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Muslim Societies, Civil and Political Rights, and The Guarantee of Religious Freedom: A Comparative Study Between Indonesia and Turkiye Constitutions

Muzayyin Ahyar
Ondokuz Mayıs Üniversitesi, Turkey
23281224@stu.omu.edu.tr

Materan
Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda, Indonesia
materan23101962@gmail.com

Muhammad Kholil Muqorrobien
Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda, Indonesia
mkmuqorrobien@gmail.com

Abstract:

One of the contents of the constitution in a democratic country is material substances on the guarantee of human rights. In the partial part of the constitution and human rights, there is always one regulation on civil and political rights. Philosophically, the civil and political rights of citizens in a democratic nature cannot be restricted. Nevertheless, there is always a gap in the legal argument that the constitution can limit civil and political rights. This article examines the limitations of civil and political rights in two cases in different countries: Indonesia and Turkiye. These two countries were chosen as subjective data based on the legal system's proximity pattern and socio-religious conditions. Both countries are also close to the civil law system and have historical references to Islam. In addition, both Indonesia and Turkiye have experience with the prohibition

of civil organizations in the religious field. Using a comparative legal study method and a sociological-empirical approach, this article compares the relevant Indonesian and Turkiye constitutions to see how the two countries guarantee human rights, predominantly civil and political rights. The result of this article reveals that national consensus, national security, stability, and legitimate political power are some of the legal arguments that are always present in the discourse on restrictions on human rights. Under these conditions, human rights restrictions are commonly regulated in the constitution, which contains human rights laws.

Keywords: Indonesia and Turkiye Constitution, Human Rights, *Hizmet*, *Hizbut Tahrir Indonesia*, Restriction of civil and political rights

A. Introduction

The democratic transition process is usually marked –one of them– by opening the gates of civil liberties in a country. After the gates of civil liberties are opened, democracy enters with its distinctive features: general elections, separation of powers, amendments to the constitution, and improvements to human rights guarantees. This guarantee of human rights is an essential element in a democratic country. Ideally, the longer the democratic system is implemented in a country, the stronger the guarantee of human rights will be. This wave of democratization continued to target third countries after the Second World War. Riveting attention to the wave of democratization has focused on democratic transitions in Muslim countries. Various circles have highlighted the complexity of Muslim countries in facing the wave of democratization in their respective countries.[1] Of the many studies on Muslim countries and democracy, Indonesia and Turkiye are the most interesting cases of democratization. Both countries are great nations and industrial lands, and they have many similarities in the various ideological struggles that have led the two countries to become democratic countries. As democratic countries, Indonesia and Turkiye are both committed to respecting human rights. Respect for human rights is demonstrated, at least through the written law contained in the state constitution. The authors propose

[1] Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton University Press, 2011); Muhammad AS Hikam, *Islam, democratization, and empowerment of civil society* (Erlangga, 2000); John L. Esposito and John Obert Voll, *Islam and Democracy* (Oxford University Press, 1996); Azyumardi Azra, *Islamic Political Transformation: Radicalism, Khilafatism, and Democracy* (Kencana, 2016); Jeremy Menchik, *Islam and Democracy in Indonesia: Tolerance without Liberalism* (Cambridge University Press, 2016); Paul J. Carnegie, "Democratization and Decentralization in Post-Soeharto Indonesia: Understanding Transition Dynamics," *Pacific Affairs* 81, no. 4 (2009): 515–25.

to look at the two countries in dealing with human rights law through written constitutional regulations and government policies related to civil society rights.

The content of human rights in the Indonesian constitution has a long history since the formulation of the state constitution in 1945. There are pros and cons to the issue of human rights: should human rights be guaranteed and contained in the Constitution? The Groups against the idea of human rights were voiced loudly by Sukarno and Supomo. Sukarno believed that human rights reflected the flow of individualism, which was far from the *causa materialist of* the Indonesian people, which led to socialism. Thus, Sukarno asked to throw away the idea of individualism and the content of human rights in the Indonesian constitution. Sukarno's opinion was supported by other figures, such as Soepomo. Soepomo added that the constitutional material must have familial content rather than unique content such as individual rights.

Meanwhile, Moh Hatta and M. Yamin voiced the pro-human rights group. Hatta requested that our constitution contain articles on the rights of citizens to cast their political voices, such as the right to assemble and convene. Hatta's idea was supported by M. Yamin, who believed that human rights were part of independence that the constitution had to recognize.[2]

A compromise of opinion between the pro and contra groups on the content of human rights was agreed upon by only containing seven human rights articles. Although it is very limited and still allows absolutism of power, these articles are considered to have guaranteed each individual's independence. The constitution contains seven articles on individual freedom and has endured decades of protecting human rights in Indonesia. Only in the amendment of the constitution in 2000 did Indonesia have a lot of human rights content. In the Indonesian Constitution, a separate article guarantees human rights; those articles are written in chapter XA, article 28A-J of the 1945 Constitution of the Republic of Indonesia.

