

Bill on Societal Organizations (RUU Ormas) and Freedom of Association in Indonesia

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Indonesia**

Table of Contents

Abstract.....	3
A. Background.....	5
B. Legal Framework for CSO in Indonesia	9
C. Law No.8 Year 1985 on Societal Organization.....	14
1. Legal History	14
a. Discussion on Definition and Scope in 1985.....	15
b. Discussion on Single Basic Principle (<i>Asas Tunggal</i>) of <i>Pancasila</i> in 1985..	15
c. Discussion on Suspension and Dissolution in 1985	16
2. Problematic Provisions of Law No.8 Year 1985	17
a. Articles with the Intent to Control in Law No.8 Year 1985	17
b. Articles on Suspension and Dissolution in Law No.8 Year 1985	17
3. Recent Developments	19
D. Bill on Societal Organizations 2011	21
1. Brief Overview of the Bill on Societal Organization 2011	21
2. Problem Identification of the Bill on Societal Organization 2011	24
E. Strategic Recommendations	26

Abstract

In the Indonesian National Legislation Program for 2010-2014, there are at least five bills that are closely related to the legal environment for civil society in Indonesia. Those bills include (1) Bill on the revision of the Law on Societal Organizations (*RUU tentang Perubahan atas UU No.8/1985 tentang Organisasi Kemasyarakatan*), (2) Bill on Associations (*RUU tentang Perkumpulan*), (3) Bill on the second revision of the Law on Foundations (*RUU tentang Perubahan Kedua atas UU No.16/2001 tentang Yayasan*), (4) Bill on NGOs (*RUU tentang Lembaga Swadaya Masyarakat*), and (5) Bill on Protection of Human Rights Defenders (*RUU tentang Perlindungan terhadap Pembela HAM*).

The Parliament has placed the Bill on Societal Organizations on its priority list for 2011. The draft bill is based on the existing draconian law, the Law on Societal Organizations No.8 of 1985.

The discourse around societal organizations in Indonesia seems always politicized. On August 30, 2010, the Parliament conducted a joint meeting with the government to respond to a series of violent activities related to societal organizations. The meeting was attended by Parliamentary leaders; the Coordinating Minister of Politics, Law, and Human Rights; the Minister of Interior; the Head of Police; the Attorney General, and the Head of Intelligence Body. One result of the meeting was a commitment to push forward with revisions to the Law on Societal Organizations (*RUU tentang Perubahan atas UU No.8/1985 tentang Organisasi Kemasyarakatan*). The commitment was further demonstrated when the Bill on the revision of the Law on Societal Organizations was put on the Parliament's Priority Legislation for years 2011 and 2012.

Since February 2011, discussions about societal organizations have related to violent actions against members of Ahmadiyah, a minority Muslim sect in Pandeglang (West Java) and also against Christian churches in Temanggung (Central Java). Responding to the situation, President Susilo Bambang Yudhoyono gave instruction to dissolve the groups engaged in violence and causing unrest in society. Although the President's instruction has never been implemented, this instruction creates a problematic situation. According to the Law No. 8 of 1985 on Societal Organizations, the government can dissolve a societal organization without seeking a court order. The possibility that government may act to dissolve organizations directly poses a substantial threat to the freedom of association in Indonesia.

Freedom of association is guaranteed by the 1945 Constitution. Since 1998, Indonesia has been undergoing a democratic transition process after 32 years of Soeharto's "New Order" authoritarian government. From 1998–2004, the pro-reform groups still held enough bargaining power to create progressive changes. During this time, Indonesia adopted legislation, including Law No. 24 of 2003 on the Constitutional Court, Law No. 22 of 2004 on the Judicial Commission, Law No. 39 of 1999 on Human Rights, Law No. 26 of 2000 on the Human Rights Court, and Law No. 23 of 2003 on the General Election for President and Vice President. And in 2005, Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR), which protects fundamental freedoms, including the freedom of association.

Nonetheless, more efforts are needed to preserve and improve the legal environment in protecting the freedom of association.

This paper will describe the legal framework related to the societal organization, the context of the revision process, and how it will affect the freedom of association in Indonesia.

Bill on Societal Organizations and the Freedom of Association in Indonesia

A. Background

There are various terms used to refer to a civil society organization (CSO) in Indonesia. Under Soeharto's New Order regime, Indonesian CSOs used the name "*Lembaga Swadaya Masyarakat (LSM)*" which means "self-reliant community development institution".¹ The term "non-governmental organization" or "NGO" was not generally used, as it could be interpreted by the regime to mean "anti-government organization".² At that time, CSOs were given no room by the regime to express arguments opposing the government or to challenge government policy. Extra-legal measures, such as kidnappings and tortures, were also used by the regime, targeting those who actively challenged the government.³

The term "LSM" is still commonly used today in practice. As alternatives, some organizations now prefer to use "*Organisasi Non-Pemerintah (Ornop)*", which is a direct translation of NGO, or "*Organisasi Masyarakat Sipil (OMS)*" which is a translation of Civil Society Organization.⁴

From 1999 to 2002, after the fall of the New Order regime in 1998, Indonesia underwent four rounds of constitutional amendments in order to ensure better protection for civil liberties and the political rights of citizens. As a result, there is now clear protection for the freedom of association (article 28) and freedom of expression (article 28E).⁵ Indonesia also ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005 regarding the Ratification of the International Covenant on Civil and Political Rights (ICCPR) on October 28, 2005. Taken together, these are significant improvements in the legal framework for CSOs, since previously, in the New Order regime, the legal framework was not conducive for CSOs to conduct public policy advocacy.⁶

Through certain laws and regulations, the government has recognized the importance and contributions of civil society. For example, since 2008, the Income Tax Law has made available tax deductions for donations in support of disaster rehabilitation, research and development, social infrastructure construction costs,⁷ education, and sports.⁸

¹ Rustam Ibrahim, "Civil Society Mapping in ASEAN Countries: Indonesia", Concept Paper prepared for Friedrich-Ebert-Stiftung (FES), 2011.

² Ibid.

³ Bivitri Susanti, "NGO Law Monitor: Indonesia," <http://www.icnl.org/knowledge/ngolawmonitor/indonesia.htm>.

⁴ There is a perspective that the terms "*Lembaga Swadaya Masyarakat (LSM)*" shows the hegemony of the state towards the civil society element. The terms "*Organisasi Non Pemerintah (ORNOP)*" was seen as a counter-discourse which is used intentionally as an effort to deconstruct the hegemonic discourse. See M.M.Billah, "Perkembangan Ornop di Indonesia" (Seminar proceeding of SMERU, August 15th, 2000), p.4.

⁵ Article 28: The liberties of association and assembly, the freedom of thought expressed verbally or in writing and similar rights, are to be determined by law.

Article 28E section (3): Each person has the right to freely associate, assemble, and express his opinions.

⁶ At that time, there were not many CSO active in conducting public policy advocacy.

⁷ The phrase "social infrastructure construction cost" is a translation of "*Biaya Pembangunan Infrastruktur Sosial*." It is defined in Article 1(e) of Government Regulation No.93/2010 as costs that

After the 1998 change of regime, the number of CSOs in Indonesia has increased considerably. Precise data relating to the number of CSOs in the New Order regime is not available.⁹ A survey conducted by the Local Assessment Team facilitated by PPATK (Indonesian Financial Transaction Reports and Analysis Centre) and the Charity Commission for England and Wales in 2010 shows that there are more than 20,000 registered CSOs in Indonesia.¹⁰

Table – 1
Numbers of CSO and Relevant Ministry in Indonesia¹¹

No	Type	Numbers of Organization	Registered to Ministry	Role of the Ministry
1	Foundation	21,301	Ministry of Law and Human Rights	Registration
2	Incorporated association	268	Ministry of Law and Human Rights	Registration
3	International organization	130	Ministry of Foreign Affairs	Registration and supervision
4	Societal Organization	16,098	Ministry of Home Affairs	Registration and supervision
5	Religion-based organization	2,425	Ministry of Religion Affairs	Registration and supervision
6	Consumer protection organization ¹²	183	Ministry of Trade	Registration and Supervision
7	Organization conducting social activities	31,474	Ministry of Social Affairs	Registration, licensing, capacity building
8	Labor union	11,786	Ministry of Manpower and Transmigration	Registration, licensing, capacity building
9	Organizations working on Disaster Management	62	National Body for Disaster Management (BNPB)	Registration

In the Indonesian National Legislation Program (2010-2014), there are at least five bills that are closely related to the legal environment for civil society in Indonesia.

are used to build non-profit public infrastructure (e.g., religious buildings, health clinics, art and culture buildings, etc.).

