945 Constitution, this law has also drawn criticism from several parties regarding the lack of protection for those with differing opinions. Several parties stated that the provisions in Law Number 17 of 2013 could cause fear and concern for social organizations that want to voice their opinions or criticize the government.

Regarding the principle of *contrarius actus*, Yusril Ihza Mahendra, an expert on Constitutional Law, distinguishes between the nature of permits, which are the rights of the state, and the deed of establishment of community organizations originating from the rights of citizens. In principle, permission is the permissibility of doing something that is prohibited. The state permits prohibited actions to become permissible. Therefore, from time to time, when it is deemed necessary, the state can revoke the permission given for the permissibility of implementing something.61 Questioning the phrase contrary to *Pancasila’s statement*, mentioned in the explanation section, Refly warned of the potential for this explanation to be lost if tested at the Constitutional Court. Often, the Constitutional Court considers that the reason for norms creates new norms that are not regulated.62

5. Fundamental Principles in Law Number 17 of 2013

Law Number 17 of 2013 has several principles that need to be discussed in Indonesian Constitutional Law, including the constitutional aspect. Law Number 17 of 2013 must be by the 1945 Constitution and not conflict with the state constitution. Therefore, it is necessary to discuss whether the content of the law is to the basic principles of the state, such as human rights, people’s

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62 M Dani Pratama Huzaini.
sovereignty, and the rule of law. Second, implementation. Law Number 17 of 2013 must be applied consistently and fairly in practice. Therefore, it is necessary to discuss how the responsible parties, such as the government and the police, implement the law and how it is implemented for social organizations that are already established.

Third is the aspect of freedom restriction. Law Number 17 of 2013 provides restrictions on the freedom of community organizations. Therefore, it is necessary to discuss the extent to which these limitations can be applied without neglecting human rights and freedom of association guaranteed by the Constitution.

Fourth, aspects of protection against radicalism and terrorism. Law Number 17 of 2013 also aims to protect the state from the activities of community organizations affiliated with radical movements and terrorism. Therefore, it is necessary to discuss the government's efforts to combat these organizations while protecting human rights and freedom of association.

Fifth, supervision. Law Number 17 of 2013 also regulates the supervision and dissolution of community organizations that violate the provisions of the law. Therefore, it is necessary to discuss how the government carries out the oversight mechanism and how the mechanism for legal resistance for organizations that are considered innocent and do not violate the law. These five principles guide the government in implementing laws to protect citizens' rights to organize and remain within the corridors of the philosophical values of Pancasila and the 1945 Constitution.63

Pros and Cons of the Revision of Law Number 17 of 2013

In response to the revision of Law Number 17 of 2013, the public is divided into two groups, pros and cons. Parties that agree with Law Number 17 of 2013 include the government and members of the House of Representatives (DPR) who approve and

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sign the law, as well as several community groups who consider this regulation necessary to oversee and restrict organizational activities that are contrary to the values of Pancasila and the 1945 Constitution.64 Some religious groups also support this law, given the stipulation that organizations must respect the beliefs of the Indonesian people. However, support for this law is balanced with criticism from several parties who oppose democratic idealism with the government as the executor.

The controversial parties, internal and external to the Indonesian government, include (1) social organizations in Indonesia, particularly those who feel disadvantaged because the government authorities have disbanded. They expressly objected to several articles in Law Number 17 of 2013, such as the article that stipulates the obligation to report activities and sources of funds as well as the article which gives the government authority to dissolve community organizations that are considered contrary to Pancasila values; (2) Activists and Human Rights Organizations (HAM): Several human rights activists and organizations criticized the articles in Law Number 17 of 2013 which were considered to restrict freedom of opinion, assembly, association, and giving too much power to the government.65

Furthermore, (3) political opposition parties: several opposition political parties in Indonesia also criticize the Law since their democratic rights and freedoms of expression are narrowed by the government's discretion; (4) civil society groups: several civil society groups, such as academics, activists, and NGOs also criticize Law Number 17 of 2013 because they were deemed not transparent and paid little attention to public participation in the legislative process; (5) religious figures: several religious leaders also expressed objections to articles in Law Number 17 of 2013 which were considered to be able to hinder religious activities,

64 “Aktualisasi Negara Hukum Pancasil... Preview & Related Info | Mendeley."
such as articles that stipulated the obligation to report sources of funds and activities of religious community organizations.