In contrast to Indonesia, Turkiye has been in contact with the ideas of human rights since the Ottoman Empire's era. Turkiye, as a state of constitutional power, actually started with the existence of a constitution in the Ottoman era in the 19th

[2] Mohammad Yamin, "The Minutes of the Assemblies of the Investigative Body for the Preparation of Indonesian Independence and the Preparatory Committee for Indonesian Independence in connection with the preparation of the 1945 Constitution" (Secretariat of the Republic of Indonesia, 1959), Excerpted from the Preparatory Manuscript of the 1945 Constitution.

century in the Tanzimat era, the young Ottoman movement (young Ottoman), and Young Turks (1839-1924).[3] However, those years were still very problematic for Turkish politics, and there was no standard formulation of human rights as stated in the Universal Declaration on Human Rights in 1948. Turkiye's constitution and human rights journey can be traced back to the 1982 Turkish Constitution, which was amended many times until 2017. In short, the Turkish constitution (currently valid) has many articles and editorials that contain human rights material. At least six "human rights" keywords in the constitution are distributed into civil, political, economic, and religious rights. By tracing this constitutional document, the author can say that the Turkish constitution guarantees the human rights of its citizens.

Guaranteeing human rights is not enough to formulate the content of rights in a written constitution. The guarantee of human rights must be realized more substantially by looking at government policies' orientation towards guaranteeing civil and political rights. One form of civil and political rights is the community's freedom to form associations and form organizations, although these organizations often criticize the legitimate Government. In this section, this research finds its relevance in seeing the application of human rights guarantees in legal and political contexts.

Over and over again, Indonesia and Turkiye have to be trapped in a challenging democratic situation. Both Indonesia and Turkiye are countries that have polarized the basic idea of the state in society. Two major ideologies that seem to be confronted are secularism and religious nationalism (Islam). In Turkiye, for example, even though their constitution explicitly states that Turkiye is a secular republic, people still carry religious nationalism narratives secretly. After Turkiye's nationalist-religious elites developed in education, strategy, and public support, Islamic-leaning parties continued to gain support. They were able to occupy power democratically in 1996,[4] 2003, 2014, and even today. Several times, Turkiye also had to experience coups and suppression of civil and political organizations because they were considered to have violated the constitution.

In civil and political rights, Indonesia and Turkiye have cases related to the prohibition or dissolution of civil organizations. In Indonesia, *Hizbut Tahrir Indonesia* (HTI) and the Islamic Defenders Front (FPI) are two organizations that have been disbanded and banned in the post-Reformation era of Indonesian

[3] John L Esposito, *The Oxford Encyclopedia of the Modern Islamic World*, vol. IV (New York: Oxford University Press, 1995).

[4] Nilüfer Göle, "Secularism and Islamism in Turkiye: The Making of Elites and Counter-Elites," *Middle East Journal* 51, no. 1 (1997): 46–58.

democracy. Meanwhile, Turkiye has also dissolved the large *Hizmet* organization, which is an organization under the tutelage of a great Turkish figure: Fethullah Gülen. A common similarity between the two cases of organizational restriction in Indonesia and Turkiye is that it opposes the constitution and the state's ideology. *Hizmet* is suspected to be the hotbed of the coup movement against the legitimate Government in 2016. Since then, the Gülen movement has been the target of President Erdoğan's political operations. In Indonesia, *Hizbut Tahrir Indonesia* was disbanded because of its activism, which continuously propagates opposition to the state ideology (*Pancasila*). FPI is considered a danger to the basic consensus of the state and diversity in Indonesia.

By looking at the phenomenon of disbanding/banning the activities of civil and political organizations in Indonesia and Turkiye, the author is interested in further investigating human rights laws in Indonesia and Turkiye.

B. Introducing Constitution and Human Rights Law In Indonesia And Turkiye

In comparative legal studies, the legal system would indicate state characteristics of law. Each system has concepts through which its rules are expressed and categories within which they are organized; the legal rule itself is described in a particular way. The study of any legal system supposes an awareness of such structural differences. The differences in the legal system might be collected in several families. According to legal scholars, some major contemporary legal families are found in legal studies. There would appear to be at least three occupied and uncontested places of prominence: the Romano-Germanic family, the common low family, and the family of socialist law.[5] There are two widely known legal systems: civil and common law. Civil law, or in other words called the European-Continental legal system, originated from the family of Romano-Germanic Family. The existing elements from which the system was to be constituted were essential to a customary character at this time. At the beginning of the thirteenth century, the Roman Empire ceased to exist for centuries. The invasion of many people, especially Germanic Tribes, was a side by side with the spreading of this Romano-Germanic legal system to other European continents such as Italy, the Netherlands, and France.

[5] Rene David, et.al, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, (New York: The Free Press, 1978)

In this legal system, Indonesia and Turkiye are similar. Both of country are closer to a civil law system. The characteristics of this legal system, among others, are "written" and codified law. The Constitution of Indonesia and Turkiye are both written and codified. It means that constitutions resulted from people's assembly agreement and were legally issued by the authoritative legislation power. By fundamental patterns of this legal system, Indonesia and Turkiye have a similarity in common; both countries are influenced by the European legal system with their own historical references. Indonesia was affected by the condition of Dutch colonialization, and geopolitical factors influenced Turkiye's geographical closeness with civil law countries.