⁸ See Income Tax Law year 2008, further regulated by Government Regulation No.93 Year 2010.

⁹ CSOs in Indonesia are increasing in quantity and improving in quality. The number of CSOs has increased from 3,255 in 1985, to 8,720 in 1990, and 13,400 in 2000. See interview with Dr. Kastorius Sinaga, quoted from Info Bisnis Magazine, Edition. 96/Year VI/September 2001, p. 20.

¹⁰ See Local Assessment Team (2010), “Domestic Review on NPO Sector in Indonesia.” This report is prepared for the Domestic Review on NPO Sector in Indonesia facilitated by PPATK (Indonesian Financial Transaction Reports and Analysis Centre) and the Charity Commission for England and Wales.

¹¹ Each ministry manages its own database, so that there is a great possibility that the data relating to CSOs is overlapping across ministries.

¹² Lembaga Perlindungan Konsumen Swadaya Masyarakat (LPKSM).

Those bills include (1) Bill on the revision of the Law on Societal Organizations (*RUU tentang Perubahan atas UU No.8/1985 tentang Organisasi Kemasyarakatan*)¹³; (2) Bill on Associations (*RUU tentang Perkumpulan*)¹⁴; (3) Bill on the second revision of the Law on Foundations (*RUU tentang Perubahan Kedua atas UU No.16/2001 tentang Yayasan*)¹⁵; (4) Bill on NGOs (*RUU tentang Lembaga Swadaya Masyarakat*)¹⁶; and (5) Bill on Protection of Human Rights Defenders (*RUU tentang Perlindungan terhadap Pembela HAM*)¹⁷. The Parliament has placed the Bill on the revision of the Law on Societal Organizations on its priority list for 2011.¹⁸ The draft bill is intended to revise the existing draconian law, the Law on Societal Organizations No. 8 (1985).

Law No. 8 (1985) was enacted to control and restrict CSOs in Indonesia. One of the main concepts of the law is the “single pot” concept (*Konsep Wadah Tunggal*),¹⁹ which seeks to compel organizations that share similarities based on activity, profession, function, and religion to be organized as a single organization.²⁰ In addition, Law No. 8 (1985) gives the government authority to suspend and dissolve a societal organization without due process of law. The existence of such a draconian law creates fundamental problems for government-CSO relations.

On August 30, 2010, the Parliament conducted a joint meeting with the government to respond to a series of violent activities relating to societal organizations. The meeting was attended by Parliamentary leadership; the Coordinating Minister of Politics, Law, and Human Rights; the Minister of Interior; the Head of Police; the Attorney General, and the Head of Intelligence. One key result of the meeting was the commitment to push the revision of the Law on Societal Organizations (*RUU tentang Perubahan atas UU No.8/1985 tentang Organisasi Kemasyarakatan*). The commitment was further demonstrated when the Bill on the revision of the Law on Societal Organizations (Revision Bill) was placed on the Parliament’s Priority Legislation for the years 2011 and 2012.

In February 2011, the discourse about the Law and the Revision Bill focused on the violent actions taken against members of Ahmadiyah, a minority Muslim sect, in Pandeglang (West Java) and also against Christian churches in Temanggung (Central Java). Responding to the situation, President Susilo Bambang Yudhoyono gave instruction to dissolve groups engaged in violence and causing unrest in society. Although never implemented, the President’s instruction creates a problematic situation, since the instruction is based on Law No. 8 (1985) on Societal Organizations, which was introduced by the New Order Regime to stifle civil society.

¹³ Listed number 193 in the National Legislation Program year 2009-2014. In the last draft provided by the parliament in the public hearing in June 8, 2011, the titled was changed to RUU Organisasi Masyarakat (Bill on Society Organization). It is not a draft revision as planned in the National Legislation Program, but rather a new law which will revoke the existing law.

¹⁴ Listed number 228 in the National Legislation Program year 2010-2014.

¹⁵ Listed number 244 in the National Legislation Program year 2010-2014.

¹⁶ Listed number 128 in the National Legislation Program year 2010-2014.

¹⁷ Listed number 156 in the National Legislation Program year 2010-2014.

¹⁸ On October 3, 2011, the Parliament established a Special Committee (Panitia Khusus) for the Bill on Societal Organizations and the plans were originally to finalize the bill by May 2012.

¹⁹ See Article 8 Law No.8 Year 1985 on Societal Organization and the elucidation.

²⁰ In the elucidation of Article 8, the law gave examples of Komite Nasional Pemuda Indonesia (KNPI) for youth organization, and Himpunan Kerukunan Tani Indonesia (HKTI) for peasants’ organization.

More recently, the government has relied on Law No. 8 (1985) on Societal Organizations in condemning Greenpeace Indonesia. Government officials, parliamentary members, and some interest groups, like the Islamic Defenders Front (FPI) and the Betawi Brotherhood Forum (FBR), have accused Greenpeace of being an illegal entity because it is not registered as a societal organization, as required by Law No. 8 (1985).

In defense, Greenpeace Indonesia clarified that it is registered as an association with legal entity status, regulated by the Dutch Colonial State Gazette, *Staatsblad* 1870/64, under the authority of the Ministry of Law and Human Rights (MLHR). Greenpeace was registered with the MLHR and declared a legal entity by the Ministry in 2009.²¹ Greenpeace claimed that the government accusations are political in nature and triggered by the fact that Greenpeace launched a global campaign against Asia Pulp and Paper in June 2011 by exposing evidence of forest destruction.²²

This paper will describe the legal framework relating to societal organizations, the context of the revision process, and how it will affect the freedom of association in Indonesia. This paper will use the term “societal organization” as a translation of “Organisasi Kemasyarakatan” or “Ormas”. Some sources translate “Ormas” as “Community Organization”. In various writings “Ormas” is translated as “mass organization,” which is an incorrect translation.

²¹ Ministry of Law and Human Rights Decision, Number. AHU- 128.AH.01.06 year 2009.

²² Greenpeace website.

B. Legal Framework for CSOs in Indonesia

Article 28 and Article 28E section 3 of the Indonesian Constitution guarantee the freedom of association:

Article 28: The liberties of association and assembly, the freedom of thought expressed verbally or in writing, and similar rights are to be determined by law.

Article 28E Section 3: Each person has the right to freely associate, assemble, and express his opinions.

While there are a range of laws and regulations governing CSOs,²³ this paper will focus on the framework legislation relating to associations and foundations, two key organizational forms for CSOs in Indonesia, as important context for understanding the place of the societal organization. This paper will not focus on other types of legal entities, such as labor unions,²⁴ cooperatives,²⁵ or political parties.²⁶

Foundations are regulated by Law No. 16 of 2001, as amended by Law No. 28 of 2004. Associations are still regulated under *Staatsblad* 1870-64 (Dutch Colonial State Gazette) on Associations with Legal Person Status (*Rechtspersoonlijkheid van Vereenigingen*).²⁷

The foundation in Indonesia is defined as a non-membership legal entity. It is established by designating the assets of the founders to fulfill a specific objective in the social, religious, or humanitarian fields.²⁸ The foundation attains legal entity status after the deed of establishment is submitted to and approved by the Ministry of Law and Human Rights. The application is made through a public notary, where the public notary is obligated to submit the application to the Ministry within 10 days from the time the deed of establishment is signed.²⁹ The minimum amount of assets at the time of the establishment is 10 million IDR (for foundations with Indonesian citizens as founders) or 100 million IDR (for foundations founded by foreign persons or foreign persons together with Indonesian citizens).³⁰

The Ministry must respond to the application (approve or reject) within 30 days from the time the complete application is received. In case of rejection, the Ministry must inform the applicant in writing of the grounds for rejection. In case input from a relevant government institution is needed, the review process could be extended up to

²³ For detailed legal framework with list of relevant laws, see Bivitri Susanti, “NGO Law Monitor: Indonesia,” <http://www.icnl.org/knowledge/ngolawmonitor/indonesia.htm>.