**Legal Reasons for the Emergence of Law Number 17 of 2013**

Law Number 17 of 2013 emerged as a response to the rise of several community organizations, which are pretty worrying by displaying unfavorable attitudes toward the behavior of the nation and state.\(^{66}\) Since the 1998 reform of Indonesia, the number of community organizations in Indonesia has increased significantly. It tends to get out of control, so there is concern that some of them can become a vehicle for activities that are contrary to the values of *Pancasila* and the 1945 Constitution, such as separatism, radicalism, terrorism, or organizations that destroy morality and decency. Based on the data that the author summarizes from various sources, there are several community organizations that the Indonesian government authorities have suspended for different legal reasons, as shown in the table below:

Table 1. List of names of community organizations that have been dissolved by the Government of the Republic of Indonesia

<table>
<thead>
<tr>
<th>NO</th>
<th>Community Organizations</th>
<th>Years</th>
<th>Unconstitutional Forms of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Indonesian Communist Party</td>
<td>1965</td>
<td>Attempting to stage a coup against the government and carry out subversive activities that threaten national security</td>
</tr>
<tr>
<td>2</td>
<td>Laskar Jihad</td>
<td>2003</td>
<td>It is considered an extremist group that committed violence and acts of terrorism in the Maluku and Sulawesi regions.</td>
</tr>
</tbody>
</table>

\(^{66}\) Taufik.
<table>
<thead>
<tr>
<th>No.</th>
<th>Organization</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Komando Jihad</td>
<td>2004</td>
<td>Involved in the conflict in Poso, Central Sulawesi, and carried out a series of acts of violence</td>
</tr>
<tr>
<td>4</td>
<td>Laskar Jihad</td>
<td>2004</td>
<td>Considered to have committed acts of violence and spread radicalism</td>
</tr>
<tr>
<td>5</td>
<td>Gerakan Aceh Merdeka (GAM)</td>
<td>2005</td>
<td>A separatist movement that wants to separate the province of Aceh from Indonesia</td>
</tr>
<tr>
<td>6</td>
<td>Komando Jihad</td>
<td>2005</td>
<td>Considered to have committed acts of violence and terrorism</td>
</tr>
<tr>
<td>7</td>
<td>Jamaah Islamiyah Indonesia</td>
<td>2008</td>
<td>Conducting a series of attempted terror attacks in Indonesia in the 2000s and is considered a terrorist organization</td>
</tr>
<tr>
<td>8</td>
<td>Negara Islam Indonesia</td>
<td>2010</td>
<td>Considered as an organization that seeks to overthrow the government and establish an Islamic state in Indonesia</td>
</tr>
<tr>
<td>9</td>
<td>Aliansi Nasional Anti Syiah (Annas)</td>
<td>2014</td>
<td>Hatred of the Shi’ah school of thought, which they consider a dangerous sect</td>
</tr>
<tr>
<td>10</td>
<td>Gerakan Fajar Nusantara</td>
<td>2016</td>
<td>Considered to cause social instability and threaten national security</td>
</tr>
<tr>
<td>11</td>
<td>Hizbut Tahrir Indonesia</td>
<td>2017</td>
<td>The organization is considered contrary to Pancasila and the 1945 Constitution and is believed to have the</td>
</tr>
</tbody>
</table>
Several other reasons concerning the emergence of Law Number 17 of 2013 are: first, guaranteeing security and public order through the legislature, namely the Parliament, so that it does not pose a threat to public security and order; second, regulate social organizations so that they are open, transparent and have integrity; third, avoiding misuse of community organization activities such as activities that attack national interests, carry out radicalism, or be involved in terrorist activities; fourth, strengthening democracy by providing space for the public to participate in the activities of community organizations by applicable laws and regulations.

Whereas the principles in Law Number 17 of 2013 include67 (1) the national interest by discontinuing community organizations’ activities that harm national interests, such as separatism, radicalism, or terrorism; (2) Pancasila and the 1945 Constitution; (3) organizing activities in a democratic and participatory manner; (4) openness and accountability of every community organizations in carrying out activities and account for their finances; (5) does not discriminate against ethnicity, religion, race, or specific groups in activities and membership; (6) diversity

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67 "Attachment of Law Number 17 of 2013 Concerning Community Organizations."
as a reflection of a multicultural country; and (7) safety and security for society and the state.

Maqasid al-Shari‘ah’s Review (MSR) on the Revision of Law Number 17 of 2013

Law Number 17 of 2013 further strengthens the government’s role in supervising and controlling the activities of social organizations in Indonesia. In conducting a maqasid al-shari‘ah analysis of this revision, several things need to be considered: first, maqasid al-shari‘ah aims to protect five essential aspects of human life, namely religion, soul, mind, lineage, and property. In this context, Law Number 17 of 2013 must pay attention to and strengthen the protection of these five aspects.