However, the comparative study on human rights in the constitution between Indonesia and Turkiye is not entirely understood by studying their legal systems. There are substantial variables to look at this constitution comparatively, discussing the material substance of human rights in each constitution. The content of the two constitutions has four fundamental substances: shared ideals or common goals, the basic format and identity of the state, institutions of power, human rights guarantee, and special rules on amendments of the constitution.

Generally, the systematical contents of the Indonesian constitution consist of a preamble paragraph, 15 chapters, 37 articles, and additional provisions. Meanwhile, the Turkiye constitution consists of a preamble paragraph, 8 chapters, 177 articles, and provisional articles.

In both the constitution of Indonesia and Turkiye, the shared ideas and common goals are reflected in the preamble part of the constitution. The shared idea and common goals of the Indonesian constitution are reflected in the fourth paragraph of the constitution:

> *"…protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order which is by virtue of freedom, perpetual peace, and social justice…"*

Meanwhile, in the constitution of Turkiye, the shared idea and common goals are contained in the seventh paragraph of the constitution preamble:

> *"That all Turkish citizens are united in national honor and pride, in national joy and grief, in their rights and duties regarding national existence, in blessings and in burdens, and in every manifestation of national life, and that they have the right to demand a peaceful life based*

> *on absolute respect for one another's rights and freedoms, mutual love and fellowship, and the desire for and belief in "Peace at home; peace in the world."*

The Indonesian constitution's basic format and state identity are in chapters 1 (articles 1) and 15 (articles 35-36C). The Turkiye constitution shows the basic format and state identity in Chapter 1 (articles 1-3). Through this basic format and state identity, there are similarities in the form of the state and differences in state values in the two countries. Indonesia and Turkiye are unitary states in the form of republics. The basic value of the Indonesian state is Pancasila, while Turkiye adheres to the values of secularism contained in its constitution.

Institutions of power in Indonesia and Turkiye are also explicitly regulated in the constitution. Indonesia adheres to the flow of separation of powers between executive, legislative, and judicial powers. In a more elaborate study, this institution of power in Indonesia has been increasingly improved to an independent power institution relating to state finance and the organization of general elections. Judicial power is contained in chapter 2 on the People's Consultative Assembly (articles 2 and 3), chapter VII on the People's Representative Council (articles 19-22B), and the Regional Representatives Council (articles 22C-22D). Executive power is contained in Chapter 3 on the Governing Powers of the State (articles 4-16). In addition, executive powers are written in Chapter V on State ministries (article 17) and Chapter VI on Regional Governments (articles 18-18B).

Meanwhile, Turkiye separated his institutions of power into legislative power (articles 75-100), executive power (articles 101-137), and judicial power (articles 138- 160). All these institutions of power are written in part 3 (Chapters 1-3) of the Turkiye constitution: fundamental organs of the Republic. The institution of power between Indonesia and Turkiye is not fundamentally different. However, there are differences in the placement of the institution. For example, the Prosecutor (Kejaksaan) is an institution with a different position of power between Indonesia and Turkiye. Indonesia Constitution did not include the prosecutor in the constitutional contents. On the other hand, Turkiye places the prosecutor's office in judicial power (article 159).

The content of human rights material in the constitutions of Indonesia and Turkiye is an important variable in this comparative study. Through textual review, Indonesia places human rights in chapter XA of the constitution (article

28A-J). In this article of the constitution on human rights, the content of rights that the state must guarantee are fundamental rights. According to the Indonesian constitution, some fundamental rights must be protected: the right to life and the right to defend their life and living... Other crucial rights that the state must guarantee are the right to have a family, the right to obtain protection from violence and discrimination, the right to obtain welfare, the right to obtain justice and legal certainty, religious rights, economic rights, and political rights. This guarantee of rights is written in several articles in the Indonesian constitution apart from the partial chapter on human rights.

Although the content of human rights in the Indonesian constitution is written in a large position, other contents of the Indonesian constitution permit the limitation of human rights. Two points explicitly regulate the limitation on human rights in Indonesia. In article 28 J, paragraphs (1) and (2) it is clearly written:

> *"(1) Every person shall respect human rights of the others in the order of life of the society, nation, and state."*

> *"(2) In the exercise of his/her rights and freedom, every person shall abide by the limitations to be stipulated by the laws with the purpose of solely guaranteeing the recognition as well as respect for the rights and freedoms of the others and in order to comply with just demands in accordance with considerations for morality, religious values, security, and public order in a democratic society."*

With this article, human rights in Indonesia are permissible and can be limited by the rights of others and the law. Limitation of the rights of others is intended to maintain and respect social relations to which each individual has equal rights. Second, the limitation of rights in the name of the law is intended to provide protection to everyone without exception. In addition, the limitation of rights stipulated by the laws is also intended to implement a human rights guarantee in Indonesia that is not addressed to Western liberal philosophy but to protect people's rights appropriated to several cultural, religious, and moral values.