²⁴ Regulated under Law No.21 Year 2000 on Labor Union.

²⁵ Regulated under Law No.25 Year 1992 on Cooperative.

²⁶ Regulated under Law No.2 Year 2011 on revision of Law No.2 Year 2008 on Political Parties.

²⁷ The Indonesian legal system is rooted in the Dutch colonial era. Since independence was gained in 1945, many of the outdated Dutch laws have been replaced. However, some Dutch laws remain in place.

²⁸ See Article 1 Law on Foundations.

²⁹ The honorarium of the public notary is regulated under Article law 34 Government Regulation No. 63 of 2008 on the Implementation of Law on Foundations, and Article 36 Law No.30 Year 2004 on Notary. In practice, the honorarium amounts to approximately 3–5 million IDR.

³⁰ See Article 6 Government Regulation No. 63 of 2008 on the Implementation of Law on Foundations.

a maximum of 37 days from the time of the application.³¹ A foundation officially becomes a legal entity once the Ministry approves the request. It is the Ministry's obligation to publish the approved deed of establishment in the Supplement to the State Gazette within 14 days from the date of approval.

It is not easy to understand the timeline of the establishment process provided in the Law on Foundations, but the following tables attempt to outline the process more clearly:

A. Registration of a Foundation, where input from another institution is NOT needed:

Steps	Days	Legal Basis
Deed of Establishment, prepared by Public Notary	1	Article 9
Public Notary must submit the written petition to the Ministry	No later than 10 days from the signing of the Deed of Establishment	Article 11(3)
Deadline for approval/rejection by the Ministry	Within 30 days of receiving written petition	Article 12(2)

B. Registration of a Foundation, where input from relevant government institution IS needed:

Steps	Day	Legal Basis
Deed of Establishment, prepared by Public Notary	1	Article 9
Public Notary must submit the written petition to the Ministry	No later than 10 days from the signing of the Deed of Establishment	Article 11(3)
Minister seeks input from relevant government institution	No later than 7 days after the petition submitted by the Notary	Article 11(4)
The relevant government institution must provide input	No later than 14 days after receiving request from the Minister	Article 11(5)
Approval from the Minister, giving the legal entity status to the Foundation	No later than 14 days from the time the response of the government institution is received by the Minister. In case there is no response from the	Article 12(3), 12(4)

³¹ See Article 11 and Article 12 Law on Foundations. In case consideration from other relevant institutions is needed, the Ministry must send the request to the relevant institution within 7 days from the time the complete application documents is received. The relevant institution must respond to the request within 14 days after such request from the Ministry is received. The Ministry must respond (approval or rejection) to the applicant within 14 days after consideration from the relevant institution is received. In case the relevant institution does not respond, the Ministry is obligated to respond to the applicant within 30 days from the time the request for consideration is sent to the relevant institution.

	government institution, no later than 30 days from the time the request is sent.	
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A foundation is not allowed to conduct economic activities directly. A foundation can only engage in economic activities to support the attainment of its objectives by establishing a separate business enterprise (provided that the activities are in accordance with the foundation's statutory purposes),³² or by participating as a shareholder in another business enterprise (provided that the shareholding does not exceed 25 percent of the total value of the foundation's assets).³³

The law requires three governing organs in a foundation, namely the governing board (*Pembina*), supervisory board (*Pengawas*), and executive board (*Pengurus*).³⁴ A foundation is not allowed to distribute the business profit from any business enterprise that the foundation establishes or in which the Foundation is a shareholder, to these governing bodies. Members of the three organs of a foundation also may not serve as board members, managers, or supervisors in any business enterprise that the foundation establishes or in which it invests.

Regarding financial transparency and accountability, a foundation must publish an abridged version of its annual report on an announcement board in its office. Foundations receiving donations (from the state, foreign parties, or other third parties) in the amount of 500 million Indonesian Rupiah (IDR) or more, or that possess assets (other than endowed assets) of over 20 billion IDR, must be audited by a public accountant and have an abridged version of their financial report published in an Indonesian-language daily newspaper.³⁵

The dissolution of a foundation may occur for three reasons: (1) the time period of its existence, as defined in its governing statute, has expired; (2) the purposes of the foundation have been achieved or not achieved; or (3) a final and binding court decision is issued dissolving the foundation, on the grounds of violating public order, not being able to pay its debt after being declared bankrupt by the court, or lacking sufficient assets to pay the debt after the bankruptcy declaration is revoked.³⁶

While the law and regulations governing foundations in Indonesia are comprehensive and up to date, the same is not the case for associations. As mentioned previously, associations are still regulated under *Staatsblad* 1870-64, which was enacted in 1870. It consists only of 11 articles³⁷ addressing the legal entity status of the incorporated association, dissolution, the treatment of remaining assets after liquidation, and limitations for ordinary associations.

³² The business activities defined here have a broad scope, including the fields of human rights, arts, sports, consumer protection, education, environment, health, and science. See Elucidation of Article 8 Law on Foundations.

³³ See Article 3 and Article 7 Law on Foundations.

³⁴ See Article 2 Law on Foundations.

³⁵ See Article 52 Law on Foundations.

³⁶ See Article 62 Law on Foundations.

³⁷ Compare with Law on Foundations, which consists of 73 Articles.

Unlike the foundation, the association is a membership-based organization. There are two types of associations in Indonesia, the incorporated association (with legal entity status) and the ordinary association (without legal entity status). Legal entity status is granted by the *Directeur van Justitie* (now the Ministry of Law and Human Rights), following approval of the statutory purposes.³⁸ Rejection of an application by the Ministry may only occur on the basis of the public interest and must be accompanied with reasons.³⁹ It is not clearly stated in the *Staatsblad* whether or not the reasons provided should be in written form.

Associations may be dissolved voluntarily or involuntarily. Voluntary dissolution is based on the agreement of its members, the expiration of its existence as defined in its governing statute, or accomplishment of its purposes. Involuntary dissolution may result when the Government⁴⁰ revokes the association's legal entity status for violation of public order. The District Attorney may file a case in civil court to revoke the legal entity status of an association when it violates its approved statutory purposes.⁴¹ The liquidation process is then conducted by the State Receiver (*Balai Harta Peninggalan*), and the remaining assets after liquidation can be distributed to the association's members or to others who have the rights, proportionally based on their contribution.⁴²

Regarding ordinary associations, the *Staatsblad* 1870-64 states that such associations cannot conduct activities as a legal entity (legal person). Any actions undertaken by an ordinary association will be considered as the action of the individual member of the association.⁴³ Further governance of ordinary associations is regulated internally through their bylaws, and through other general civil law provisions, especially Article 1653 and Article 1654 Indonesian Civil Code.⁴⁴

The fact that associations are still regulated under a colonial-era law has a practical impact on civil society in Indonesia. As revealed in Table-1 above, there are 21,301 foundations and only 268 incorporated associations. This unusual imbalance results, at least in part, from the lack of knowledge and information about the *Staatsblad* 1870-64, including among the public notaries in various regions in Indonesia.

³⁸ See Article 1 and Article 2, *Staatsblad* 1870-64. Statutory purposes contains the objectives, basic values, working environment, and other provisions of the associations.

³⁹ See Article 3, *Staatsblad* 1870-64.