Second, all rules and principles of Law Number 17 of 2013 must pay attention to the principles of justice and balance between rights and obligations. Community organizations must be allowed to operate according to their goals. Still, at the same time, the government must also have the authority to restrict and control the activities of mass organizations that are contrary to national values and objectives, such as security, safety, and public order. Third, the revision of Law Number 17 of 2013 must pay attention to the maqasid al-shari‘ah principle related to the regulation and settlement of disputes. The government must provide protection and guarantees to mass organizations in their activities. Still, at the same time, it must pay attention to the public interest and resolve disputes fairly and lawfully.

Fourth, the revision of Law Number 17 of 2013 must consider the maqasid al-shari‘ah principle related to maintaining security and public order. The government must have the authority to control the activities of community organizations that can threaten security and public order. Still, at the same time, it must pay attention to human rights and freedom of expression. Fifth, the revision of Law Number 17 of 2013 must pay attention to

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the *maqasid al-Shari’ah* principle related to the promotion of public welfare. Civil Society Organizations (CSOs) must be allowed to contribute to advancing the common good. However, they must pay attention to larger national values and goals.

The Establishment of Community Organizations must be by the *Pancasila* and the 1945 Constitution of RI: The Debate between *Qat’i al-Dalalah* and *Dhanni al-Dalalah*.

The Indonesian government makes conditions that are pretty stringent for the establishment of community organizations. Article 59 Paragraph 4 stipulates that the vision and mission of social organizations are supposed to align with the values of *Pancasila* and the 1945 Constitution. In addition to the two, Law Number 17 of 2023 also ensures that the establishment of community organizations does not conflict with religious, moral, and decency, which are recognized by the community as local wisdom. Perceptions about the behavior of community organizations with nuances of violence, threats of violence, acts of violence in achieving organizational goals, carrying out actions that have the potential to damage national unity and integrity, threaten the integrity of the state, and disrupt public order and security have also received sharp scrutiny from the government through law no—17 of 2013.

In the context of *qat’i al-dalalah* (certainty in Islamic law), what the Government does by restricting and providing quite strict conditions is to create conducive conditions for the nation’s life. The meaning of certainty is that the State must deliver legal certainty to all elements of the country in all aspects of life.

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69 “Attachment of Law Number 17 of 2013 Concerning Community Organizations.”
Pancasila, as the nation’s view of life, has the primary function of being the basis of the Indonesian state.\(^73\)

In such a position, Pancasila occupies the highest position as the source of law or national fundamental law in the legal system in Indonesia.\(^74\) Meanwhile, the 1945 Constitution is Indonesia’s highest legal source of all legal products.\(^75\) So, the power of law and legal authority for all Indonesian citizens are qat’i (specific). Meanwhile, the rules made internally by social organizations and applied internally and externally are more dhanni (uncertain)\(^76\) in nature and receive recognition from all elements of the nation. Therefore, in terms of provisions that are pretty stringent that the government makes for the establishment of community organizations, it is an integral part of the government’s responsibility to protect the State from various forms of effort that could threaten the Unitary State of the Republic of Indonesia.\(^77\)

**Internal and External Supervision of Community Organizations in the Lance of Daruriyyah Level of Maqasid al-Shari’ah**

After the reformation in 1998, community organizations in Indonesia emerged\(^78\) with diverse socio-religious backgrounds and national political affiliations. On the one hand, the emergence of these social organizations is clear evidence of citizens’ participation in national development. However, various visions and missions that are increasingly far from the values of Pancasila and the 1945

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\(^{74}\) “Pancasila as the First and Foremost... Preview & Related Info | Mendeley,” accessed March 19, 2023, https://www.mendeley.com/catalogue/2dbb3aab-52f2-3dbd-8081-cbc91e956b4e/.


\(^{77}\) Dahoklory and Wardhani, “Rekonstruksi Nilai-Nilai Pancasila Dalam Undang-Undang.”

Constitution reinforce the potential for disintegration of the nation. The organization's legitimacy on behalf of a particular religion and culture of a specific area also contributes to the increasingly precarious atmosphere of public security mainly if the community organization receives a flow of funds not only from internal members but also from outsiders who deliberately want to undermine the sovereignty of the Republic of Indonesia.