The Turkiye constitution places human rights in separate sections in several chapters of the constitution. In the preamble, the Turkiye constitution states that innate rights are adjusted to several variables related to other rights. In the sixth paragraph of the Turkiye constitution preamble, it states:

> *"That every Turkish citizen has an innate right and power to lead an honourable life and to improve his/her material and spiritual well-being under the aegis of national culture, civilization, and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution, in conformity with the requirements of equality and social justice."*

Besides in the preamble, the contents of human rights material are also mentioned in Chapter 2 of the constitution on fundamental rights and duties. Article 12 of the Turkiye constitution states:

> *"Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable.*
>
> *The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/ her family, and other individuals."*

There are differences in editorials and nature regarding fundamental rights between Indonesia and Turkiye. In the Human Rights chapter, the Turkish constitution juxtaposes the word rights with duties. Therefore, in other words, there are "fundamental rights" and "fundamental duties". Meanwhile, Indonesia places the obligations of citizens in another chapter in its constitution. In this fundamental rights chapter, the Turkiye constitution contains four chapters: General provisions, rights and duties of the individual, social and economic rights and duties, and political rights and duties.

From a theoretical perspective, the following paragraphs in this article will look at the concept of human rights from a philosophical theory that is often associated with human rights discourse. Generally, there are several theories and ideas related to Human Rights. The two most popular among those are universalism and relativism. The idea of universalism in human rights could be traced to a political philosopher in the 17th century, John Locke. Locke argued that human beings are born with – what he called– *tabula rasa*, or a blank slate. Locke proposed that humans are born like blank paper; anyone around them could make a rough concept from this paper. There are no innate principles in the mind when humans are born into the world. Although initially empty and can be crossed out

by anything, some fundamental rights cannot be removed from humans: the right to life, liberty, and property. These three fundamental rights apply universally to every human being.[6] The fundamental rights are none of the people's innate ideas but universal rights that others should guarantee. A lot of John Locke's thinking has formed the basis of a Western liberal democratic society. The United Nation's Universal Declaration of Human Rights (UDHR) reflects those fundamental rights. Article 2 of UDHR, for instance, states that access to basic rights and granting those rights are vested solely because we are human. It can not be based on location, race, nationality, gender, ethnicity, religion, politics, or other status. To follow up on that, article 3 of the UDHR states that everyone has the right to life, liberty, and the security of person. Those fundamental rights written in the UDHR are certainly understood as universal status. Moreover, UDHR has been ratified by several countries of United Nations members.

The idea of universalism in human rights gets critical responses from the concept of relativism. Relativist interpretation of human rights believes that beliefs, values, and rights should be understood as a product of culture. Those variables should vary from culture to culture. Therefore, human rights could be not really universal but "relatively universal." Human rights are universally applicable, but the implementation of these rights can be culturally and locationally relative to where the UDHR is applied.[7] For Instance, several countries that have ratified the UDHR certainly agree with the contents of the articles of the UDHR, including article 19 regarding freedom of opinion and expression and expressing opinions without intervention. In fact, several countries, including Indonesia and Turkiye, have legalized other particular laws and regulations regarding restrictions on people's expression based on the country's values, culture, and ideology.

Supporters of the theory of relativism widely criticize the theory of universalism of human rights. The relativist interpretation of human rights believes that beliefs, values, and even fundamental rights are cultural products. Therefore, the concept of this fundamental right must vary from one culture to another, from one place to another. Consequently, it is possible that human rights are not “universally universal” but “relatively universal”. Human rights are universally applicable, but the implementation of these rights can be culturally and conditionally relative

[6] John Locke, *Locke: Two Treatises of Government Student Edition* (Cambridge University Press, 1988); John Locke, *An Essay Concerning Human Understanding* (J. Johnson [and 18 others], 1805).

[7] Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2003); Jack Donnelly, *The Concept of Human Rights* (Routledge, 2019).

according to where the UDHR is applied.[8] For example, several countries that have ratified the UDHR certainly agree with the contents of the articles of the UDHR, including article 19 concerning freedom of opinion and expression and to express opinions without intervention. In fact, several countries, including Indonesia and Turkiye, have other laws regarding restrictions on people's expression based on the country's relative values, culture, and ideology.

Another interpretation of relativism's idea of human rights is the declaration of Human Rights in Islam, popularly called the Cairo Declaration of Human Rights. The Cairo Declaration of Human Rights in Islam was declared in 1990 and revised in 2020. The first version of the Cairo Declaration of Human Rights in Article 25 sounds relativistic. Article 25 states that Islamic sharia is the only reference source for interpreting and explaining articles on human rights in Islam. The next revision of human rights in Islam took fundamental changes. The member states of the declaration eliminate the article stating that Islamic Sharia is the only source for explaining human rights in Islam. Nevertheless, the human rights declaration still has a sense of relativism. Article 25 numbers (a) and (b) states that all articles written in the declaration of human rights in Islam have a possibility to be interpreted and explained differently according to national law or the obligations of the Member States under international and regional human rights treaties as well as their sovereignty and territorial integrity.

Besides these two major theories, there are several more concepts about human rights. The idea of human rights can be based on several legal theories: rights based on natural laws, justice, reaction to injustice, dignity, and equality of respect. However, these two theories lead to the understanding that although human rights have universal values, their application in various countries brings the ideas of relativism. The theory of universalism and relativism in human rights will be the initial guide to the focus of this research. This research will first categorize the character of human rights that apply in two countries, Indonesia and Turkiye, based on their universality and relativity. Further, the study will look for specific conditions in which the universal theory of human rights becomes more "relatively universal". On the one hand, fundamental rights can be considered human rights, but those rights can be limited normatively by national laws that apply in certain countries on the other hands.