⁴⁰ The *Staatsblad* 1870-64 describe as Governor General ("Gubernur Jenderal"). See Article 5, *Staatsblad* 1870-64.

⁴¹ See Article 6, *Staatsblad* 1870-64.

⁴² See Article 7, *Staatsblad* 1870-64.

⁴³ See Article 8, *Staatsblad* 1870-64.

⁴⁴ See Article 9, *Staatsblad* 1870-64. Article 1653 and Article 1654 of the Indonesian Civil Code relates to Legal Entities:

- Article 1653: *In addition to an actual partnership, the law shall also acknowledge associations of individuals as legal entities, whether they are established by public authority or acknowledged as such, or whether they are permitted as lawful, or whether they are established with a specific objective, provided that they do not violate the law or proper order.*
- Article 1654: *All established legal entities shall be, even as private individuals, authorized to perform civil acts, without prejudice to the public ordinances, in which such authority may be amended, restricted or rendered subject to certain formalities.*

In the early 1990s, a draft law was prepared by the Ministry of Law and Human Rights (the Ministry of Justice at that time), entitled “Bill on Foundations and Associations.” In 2001, however, due to the influence of the IMF Letter of Intent, the draft law on Foundations was separated and enacted as Law No. 16 (2001) on Foundations.⁴⁵ The new Law targeted ex-President Soeharto’s foundations, which were suspected as vehicles for corruption. The impact of the Law, however, was far broader, since there are thousands of foundations in Indonesia.

In addition to the foundation and association, Indonesian law includes the “societal organization” (*Organisasi Kemasyarakatan* or *Ormas*). The societal organization, introduced by the Law No. 8 (1985) for political reasons, is not a legal entity form, but rather a status for CSOs that are registered with the Ministry of Home Affairs. Organizations registered will receive a registration acknowledgement known as “*Surat Keterangan Terdaftar (SKT)*” or “Letter of Registration” issued by the Ministry of Home Affairs, Directorate General of National Unity and Politics (*Direktorat Jenderal Kesatuan Bangsa dan Politik*). This paper will consider this status more deeply in the next chapter.

⁴⁵ Letter Of Intent dated January 20th 2000 20, Memorandum of Economic and Financial Policies Medium-Term Strategy and Policies for 1999/2000 and 2000. Chapter IV, Structural Reform, Article 32. See www.imf.org. It stated that “...The Ministry of Law and Legislation will form a working group to make policy recommendations and to draft legislation on foundations to be submitted to Parliament by end-April 2000. The legislation will require foundations to file public statement of activities, including audited accounts.”

C. Law No. 8 (1985) on Societal Organizations

Law No. 8 (1985) on Societal Organizations was conceived and enacted during Soeharto's New Order regime. The original Bill on Societal Organizations was included in a legislative package called "Package of Bills on Politics" (*Paket Undang-Undang Politik*), together with four other bills, including the Bill on General Elections; the Bill on People's Consultative Assembly, House of Representatives, and Regional House of Representatives; the Bill on Political Parties; and the Bill on Referendum.

Discussion in Parliament began on June 23, 1984, and continued until May 25, 1985. The Bill on Societal Organizations was envisioned not to enable CSOs, but to restrict them. Behind the Bill lay strong political motivations, namely, to promote political stability.

1. Legislative History of 1985 Law

The need to develop the Bill on Societal Organizations was articulated in the Decree of People's Consultative Assembly No.II/MPR/1983 on State Policy Guidelines (*TAP MPR No.II/MPR/1983 Tentang Garis-garis Besar Haluan Negara*), Chapter IV on Politic, letter g and letter h.

In addition, the importance of political stability was also emphasized by President Soeharto in his State Address on August 16, 1983:

*... Efforts to improve and structure the societal organization should be put in the framework of guaranteeing the sustainability of Pancasila, national stability, and national development, as implementation of Pancasila. All of this influencing the spirit and direction as shown by State Policy Guideline...*⁴⁶

In the first meeting of the Special Committee for the Bill on Societal Organizations (April 22, 1985), the Chairman of the Committee, Mr. Suhardiman from *Fraksi Karya Pembangunan*⁴⁷, reminded the Committee about the importance of this law. The Chairman urged the Committee toward "not acting as politician, but more as statesman." Furthermore, the Chairman also made reference to the statement of Commander of Armed Forces (*Panglima Angkatan Bersenjata*) on April 17, 1985 that there were efforts by people to disturb the deliberation on this Bill.

In the early discussions on the Bill, the Chairman identified six main problems, including the title of the law, supervision, suspension and dissolution, the relation between religions and *Pancasila*⁴⁸, elucidation of Article 1 regarding the definition of "societal organization," and elucidation of Article 2 regarding the basic principles of societal organizations. Each of these topics was intensely debated.

⁴⁶ See State Address, free translation.

⁴⁷ The ruling party.

⁴⁸ *Pancasila* is Indonesian state fundamental norm created in 1945, which consist of five ("panca") principles ("sila"), as follows: (1) belief in the one and only God; (2) just and civilized humanity; (3) the unity of Indonesia; (4) democracy lead by wisdom in the unanimity arising out of deliberations amongst representatives; and (5) social justice for all people of Indonesia.

a. Discussion on Definition and Scope of Societal Organization

In the early draft of the Bill on Societal Organizations being discussed in the Parliament in 1985, the Bill excluded other types of organizations or associations regulated under separate laws. The draft Bill, in the Elucidation of Article 1, stated:

“... organization or association regulated under separated laws is not included in the definition of Societal Organization in this law.”⁴⁹

This position, however, was not accepted following discussion in the Special Committee. Instead, the Elucidation of Article 1 was revised to state that any organization or association, which is established voluntarily by Indonesian citizens, is included in the definition of a societal organization. The law only excludes organizations established by the Government, such as the Boy Scouts (*Praja Muda Karana* or *Pramuka*), Civil Servant Organization (*Korps Pegawai Republik Indonesia* or *Korpri*), and organizations working in economic activities (*cooperatives, limited liability corporation etc*).

This broad definition of societal organization will later become problematic in the implementation of the law. The definition of societal organization embraces all types of organizations, whether with or without legal entity status, including foundations and associations. For those with legal entity status, registration as a societal organization serves little or no purpose. It seems to amount to a kind of special status, though it is accompanied by no benefits. Indeed, the concept of social organization makes sense only as a tool of state control.

b. Discussion on Single Basic Principle (*Asas Tunggal*) of *Pancasila*

Pancasila is the Indonesian state fundamental norm created in 1945, which consists of five (“*panca*”) principles (“*sila*”), as follows: (1) belief in the one and only God, (2) just and civilized humanity, (3) the unity of Indonesia, (4) democracy led by wisdom in the unanimity arising out of deliberations amongst representatives, and (5) social justice for all people of Indonesia.⁵⁰

The relationship between religion and *Pancasila* is controversial and sensitive. The source of concern relates to the requirement that societal organizations must uphold the single basic principle, which is *Pancasila*. This requirement was clearly contained in Article 2(1) of the 1985 draft bill, which stated: “Societal organizations uphold the one and only basic principle, *Pancasila*.” Implementation of this requirement (known as *Asas Tunggal*, the single basic principle) may be problematic for faith-based organizations.

Regarding this issue, President Soeharto gave his explanation in his State Address in 1983 as follows:

“... regarding the field of religion and belief in God, we still strongly hold to the Pancasila, Indonesian Constitution 1945, Manual on Understanding and

⁴⁹ Elucidation of Article 1 from the early draft bill submitted by the government to the parliament in 1985.

⁵⁰ See http://www.indonesianembassy.org.uk/aboutIndonesia/indonesia_facts.html.

Implementing Pancasila (Pedoman Penghayatan dan Pengamalan Pancasila), and State Policy Guideline (Garis-Garis Besar Haluan Negara) year 1983. Pancasila is not religion. Pancasila also will not and could not replace religion. We will not make Pancasila as religion. It is also impossible to make religion as Pancasila ...”