In such conditions, the government's policy to carry out internal and external supervision is *daruriyyah* (emergency)\(^7^9\) in nature to protect national interests which include religion and belief (*hifz al-din*), soul (*hifz al-nafs*), family survival (*hifz al-usrah*), economic development and property (*hifz al-mal*), and education (*hifz al-‘aql*) as set forth in the features of *maqasid al-shari’ah*. On behalf of the people, of course, the government has the authority to monitor and oversee the activities of social organizations, including taking preventive and repressive actions if the violation of laws harms the state and society. Meanwhile, the community can also supervise by providing input, criticism, and suggestions on the activities of social organizations and reporting if violations or misuse of organizational activities are found.

The various legal reasons for dissolving social organizations, as in the table above, show that what the government did is a very appropriate policy for the needs of the people’s welfare. However, several notes highlighted by some community parties are that the dissolution of community organizations must still go through transparent and accountable legal procedures and judicial processes. It is at this point that often gets sharp scrutiny from many groups, including human rights activists, that the authorities often take cutting-edge actions.

\(^7^9\) “Maqasid Daruriyyah Al-Kulliyah, Preview & Related Info | Mendeley,” accessed March 19, 2023, https://www.mendeley.com/catalogue/9b7c1c01-705b-3ea6-9c33-dfa63156f569/.
Dissolution of Community Organizations: a Reflection on *al-Maqasid al-'Ammah*

There are several fundamental principles in Law Number 17 of 2013, such as constitutional action, consistent law enforcement, restriction of freedom for the sake of national interests, protection of citizens from communism-radicalism-terrorism, and supervision-dissolution of social organizations that violate these provisions applicable law. These principles are the benchmarks and the government's spirit in dissolving social organizations that do not comply with the relevant law.

The reflection of *maqasid al-'amman* (universal goals) from Law Number 17 of 2013 is how the government can provide security and peace for all citizens from various unconstitutional actions by certain parties, including community organizations. The power to control all forms of such destructive actions is needed to achieve this universal goal. In this case, the government, as a policyholder, not only has the right but a must to realize universal goals by dissolving community organizations that are considered contrary to the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and religious norms, morality, and decency recognized by society.\(^{80}\)

In the analysis of *maqasid al-'amman*,¹ the interests (maslahah) of the wider community must be prioritized over the benefits of certain groups or individuals (*maqasid al-khassah*).\(^ {82}\) In this case, it could be that unconstitutional actions taken by social organizations benefit members and sympathizers of the organization itself but can sacrifice much larger interests of the people. In the perspective of *maqasid al-'amman*, the dissolution of community organizations that carry out actions or activities that can threaten national security, carry out actions that harm many people, commit acts of

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³ Alimuddin, “The Urgency of the Maqāṣid Al-Syar’Iah in Reasoning Islamic Law.”
violence or anarchism, as well as activities that are contrary to prevailing social norms is justified in Islamic law. However, the government cannot carry out the dissolution of community organizations unilaterally. Dissolution must go through clear legal procedures and be regulated in laws and regulations. In addition, the rights of community organizations that will be disbanded must be given, including the opportunity to defend themselves and provide clarification regarding allegations or activities carried out through the judicial mechanism.

Conclusions

The socio-political atmosphere of Law Number 17 of 2013 of the emergence of this Law was driven by several factors, including the need to regulate the growth of increasingly expanding civil society organizations in Indonesia, which tended to get out of control. So, there is concern that some of them can become a vehicle for activities contrary to the values of Pancasila and the 1945 Constitution, such as separatism, radicalism, terrorism, or organizations that destroy morality and decency as well as the welfare of the people. In this case, the Government of Indonesia is invited to regulate those Community Organizations (COs) by establishing the law containing rules that govern the establishment, recognition, supervision, and dissolution of community organizations in Indonesia.

The Maqasid al-Shari’ah Review (MSR) on the debate over the Law Number 17 of 2013 are: (1) for the contexts of Indonesia, Law Number 17 of 2013 should further protect to five essential aspects of human life, namely religion (hifz al-din), soul (hifz al-nafs), mind (hifz al-‘aql), lineage (hifz al-nasl), and property (hifz al-mal); (2) based on the feature of qat’i al-dalalah (certainty in Islamic law), what the Government did by restricting and providing conditions to COs is the form of the government’s responsibility to protect the State from various efforts that could threaten the Unitary State of the Republic of Indonesia; (3) the COs’ various visions and missions that are increasingly far from the values of Pancasila and
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the 1945 Constitution reinforce the potential for disintegration of the nation is classified as daruriyyah (emergency) in nature that is in need of a strict policy from the Government; and (4) dissolution of the COs, as stipulated in Law Number 17 of 2013, is as a reflection of implementing more prioritizing maqasid al-'ammah (universal goals) than maqasid al-khassah (specific goals).

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