[8] Donnelly, *Universal Human Rights in Theory and Practice*; Donnelly, *The Concept of Human Rights*.

C. Human Rights and Political Restriction: Cases of Hizbut Tahrir in Indonesia And *Hizmet* In Turkiye

In security studies, some discussion emerged emphasizing the role of constitutional and political restrictions on special persons. For instance, for government employees, armed forces in a multilateral context, and other unlawful communities.[9] In another case, the International Covenant on Civil and Political Rights cannot be completely understood without considering their explicit or implicit limitations. Some issues that have arguably dealt with political or rights restrictions are radical freedom, interpretation, balancing of rights, absolute rights, margin of appreciation, and violation of human rights values.[10]

1. The Case of Hizbut Tahrir Indonesia

The rule of restriction of Rights is applied in Indonesian Law. In 2017, the Government passed Government Regulation in Lieu of Law No. 2 of 2017 concerning Community Organizations (*Perppu Ormas*). One of the results of the birth of this Government Regulation is that the organization's dissolution is no longer through a court mechanism if it is proven to have committed a crucial violation of the state's ideology (Pancasila). On this basis, the Ministry of Law and Human Rights, as the institution providing legality to the *Hizbut Tahrir Indonesia* (HTI) association, revoked the old decision on the legalization of the establishment of the HTI association. The legal basis for the revocation of legal entities for the Hizbut Tahrir Indonesia association is the Decree of the Minister of Law and Human Rights No. AHU -30.AHA.01.08.2017 concerning the revocation of the decision of the Minister of Law and Human Rights No. AHU-00282.60.10.2014 concerning the ratification of the establishment of *Hizbut Tahrir Indonesia* associations. With the Minister of Law and Human Rights decision, all activities that carry the name *Hizbut Tahrir Indonesia* are declared as illegal associations and can be subject to legal sanctions for the perpetrators.

As a group that lives in a democratic world, the revocation of the legal entity of the Indonesian *Hizbut Tahrir Indonesia* association was met with legal resistance by its members. Initially, *Hizbut Tahrir Indonesia* examined the material on *Perppu* number 2 of 2017 concerning community organizations

[9] Patrick A. Mello, "A Comparative Analysis of Constitutional and Political Restrictions on the Use of Force," *SSRN Electronic Journal*, 2014, https://doi.org/10.2139/ssrn.2477716.

[10] Eckart Klein, "'On Limits and Restrictions of Human Rights: A Systematic Attempt.,'" in *Strengthening Human Rights Protections in Geneva, Israel, the West Bank and Beyond*, Edited by Joseph E. David, Yaël Ronen, Yuval Shany, and J. H. H. Weiler (Cambridge: Cambridge University Press, 2021).

(Perppu Ormas) to the Constitutional Court (judicial review). The review of this Perppu was carried out because *Hizbut Tahrir Indonesia* felt that they were disadvantaged as citizens of the promulgation of the Perppu. *Hizbut Tahrir Indonesia* feels that its constitutional rights have been impaired, especially with Article 59 paragraph (4) letter c, Article 61 paragraph (3), Article 62 paragraph (1), Article 80, Article 82A paragraph (1), (2), and (3) *Perppu* 2 /2017.

Article 59 paragraph (4) letter c of Perppu 2/2017 reads, *"Community organizations are prohibited from adopting, developing, and spreading teachings or understandings that are contrary to Pancasila".*

Meanwhile, Article 61 paragraph (3) states, *"Administrative sanctions as referred to in Article 60 paragraph (2) are in the form of: a. Revocation of registered certificate by the Minister; or b. Revocation of legal entity status by the minister who carries out government affairs in the field of law and human rights.*

Then Article 62 paragraph (1) reads, *"The written warning as referred to in Article 61 paragraph (1) letter a is given only 1 (one) time within a period of 7 (seven) working days from the date the warning is given."*

According to the Petitioner of the judicial review (Hizbut Tahrir Indonesia), the state should protect the human rights of its citizens, and the consequence is that the state apparatus should not act arbitrarily. The state must guarantee legal certainty without exception to those in community organizations.

The Petitioner argued that the application of Article 59 paragraph (4) letter c along with the phrase "adhering to" and Article 61 paragraph (3), Article 62, Article 80, and Article 82A of Perppu 2/2017 allows the Government to take unilateral actions without considering the right of response from mass organizations. As a result, these provisions can be used arbitrarily. The Petitioner also considered that the article had taken over the task of the judge in adjudicating the case.

The Constitutional Court later rejected this Perppu Ormas. The Constitutional Court's decision was issued after considering several things. First, the problem with the object of the application is the *Perppu*. The House of Representatives, in a plenary meeting on October 24, 2017, approved Perppu No. 2 of 2017 concerning the amendment of Law No. 2003 concerning community organizations into a state law. On November 22, 2017, the President ratified the Perppu -as a provisional law- into Law No.