This idea of *Asas Tunggal* was rejected mostly by Islamic based organizations, since most of these organizations considered the religion of Islam as the basic principle of the organization. In Parliament, the Islamic political faction⁵¹ *Fraksi Persatuan Pembangunan* defended the interests of these Islamic organizations during discussions on the Bill.⁵²

Following the enactment of the Law, this provision proved problematic and was used as a repressive measure against some CSOs. For example, on December 10, 1987, the Ministry of Home Affairs dissolved the Indonesian Islamic Student (*Pelajar Islam Indonesia* or PII), the biggest student organization in Indonesia, which had been established in 1947,⁵³ and the Marhaenis Youth Movement (*Gerakan Pemuda Marhaenis* or GPM).⁵⁴ The Ministry of Home Affairs argued that both organizations were dissolved because they failed to comply with Law No. 8 (1985) on Societal Organizations.⁵⁵ PII held Islam, and GPM held Marhaenism,⁵⁶ as the basic principle of the respective organizations.

c. Discussion on Suspension and Dissolution

The dissolution of PII, GPM, and other organizations after the enactment of the Law was somehow predictable. During the discussion in the Special Committee, *Fraksi Persatuan Pembangunan* (F-PP) had challenged the provision allowing the government to dissolve an organization without due process of law. F-PP argued that Indonesia is a rule-of-law state where such measures (suspension and dissolution) should be based on a court decision. This argument, however, was not accepted. *Fraksi Partai Demokrasi Indonesia* (F-PDI) indicated that it would support suspension and dissolution being conducted by the government, provided that government dissolution is followed by consideration of the Supreme Court. *Fraksi Angkatan Bersenjata* (F-ABRI), the military faction in the Parliament, argued that this Law on Societal Organizations is considered as *Lex Specialis* and therefore can authorize the government to dissolve an organization without going to court. The end result of these discussions, as reflected in the Law on Societal Organizations, was that

⁵¹ To give a brief background, in the 1980s (up until reform in 1998) there were four factions (political grouping called “Fraksi”) in the Parliament: Fraksi Persatuan Pembangunan (F-PP or Faction of United Development), Fraksi Partai Demokrasi Indonesia (F-PDI or Faction of the Indonesian Democracy Party), Fraksi Karya Pembangunan (F-KP or Faction of Functional Development), and Fraksi Angkatan Bersenjata (F-ABRI or Faction of the Armed Forces).

⁵² Masukin hasil pansus, masukan FPP ke pasal 2.

⁵³ mempunyai 1.080 cabang di 26 provinsi dan 4,5 juta anggota, see

<http://majalah.tempointeraktif.com/id/arsip/1987/08/01/NAS/mbm.19870801.NAS29687.id.html>.

⁵⁴ Pelajar Islam Indonesia was dissolved by Decree of Ministry of Home Affairs No.120/1987. Gerakan Pemuda Marhaenis was dissolved by Decree of Ministry of Home Affairs No.121/1987.

See <http://ip52-214.cbn.net.id/id/arsip/1988/03/19/KL/mbm.19880319.KL26644.id.html>;

<http://majalah.tempointeraktif.com/id/arsip/1988/02/06/NAS/mbm.19880206.NAS26288.id.html>.

⁵⁵ The deadline for such compliance was on June 17, 1987. It is the deadline given by Law No.8 Year 1985.

⁵⁶ Marhaenism is the populist ideology of Indonesia first President, Soekarno.

the government can dissolve organizations directly (without court involvement), but for national level organizations, consideration of the Supreme Court is also needed.

2. Problematic Provisions of Law No. 8 (1985)

The Law on Societal Organizations was finally enacted on June 17, 1985. All organizations were given two years within which to comply with the new Law. As of June 17, 1987, the government (based on Article 15 of Law) had authority to dissolve organizations that were not complying with the Law. Thus, the government was able to move to dissolve PII and GPM, as indicated above.

This section will highlight two key problems with the Law: (1) the controlling focus of the Law and (2) the arbitrary mechanism for suspension and dissolution.

a. Provisions with the Intent to Control

The intent to control CSOs is reflected in Article 1, Article 2, and Article 8 of Law on Societal Organizations.

Article 1 defines “societal organization” in broad terms, which include all organizations, except for the Boy Scouts (*Praja Muda Karana* or *Pramuka*), Civil Servant Organization (*Korps Pegawai Republik Indonesia* or *Korpri*), and organizations working in economic activities (*cooperatives, limited liability corporation etc*). In practice, the Ministry of Home Affairs also includes foundations within the definition of societal organizations. This is reflected in the Directory of Societal Organizations,⁵⁷ published annually by the Ministry of Home Affairs. This inclusive regulatory approach creates confusion and inconsistency among laws. The foundation is clearly defined by the Law on Foundations as a non-membership organization, while the societal organization is defined as a membership-based organization.⁵⁸

Article 2 requires that the single basic principle (*Asas Tunggal*) of *Pancasila* be upheld by societal organizations. The government (based on Article 15 of the Law) can dissolve organizations that violate this requirement.

Article 8 imposes the single-pot concept (*Konsep Wadah Tunggal*). This concept seeks to ensure that organizations that share similarities based on activity, profession, function, or religion be organized as one organization.⁵⁹ The single organization concept was intended as a means of clustering related organizations and ultimately as a way to control CSOs in Indonesia.

b. Provisions on Suspension and Dissolution

The Law provides nine grounds for suspending or dissolving a societal organization, including the following:

⁵⁷ See Directory of Societal Organizations, <http://www.depdagri.go.id/basis-data/2011/01/17/direktori-organisasi-kemasyarakatan>.

⁵⁸ See Chapter IV of Law No.8 on Societal Organization, on Membership and Administration. Also see Chapter III on Functions, Rights, and Obligations.

⁵⁹ In the elucidation of Article 8, the law gave examples of Komite Nasional Pemuda Indonesia (KNPI) for youth organization, and Himpunan Kerukunan Tani Indonesia (HKTI) for peasants’ organization.

1. The societal organization does not uphold *Pancasila* as the one and only basic principle of the organization.⁶⁰
2. The societal organization's mission statement is not in the framework of achieving the national objectives as stated in the preamble of the 1945 Indonesian Constitution.⁶¹
3. The societal organization fails to put the basic principle of *Pancasila* and its mission statement in its bylaws.⁶²
4. The societal organization fails to have bylaws, does not implement the *Pancasila* and 1945 Indonesian Constitution, and does not preserve the unity of the nation.⁶³
5. The societal organization disturbs the public order.⁶⁴
6. The societal organization receives foreign support without approval from the Government.⁶⁵
7. The societal organization gives support to a foreign party that can harm the interest of the nation.⁶⁶
8. The societal organization is considered to be promoting the ideology of Communism, Marxism-Leninism, or another ideology that is against *Pancasila* and the 1945 Indonesian Constitution.⁶⁷
9. The societal organization does not comply with the Law No. 8 (1985) on Societal Organizations after two years of its enforcement (June 17th 1987).⁶⁸

The suspension and dissolution of societal organizations is further regulated by Government Regulation No. 18 of 1986 on the Implementation of Law No. 8 of 1985 regarding Societal Organizations. Before suspending a societal organization, the government must send a written warning at least twice within 10 days to the administrator, local administrator, or central administrator of the organization. If there is no response from the organization within one month, the government must summon the administrator. If the administrator does not appear, or if the societal organization continues its illegal activities, the government can suspend the organization, after receiving consideration and advice from the Supreme Court (for national level organizations) or other relevant institution appointed by the Ministry of Home Affairs (for organizations at the provincial or city level). The organization and the public will be informed of the suspension. The government may consider revoking the suspension if the organization ceases its illegal activities, admits its wrongdoing, or replaces its administrator. If the organization continues its illegal activity, the government can dissolve it.

As mentioned above, the government can also dissolve organizations, which fail to comply with the Law after June 18, 1987. In this case, the government will first give a written warning, and if after three months the organization does not comply, the Government can dissolve it, after receiving consideration and advice from the

⁶⁰ Article 2 and Article 15, Law No.8 Year 1985 on Societal Organizations.

⁶¹ Article 3 and Article 15, Law No.8 Year 1985 on Societal Organizations.

⁶² Article 4 and Article 15, Law No.8 Year 1985 on Societal Organizations.

⁶³ Article 7 and Article 15, Law No.8 Year 1985 on Societal Organizations.

⁶⁴ Article 13(a), Law No.8 Year 1985 on Societal Organizations.

⁶⁵ Article 13(b), Law No.8 Year 1985 on Societal Organizations.

⁶⁶ Article 13(c), Law No.8 Year 1985 on Societal Organizations.

⁶⁷ Article 16, Law No.8 Year 1985 on Societal Organizations.

⁶⁸ Article 18 and Article 15, Law No.8 Year 1985 on Societal Organizations.

Supreme Court (for national level organizations) or other competent institutions (for organizations at the provincial or city level). The organization and the public will be informed of the dissolution.

None of these procedural mechanisms was applied in the dissolution of PII or GPM in 1987. Neither organization even received the decree of the Ministry regarding the dissolution. Feisal Tamin, Head of Public Relations of the Ministry, explained that there was no need to inform these two organizations, since their existence was no longer acknowledged by the government.⁶⁹

Societal organizations dissolved for promoting the ideology of Communism, Marxism-Leninism, or other ideology that is against *Pancasila* and the 1945 Indonesian Constitution, are declared to be a “banned organization” (*organisasi terlarang*). A written decision will be communicated to the organization and announced to the public.

3. Recent Developments

On April 4, 1986, the Government issued Government Regulation No. 18 of 1986 on the Implementation of Law No. 8 of 1985 regarding Societal Organizations. Furthermore, the Ministry of Home Affairs also promulgated Ministry of Home Affairs Regulation No. 5 of 1986 on the Scope and Notification Procedure to the Government and the Sign and Logo of the Societal Organizations (October 1, 1986) and Instruction from the Minister of Home Affairs No. 8 of 1990 on Non-Governmental Organization Supervision (March 19, 1990).

After the fall of Soeharto’s regime, this set of laws and regulatory measures was practically not enforced. However, the existence of these laws and regulations served to threaten the freedom of CSOs in Indonesia.

In 2006-2007, the Ministry of Home Affairs started to prepare a draft bill to revise the 1985 Law. The Ministry stated that it had changed its perspective and also admitted that the 1985 Law on Societal Organizations is no longer suitable for a democratic era. The Ministry of Home Affairs was successful in placing the bill on the National Legislation Program for 2008. The bill, however, was never discussed by the Parliament.

Subsequently, the Ministry started to discuss further implementing regulations for the Law.⁷⁰ The Ministry of Home Affairs (MoHA) then issued Ministry of Home Affairs Regulation No. 38 of 2008 on the Obtainment and Granting Societal Organization Donations From and To Foreign Entities (August 15, 2008) and Ministry of Home Affairs Regulation No. 15 of 2009 on Guidelines on Cooperation between the Ministry of Home Affairs and Foreign Non-Governmental Organizations (March 4, 2009).

MoHA Regulation No. 38 (2008) provides a detailed reporting procedure for societal organizations in obtaining and disbursing donations from and to foreign parties.

⁶⁹ See <http://ip52-214.cbn.net.id/id/arsip/1988/03/19/KL/mbm.19880319.KL26644.id.html>.

⁷⁰ This is somehow inconsistent with the statement admitting that the law is no longer suitable for democratic era.

Societal organizations must secure approval from the government to receive grants from a foreign party or provide grants to a foreign party.⁷¹ Societal organizations receiving foreign support without government approval are subject to suspension or dissolution.⁷²

MoHA Regulation No. 15 (2009) outlines the procedure of cooperation between the MoHA and the foreign NGO. Among other requirements, the foreign NGO must be registered in its home country, have a representative office in Indonesia, and secure approval from the Government of Indonesia.

More recently, as a response to a series of violent actions carried out by societal organizations,⁷³ a joint meeting was held in Parliament on August 30, 2010 and attended by leaders of the House of Representatives; the Attorney General; the Head of Intelligence Agency; the Chief of Police; the Minister of Politics, Law, and Security; the Minister of Home Affairs; the Minister of Religious Affairs; and the Minister of Law and Human Rights. At the meeting it was agreed to review the Law on Societal Organizations. Consequently, the Bill on Societal Organizations was included among the 2011 national legislative priorities.

⁷¹ To be eligible to provide grants to or receive grants from a foreign party, societal organizations must be registered with MoHA, another government body, or local government. (Articles 7 and 33(1)) A social organization that receives a grant from a foreign party, or provides a grant to a foreign party, is obligated to report the project plan to the Minister of Home Affairs. (Articles 10, 18, 35)

⁷² Article 13(b), Law No. 8 (1985) on Societal Organizations.

⁷³ One of them was a street brawl involving members of the Forum Betawi Rempug (Betawi Brotherhood Forum) over the weekend in early August 2010. After the incident, the police brought together the leaders of the societal organizations involved, Pemuda Pancasila, Forum Betawi Rempug, Kembang Latar, and Forkabi, to reconcile their differences.

D. Bill on Societal Organizations 2011

In analyzing the new Bill on Societal Organizations, this paper will refer to the published draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011. On October 3, 2011, the Parliament established a Special Committee (*Panitia Khusus*) for the Bill on Societal Organizations. The Special Committee was planning to finalize the Bill by May 2012, but did not manage to do so.

On May 30, 2012, the Special Committee conducted a meeting with the Government. It was agreed to establish a Working Committee to further discuss the Bill. The Chief of the Special Committee, Mr. Abdul Maliq Harmain, mentioned the date of July 12, 2012, as the new time frame for discussion of the Bill in the Plenary Session.

1. Brief Overview

The draft Bill consists of 19 chapters, with a total of 54 Articles. The structure of the draft Bill is as follows:

- a. Chapter I: General Provision (Article 1);
- b. Chapter II: Principle, Identification, Characteristics (Article 2 – Article 4);
- c. Chapter III: Objectives, Function, and Scope (Article 5 – Article 7);
- d. Chapter IV: Establishment of Societal Organizations (Article 8 – Article 14);
- e. Chapter V: Registration (Article 15 – Article 18);
- f. Chapter VI: Rights and Obligations (Article 19 – Article 20);
- g. Chapter VII: Organization, Domicile, and Board of Executive (Article 21 – 27);
- h. Chapter VIII: Membership (Article 28 – Article 29);
- i. Chapter IX: Decision of Organization (Article 30);
- j. Chapter X: Articles of Association / Bylaws of Societal Organization (Article 31 – Article 32);
- k. Chapter XI: Finance (Article 33 – Article 34);
- l. Chapter XII: Business Enterprise of Societal Organizations (Article 35);
- m. Chapter XIII: Empowerment of Societal Organizations (Article 36 – Article 38);
- n. Chapter XIV: Foreign Social Organizations (Article 39 – Article 40);
- o. Chapter XV: Supervision (Article 41 – Article 43);
- p. Chapter XVI: Dispute Settlement of Organization (Article 44 – Article 45);
- q. Chapter XVII: Prohibition (Article 46);
- r. Chapter XVIII: Sanctions (Article 47 – Article 50); and
- s. Chapter XIX: Concluding Provisions (Article 51 – Article 54).