16 of 2017. Second, therefore, according to the Constitutional Court, the *Perppu Ormas*, which is the object of the petition in the material review of *Hizbut Tahrir Indonesia* has disappeared, so the petitioner's petition has lost its object.[11]

Hizbut Tahrir Indonesia conducted other legal defenses besides the judicial review of *Perppu Ormas*. Hizbut Tahrir Indonesia filed a lawsuit to the *Pengadilan Tata Usaha Negara* Jakarta (PTUN, State Administrative Court), which was addressed to the Minister of Law and Human Rights and the Director General of General Legal Administration. The filing of this lawsuit is to ask the Administrative Court to decide that the decision of the Minister of Law and Human Rights No. AHU -30.AHA.01.08.2017 is null and void and has no binding legal force with all legal consequences. In this trial, the Administrative Court rejected the plaintiff's claim in its entirety because the Minister of Law and Human Rights decision was not proven to be formally flawed. The results of the PTUN trial were stated in the decision of the Jakarta State Administrative Court No. 211/G/2017/PTUN.JKT.

Within the scope of freedom of association, this limitation on the organization of Hizb ut-Tahrir Indonesia can be regarded as a form of violation committed by the Government against citizens who have been protected in the constitution. Although the Constitution guarantees the formation of a mass organization, it does not mean that its activities can be carried out freely. In other words, the activities of mass organizations must always be bound by restrictions to respect the human rights and freedoms of others in the context of law and order and create justice in the life of the nation and state. The existence of Ormas can be limited considering that the rights to freedom of association, assembly, and expression of opinion regulated in Article 28E paragraph (3) of the 1945 Constitution fall into the category of human rights whose implementation can be limited. In contrast to the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law. According to Article 28I paragraph (1) of the 1945 Constitution, all of these rights are included in the category of human

[11] See "Putusan Mahkamah Konstitusi Republik Indonesia (Decision of the Constitutional Court)," No. 39/PUU-XV/2017 § (2017).

rights that cannot be reduced under any circumstances (non-derogable rights).[12]

In order to ensure the exercise of civil rights is not easily suppressed arbitrarily by the Government, the restrictions, such as the dissolution of mass organizations, are still bound to certain criteria. The criteria are referred to as stipulated in Article 28J paragraph (2) of the 1945 Constitution. Every person shall abide by the limitations to be stipulated by the laws.

From other arguments, the banning of HTI is a form of securitization. This securitization indicates several things. The dissolution of HTI brought a discourse of national security and state ideology. The existence of HTI is allegedly a threat to democracy in Indonesia. The securitization of HTI, on the other hand, is a preventive measure for the Indonesian Government regarding the concept of security that they have created themselves. However, the absence of dialogue between the Indonesian Government and HTI led to the emergence of black lash.[13] The case of HTI also shows the response of the Indonesian Government to the Islamist movement. Indonesia used three kinds of actions: the issuance of an extraordinary law known as Perppu Ormas in 2017 to dissolve this movement. According to the state, HTI failed to contribute to Indonesia life directly; indeed, it brought an ideological threat to Indonesia, stigmatizing HTI through producing destructive frames, according to the national interest, such as radical, dangerous, and anti-Pancasila, warning the state`s civil servant who support and join HTI with a punishment threat. The state took all these strategies to weaken this group`s ability to work further to pursue its political and ideological objective. However, the state response does not always work as the state hopes. In some cases, it does, but sometimes state repression strengthens groups or movements.[14]

2. The Case of Hizmet in Turkiye

[12] Bayu Marfiando, "Pembubaran Hizbut Tahrir Indonesia (HTI) Ditinjau dari Kebebasan Berserikat," *Jurnal Ilmu Kepolisian* 14, no. 2 (September 30, 2020): 13.

[13] Ayu Rikza, "The Securitization of Hizbut Tahrir Indonesia," *Politik Indonesia: Indonesian Political Science Review* 5, no. 2 (August 21, 2020): 172–91, https://doi.org/10.15294/ipsr.v5i2.21712.

[14] Hasbi Aswar, Danial Bin Mohd Yusof, and Rohana Binti Abdul Hamid, "The State Response toward the Existence of HTI: An Analysis from Social Movement Study Approach," *Sospol : Jurnal Sosial Politik* 6, no. 2 (October 10, 2020): 183–200, https://doi.org/10.22219/sospol.v6i2.12908.

Turkiye has framed popular perception of Islam both in Europe and Asia continental. Nevertheless, such perceptions regarding secularization in Turkiye are rather inappropriate. Mustafa Kemal Pasha, popularly known as Atatürk, changed Turkiye's Islamic caliphate to a Republic State in 1923. Atatürk then regarded political Islam and its representatives as an obstacle to the new modern Turkiye. Therefore, the separation of state and religion must be a priority on the agenda for building the New Turkiye. The constitution of Turkiye reveals that secularism is a national value of the Republic of Turkiye.