The draft Bill defines “societal organization” as an organization that is voluntarily established by Indonesian citizens, on the basis of common objectives, interests and activities, to participate in development in order to achieve the objectives of the state. The draft Bill also regulates the foreign societal organization, which is defined as a nonprofit organization that is established by foreigners as a foreign legal entity and that conducts activity in Indonesia.⁷⁴

⁷⁴ See Article 1 draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011

One or more Indonesian citizens may establish a societal organization.⁷⁵ A societal organization may take the form of an organization with legal entity status (e.g., a foundation or association), or an organization without legal entity status (e.g., an ordinary association).⁷⁶ Organizations seeking legal entity status (as an association or foundation) may undergo registration as a societal organization simultaneously.⁷⁷

Ordinary associations (unincorporated associations) must inform the government or local government of their existence in writing.⁷⁸ The government then will issue an acknowledgement of receipt letter (*surat tanda terima pemberitahuan keberadaan organisasi*).⁷⁹ In addition, ordinary associations seeking registration must also register with the government. The government then will issue a Letter of Registered Organization (*Surat Keterangan Terdaftar*).⁸⁰ The Ministry of Home Affairs, Governor, or Mayor will issue this letter for organizations working at the national level, provincial level, and regency/city level, respectively.⁸¹

A foreign societal organization, in order to operate in Indonesia, must originate from a country with diplomatic relations with Indonesia; must be established as a legal entity in its country of origin; must have an operational license from the Ministry of Foreign Affairs; must submit such license to the Ministry of Home Affairs; and must, in implementing its activity, cooperate or involve an Indonesian societal organization or organizations.⁸²

The permissible scope of activity for societal organizations includes, among others, the following fields: religion and belief, law, social activities, economy, health, education, human resources, strengthening *Pancasila* democracy, women's empowerment, environment and natural resources, youth, sports, professions, hobbies, and arts and culture.⁸³ In order to fulfill the needs of the organization, a societal organization with legal entity status may establish business enterprises.⁸⁴

⁷⁵ See Article 8 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁷⁶ See Article 9 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁷⁷ See Article 15 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁷⁸ See Article 14(1) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁷⁹ See Article 14(2) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸⁰ Article 16(1) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011. The issuance of such letter is already implemented by Ministry of Home Affairs based on Law No.8 Year 1985 on Societal Organization. "Surat Keterangan Terdaftar (SKT)" or "Letter of Registered Organization" with the existing law is issued by Ministry of Home Affairs, Directorate General of National Unity and Politics (Direktorat Jenderal Kesatuan Bangsa dan Politik)

⁸¹ Article 16(3) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸² See Article 39 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸³ See Article 7(2) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸⁴ See Article 35 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

Notably, the draft Bill does not mandate the Single Principle (*Asas Tunggal*) of *Pancasila*. The draft Bill only states that the principle(s) of a societal organization must not conflict with *Pancasila* and the 1945 Constitution. A societal organization may therefore adopt another specific identity which reflects its intention and aspiration and does not conflict with *Pancasila* or the Constitution.⁸⁵

The draft Bill also adopts a less rigid approach toward the Single-Pot Concept (*Konsep Wadah Tunggal*), which is emphasized in the existing Law No. 8 (1985) on Societal Organizations. Specifically, the current draft Bill states that to optimize its role and function, a societal organization *may* integrate itself into an umbrella organization.⁸⁶

The draft Bill requires that a societal organization make its activity and financial report accessible to the public.⁸⁷ The public is entitled to give support or make objections/complaints regarding the existence or activity of a societal organization. Public support may come in the form of a reward, program, donation, or operational support. The objections/complaints shall be submitted to the government or local government, depending on the territorial scope of the societal organization. The government then will promote settlement through the mechanism of mediation and conciliation.⁸⁸

Permissible sources of financing for societal organizations include membership fees, public donations, grants/donations from a foreigner or foreign institution, business income, and other donation/business that is legal under the law. A societal organization receiving a grant or donation from a foreign party must inform and seek approval from the government.⁸⁹

The underlying legal entity status (for societal organizations established by organizations with legal entity status) or the Letter of Registered Organization (for ordinary associations) may be revoked by issuing institutions, if the societal organization is using a name, symbol or sign, which is similar to the flag or the State's symbol of the Republic of Indonesia, the Government's symbol, the state symbol of other countries or international institutions, the symbol of a separatist movement or banned organization, the symbol of another societal organization, or the symbol of political parties.⁹⁰

⁸⁵ See Article 2 and Article 3 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸⁶ See Article 13 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸⁷ See Article 42 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸⁸ See Article 43 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁸⁹ See Article 34(2) draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁹⁰ See Article 46(1) and Article 47(2) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

The government may suspend a societal organization temporarily (for a maximum of 90 days)⁹¹ after a written warning, where the societal organization is conducting activity that conflicts with the Constitution and prevailing laws and regulations; endangers the unity and safety of the State; spreads hostility among ethnic groups, religions, races, etc.; undermines the unity of the State; disturbs public order; engages in violent action; or damages public facilities.⁹²

Within 30 days after the temporary suspension is issued, the government or local government may submit a petition for permanent suspension to the District Court (for provincial/city level organizations) or the Supreme Court (for national level organizations). The District or Supreme Court must issue a decision no later than 30 days from the date of the petition. In case the temporarily suspended organization commits another violation, the District/Supreme Court may dissolve the organization.⁹³

The government may also suspend the activity of a societal organization, after issuing three warnings (occurring within a maximum period of 60 days), where the organization receives from or provides to a foreign party any kind of support which is against the law; conducts fundraising for the interest of a political party or campaign for a political position; or receives support (money, goods, or services) from any kind of party without a clear identity.⁹⁴

Finally, the Court may dissolve a societal organization that follows, develops, and promotes Communism or Marxism-Leninism. The board of the executive of such an organization, if convicted, can be sentenced to 15-20 years in prison.⁹⁵

2. Problem Identification

The primary problem with the Bill does not spring from the specific provisions and details of the Bill, but from the concept of the Bill itself. As described previously, the societal organization was originally conceived for political reasons during Soeharto's regime in order to control CSOs in Indonesia. Three issues deserve highlighting.

First, the concept of "societal organization" amounts to a special status for organizations that brings no benefits. The laws in many countries provide for a special status for CSOs – a public benefit or charitable status, for example – but with this status come fiscal privileges, usually in the form of tax exemptions. The Bill on Societal Organizations envisions no privileges or benefits. Instead, the Bill seems to rest on the original premise of control.

⁹¹ The District Court or Supreme Court will make the decision for permanent suspension. See Article 48(3) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁹² See Article 46(2) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁹³ See Article 48 of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁹⁴ See Article 49(1) of draft Bill provided by the Parliament (dated May 30, 2011) in the series of public hearings conducted in June 2011.

⁹⁵ See Article 107(c, d, e) of Law Number 27 of 1999 on Amendment of Criminal Code in relation with Crime Against State Security.

Second, the Bill, if enacted, would create a kind of second-tier registration system. The Bill envisions that a societal organization may take the form of an organization with legal entity status, such as a foundation or association. Although the foundation and association may undergo registration as a societal organization simultaneously in the process of seeking the underlying legal entity status, the meaning of having the status of a societal organization is unclear.

The Special Committee in the Parliament currently has the opportunity to improve the legal framework. The immediate priority should be on the Bill on Associations, which has a valid legal basis and is already listed in the National Legislation Program 2010-2014, number 228. With an enabling Law on Foundations (for non-membership organizations) and Law on Associations (for membership organizations), there would be no need to regulate the civic sector through the Bill on Societal Organizations. A broadly sweeping and highly politicized legal status, as represented by the societal organization, is clearly not suitable for a democratic country like Indonesia.

Third, the Bill on Societal Organizations envisions the continuing authority of the Ministry of Home Affairs (MoHA), and the Directorate General of National Unity and Politics (*Direktorat Jenderal Kesatuan Bangsa dan Politik*) in particular. The approach of the MoHA, and especially the Directorate General of National Unity and Politics, is always grounded in the perspective of politics and security. Such a regulatory approach is not likely to lead to a healthy and strong civic sector in Indonesia. By contrast, in many civil law countries, it is the Ministry of Justice or the court system that is made responsible for the registration and supervision of CSOs.

Indonesia needs a more enabling legal framework to strengthen the CSO sector. Instead of vesting regulatory authority with the MoHA, it would be better to assign the Ministry of Law and Human Rights to handle the registration of foundations and associations. Relevant sectoral ministries, such as the Ministry of Social Affairs, Ministry of Education, or Ministry of Religious Affairs can use their regulatory roles to further support and facilitate the activities of foundations and associations.

E. Strategic Recommendations

This section provides two phases of strategic recommendations: short-term and long-term recommendations.

1. Short-term Recommendations (June – July or end of 2012)

The Special Committee for the Bill on Societal Organizations in the Parliament originally scheduled the discussion of the Bill to run from January 26 until May 22, 2012, but did not manage to complete the discussion during that time frame.

On May 30, 2012, the Special Committee conducted a meeting with the Government. It was agreed to establish a Working Committee to further discuss the Bill. The Chief of the Special Committee, Mr. Abdul Maliq Harmain, mentioned the date of July 12, 2012, as the new time frame for the discussion of the Bill in the Plenary Session. There is a substantial possibility, however, that the targeted schedule will again not be met.

The short-term recommendations are based on that schedule, seeking to make input into the parliamentary process.

1.1. Recommendations for CSOs

There is a need to raise awareness of the Bill and its implications throughout the CSO sector in Indonesia. One of the lessons learned in conducting advocacy work for the Foundation Law in 2000 is that most CSOs are narrowly focused on their core issues (issues related directly to their own mission) and often tend to ignore issues related to the underlying legal framework (legal entity status, taxation etc).

The lack of understanding regarding the Bill on Societal Organizations and the legal framework for CSOs in Indonesia weakens the public pressure against the Bill. Some CSOs and members of the public support the Bill because they believe it will solve the problems caused by organizations promoting hatred and violence. In fact, the Criminal Code of Indonesia is more than sufficient to support law enforcement and to respond to violent activities. The Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana – KUHP*) already covers violent offences conducted by a principal criminal actor, or one who aids, abets, or commands a crime, or who publicly promotes hatred against a group of people. The real problem is the lack of political will of law enforcement agencies, including the police, to enforce the law against such individuals.

A constructive response to the Bill would be for CSOs to participate in and contribute to the ongoing process in the Parliament, by sharing their views on the Bill and supporting a more enabling legal framework for CSOs. CSOs could also request a hearing with each political faction to discuss the Bill. In order to provide constructive input, however, CSOs need enhanced capacity and access to effective advocacy materials, credible references, comparative international studies, etc.

The recommendation is to (1) raise awareness among CSOs of the Bill on Societal Organizations and its implications throughout the CSO sector in Indonesia; and (2)

empower CSOs to participate in the Parliamentary process, through access to effective advocacy materials, comparative expertise, etc.

1.2. Recommendation for the Special Committee in the Parliament

The Special Committee needs to understand the legislative history of the Bill on Societal Organizations and understand that civil society is an important sector in a democratic country. Ideally, the Special Committee should not proceed with the Bill. However, it may not be realistic to expect the Committee to withdraw the Bill, since the Bill is already being discussed (special committee established, budget already allocated, etc). One potential solution is for the Special Committee to shift its focus from the Bill on Societal Organizations to the Bill on Associations. As mentioned previously, the Bill on Association is already listed number 228 in the National Legislation Program 2010-2014. The challenge of this strategy is that for the Bill on Associations, the relevant ministry is the Ministry of Law and Human Rights, not the Ministry of Home Affairs. It would be politically difficult for the Special Committee to shift the focus from one Bill to another, because it would mean a shift in liaising with a different ministry.

The recommendation is for the Special Committee to (1) study the legislative history of the Bill on Societal Organizations and the importance of civil society to Indonesia; and/or (2) withdraw the Bill on Societal Organizations from consideration and shift its focus to the Bill on Associations.

1.3. Recommendation for the Ministry of Law and Human Rights

Since 1994, the Ministry of Law and Human Rights has been discussing the Bill on Associations. As explained previously, the draft Bill sprang from a unified draft law entitled “Bill on Foundation and Association.” In 2001, because of the influence of the IMF, a separate bill on foundations was prepared and enacted as the Law on Foundations.

The enactment of a new Law on Associations is a crucial step toward strengthening the legal framework for associations. To achieve this, the Ministry of Law and Human Rights must be more active in promoting the Bill on Associations. The Ministry of Law must coordinate with the Ministry of Home Affairs to establish a conducive legal framework for CSOs in Indonesia. The challenge is that, in practice, so-called “sector-ego” may prevent a ministry from “disturbing” another ministry’s program. The discussion of the Bill on Associations will surely overlap with the discussion of the Bill on Societal Organization since both Bills relate to membership-based organizations.

The recommendation is for the Ministry of Law to promote the Bill on Associations to the public, to other ministries, and to the Parliament.

2. Long-term Recommendations (2012 – 2014)

2.1 Recommendation for CSOs

Government arguments supporting increased regulation of CSOs in Indonesia relate to accountability and transparency, especially related to foreign funding. CSOs need to improve their ability to demonstrate their accountability and transparency. More generally, CSOs need to be more pro-active in managing governmental and public perceptions, rather than responding to government-led initiatives.

CSOs need greater awareness of their rights and opportunities under the legal framework. For example, CSOs should be more aware of taxation issues and the availability of tax incentives. Tax deductions for donations to support disaster rehabilitation, research and development, improved infrastructure, education facility, and sports are available and have been since 2008.

CSOs need to be more involved in the law making process. As mentioned earlier, the Indonesian National Legislation Program for 2010-2014 includes at least five bills that are closely related to the legal environment for civil society in Indonesia.⁹⁶ CSOs need to be prepared to engage in research, advocacy, parliamentary lobbying, and public campaigning related to the discussion process of these bills.

2.2. Recommendation for the Government and Parliament

The Government and Parliament need to adopt a more enabling approach toward CSOs in Indonesia. The approach should be to facilitate and improve the quality of the legal environment, not to limit and repress civil society. CSOs are crucial and play an important role in a democratic country.

It is important for Indonesia to improve the legal framework. The general framework should be based on the Foundation Law (for non-membership organizations) and the Association Law (for membership based organizations). The Law on Societal Organizations should be revoked, not revised.

Data from the Ministry of Law and Human Rights reveals the existence of 21,301 registered foundations and 268 incorporated associations. This data reflects a serious problem in the field. There are undoubtedly more than 21,301 foundations and 268 incorporated associations in Indonesia; this reveals not only a problem of registration or an incomplete database, but also a problem of the effectiveness of law. It also clearly reflects an imbalance in the number of foundations and associations.

The Ministry of Law and Human Rights has established 12 "Law Centers" in some provinces (Banda Aceh, Ternate, Yogyakarta, Banten, Pekanbaru, Medan, West Java, Central Java, East Java, Padang, Nusa Tenggara Timur, and Jambi). These law centers could be a good vehicle to connect various CSOs in the regions to the Ministry of Law in Jakarta. The Ministry of Law could run a program facilitating CSOs in the regions to help them comply with the laws governing foundations and associations.

⁹⁶ To repeat, those bills are (1) the Bill on the revision of the Law on Societal Organizations (*RUU tentang Perubahan atas UU No.8/1985 tentang Organisasi Kemasyarakatan*); (2) the Bill on Associations (*RUU tentang Perkumpulan*); (3) the Bill on the second revision of the Law on Foundations (*RUU tentang Perubahan Kedua atas UU No.16/2001 tentang Yayasan*); (4) the Bill on NGOs (*RUU tentang Lembaga Swadaya Masyarakat*); and (5) the Bill on Protection of Human Rights Defenders (*RUU tentang Perlindungan terhadap Pembela HAM*).

The Ministry of Law and Human Rights also needs to build proper database for CSOs. The Ministry of Law should have an accessible and reliable database for data related to the foundations and associations established in Indonesia.

Furthermore, the Government and Parliament should engage in more strategic partnership with CSOs. This should include open communication and establish improved relations with the CSO sector.