Since the beginning of secularization both in the Tukish political realm and the legal-constitutional field, the Islamic movement has become an underground activity. Yet Islam in the political arena would be allegedly dangerous as its desire to change the constitution to be more "Islamic". Some "Islamic" actors in the political field of Turkiye were faced with a military coup when they won the political contestation. Adnan Menderes, for instance, the former Turkiye Prime Minister who changed the Islamic call for worship (*azan*) from Turkish back to Arabic, was ousted in a military coup in 1960. A new constitution was drawn up in 1961, which made the Department of Religious Affairs (now known as the *Presidency of Religious Affairs*) become the government authority, a move designed to create a closer link between Islam and the state.[15]

Military coups have occurred many times in Turkiye, followed by amendments to the constitution. The latest (failed) coup attempt was on the evening of July 15th 2016, when fighter military jets were witnessed flying over Ankara. In other places, the two major bridges -both the Fatih Sultan Mehmet and Bosphorus bridges in Istanbul- were closed. The Turkish Government has blamed Fethullah Gulen for designing the coup with his Followers. Gülen is a Turkish religious and businessman figure. The people who are inspired by Gülen's teaching consolidate themselves in a community named *Hizmet*. *Hizmet* literary means services. *Hizmet* refers to a faith-based civil society movement from Turkiye whose disciples have created an unprecedented global network of thousands of individuals and institutions that span different circles of human organization. Established in Turkiye and Surrounded in terms of Islam, *Hizmet* collectively contends that math and

[15] Erhard Franz, "Secularism and Islamism in Turkiye," in *The Islamic World and the West: An Introduction to Political Cultures and International Relations*, vol. 71, Social, Economic and Political Studies of the Middle East and Asia (Brill, 2000), 161–75, https://doi.org/10.1163/9789047400370_014.

science-based education, economic development, and intercultural dialogue are essential ingredients necessary to combat humanity's three-fold enemies: ignorance, poverty, and disunity. *Hizmet*-affiliated institutions in Turkiye or other countries have intensely proposed Gülen's methods to solve various problems affecting humankind, such as economics. Considering its worldwide presence, the movement's activities are often contested, and in return, its affiliates have difficulty convincing outsiders that it is simply a faith-based social movement active in education, development, and dialogue.[16]

In other opinion, *Hizmet* cannot be classified easily in political terms. An adherent will focus on the movement's fight against poverty, ignorance, and disunity through work, the mobilization of capital, and dialogue. It will emphasize its globally oriented humanism. A Marxist will look at the business side of its support for neoliberalism and label it as a form of the new right and as an expression of a globalizing elite intent on extending global free markets with slight modifications. A feminist will see its support for traditional family values and role allocation to women and dismiss it as detrimental to women's interests. The Jihadi-Salafist will balk at its notions of "tolerance" and "dialogue," viewing it as too liberal. By contrast, an assertive secularist will charge it with intentions to overthrow the secular social order. What has become clear is that a more systematic study of Gülen's thinking and its application in practice is needed.[17] By this argument, the *Hizmet* movement, which was influenced by Gülen's thinking, was not merely surrounded by religious fields but also social, political, and economic movements.

Following the failed coup attempt in 2016, the Government of Turkiye incessantly blames Gülen as an actor behind the coup. Several efforts were made by the Turkish Government to dismiss this alleged actor from the social-political-economic life of Turkish people. The first legal strategy of the Turkish Government is declaring "State of Emergency". Responding to the attempted coup in July 2016, the Government of Turkiye declared a state emergency for about three months (90 days). The declaration of a state emergency in Turkiye further became a contain of the constitutional

[16] Ihsan Yilmaz and John L Esposito, *Islam and Peace Building: Gülen Movement Initiatives* (New York: Blue Dome Press, 2010).

[17] Sabine Dreher, "What Is the Hizmet Movement? Contending Approaches to the Analysis of Religious Politics in World Politics," *Koninklijke Brill NV*, Koninklijke Brill NV.

amendment in 2017, a year after the government defeated the attempted coup. Article 119 of the Turkish Constitution reveals that *"the President of the Republic may declare a state of emergency in one region or nationwide for a period not exceeding six months".* Several conditions might be considered when declaring a state of emergency. One of them is *"strong rebellious actions against the motherland and the republic"*.

The result of this declaration is that the exercise of fundamental rights and freedom may be either partially or entirely suspended. In other ways, measures derogating the guarantees embodied in the constitution may be taken to the extent required by the situation as long as obligations under international law are not violated.[18] In this nature, the Government takes control over the people and tries to blame the Gülenist movement for the coup. A year after the attempted coup, the Supreme Court of Turkiye made a decision that FETÖ (the name to mention the Hizmet movement, given by the Turkish Government) was categorized as an "armed terrorist organization" for the first time in the upper judicial standard. The criteria for membership in this organization were also determined.[19] By this judicial decree, the executive Government was more powerful in executing *Hizmet*, the alleged movement, from many legal sources. Some related laws are: anti-terrorism laws, Turkish penal code Number 5237, and the latest legislation, Turkiye has issued a Turkiye's Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction. This law was finally issued in 2020. Under the state of emergency, 19 decree laws have been published. These decree law are allegedly related to the restriction of expression, especially in media.[20]

The discoursive strategy was conducted through political speech to ban some movements affiliated with Gülen. The President's campaign to mention Gülen adherents as a Fethullah Terrorist Organization (FETÖ) is extremely reproduced. Some presidential speeches traced this issue:[21]

[18] Article 15 the Constitution of Turkiye, as amended on 16th of April, 2017)

[19] "'Silahlı terör örgütü' tanımı yargıtay kararıyla tescillendi," Sabah, accessed August 3, 2022, https://www.sabah.com.tr/gundem/2017/06/17/silahli-teror-orgutu-tanimi-yargitay-karariyla-tescillendi.

[20] "Government Memorandum on the Measures Taken During The State of Emergency Relevant to the Freedom of the Media," Opinion (Venice: European Commision for Democracy through Law (Venice Commision), 2017).

[21] "Erdoğan's Campaign of Hate Speech. Case of Targeting the Gülen's Movement 2013-2017" (Stockholm Center for Freedom, May 2017).

On October 12th 2016 the President stated: the President stated:

> "*FETÖ, which has haunted Turkiye like a dark cloud, is a seditious movement that abuses religion and legitimizes everything for its aims and has questionable funds and works to fragment the Ummah and whose real face cannot be seen due to its secret nature."(Dolmabahçe Palace, İstanbul, 9th Eurasia Islamic Council Meeting)*

On November 29th, 2016, the President delivered his speech:

> *"I call on those who insist on being part of FETÖ: If you choose to stay with it [FETÖ], you will hit this nation's wall. This nation will make you pay a price. We have entered the lairs of the separatist terrorist organization. We will enter FETÖ's lair as well" (Ankara, High Speed Train Station opening)*

On January 19th, 2017, the President stated:

> *"The FETÖ cleansing is not over; it will continue. (…) These microbes and viruses will still be there. Such a thing is unacceptable. This cleansing is not yet done. We have a lot of work to do. This will be completed." (Meeting of headmen at the Presidential Palace)*

On March 29th, 2017, the President said:

> *"We have no state other than the Republic of Turkiye. We are not going to recognize the right to life for those who divide our state and the FETÖ parallel state structure. (Ankara, Presidential Palace)*

Regarding Erdogan's campaign speech, a multilateral relationship was formed between Turkiye and other countries. On Thursday, Turkish Deputy Parliament Speaker Ahmet Aydin told Anadolu Agency that FETO was designated a terrorist organization in the final declaration of the Asian Parliamentary Assembly's (APA) 9th Plenary Session held in Cambodia's Siem Reap province. Aydin said that in a speech at the gathering, he gave a

detailed account of FETO's July 15 coup attempt and asked the member states for their support.[22]

Finally, According to Turkish Ministry of Interior data, it suspended 8,777 officials, including 7,899 police officers, 30 governors, 614 Gendarmerie officers (Public Forces responsible for public order), and 47 district governors. A total of 2,745 judges and five members of the Turkish Supreme Court (Hakimler ve Savcilar Yuksek Kurulu / HSYK) were dismissed by the relevant authorities, while 2,836 members of the military including high-ranking officers were detained on July 16, 2016, 7,543 people were arrested for allegedly playing a role in a coup consisting of 100 police, 6,038 soldiers, 755 judges and 650 civilians. In addition, 15,200 Ministry of Education staff were fired in the education sector, and 21,000 teachers were withdrawn from their teaching permits. The number continued to increase until December 9, 2016, when it was noted that more than 125,000 workers were fired, 3,673 judges and prosecutors were dismissed, and around 1,800 organizations/foundations were closed. About 2,100 schools, dormitories, and universities were closed. The impact of the 2016 Turkish military coup on domestic politics describes that the coup had four impacts on politics in Turkiye. First is the government's relations with the opposition parties. Second, Turkiye's democratic political culture. Third is domestic political policy, and fourth is military bureaucracy.[23]

D. CONCLUSION

From the case of banning the *Hizmet* Movement in Turkiye and *Hizbut Tahrir Indonesia* in Indonesia, could these cases be in similar law conditions? As democratic countries that have a constitution as the rule of law, Indonesia and Turkiye are similar in guaranteeing human rights. The two constitutions reveal that human rights become a material content written in the constitution. In the case of guaranteeing human rights in the constitution, the theory of relativism seems to be more appropriate than the theory of universalism. The right to life, as well as other fundamental rights, must be universally guaranteed by every country. However, relatively, several countries have considerations for imposing restrictions on human rights in accordance with issues of national interest in each

[22] "FETO Declared Terrorist Organization by 42 Asian Nations," accessed August 3, 2022, https://www.aa.com.tr/en/july-15-coup-bid/feto-declared-terrorist-organization-by-42-asian-nations/697306.

[23] Ismail Adsay, "The Impact of the 2016 Turkish Military Coup on Politics in Turkiye," *International Journal of Science and Society* 2, no. 2 (May 11, 2020): 15–20, https://doi.org/10.54783/ijsoc.v2i2.87.

country, for example, the case of the prohibition of *Hizmet* in Turkiye and Hizbut Tahrir in Indonesia. Apart from the philosophical argument stating that there should be democratic backsliding in a country that enforces the restriction on civil and political rights, these two cases show that restrictions on civil and political rights are also legally and formally correct. Both the Indonesian and Turkiye constitutions contain restrictions on the rights and freedom of association, which are legally regulated in order to maintain national security and respect and protect the rights of others. Through the cases of *Hizmet* and HTI, national consensus, national security, stability, and legitimate political power are some of the legal arguments always present in the discourse on restrictions on human rights. Under these conditions, human rights restrictions are commonly regulated in the constitution, which contains human rights law.

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